

PUBLIC NOTICE

Notice is hereby given that the Tooele City Council will meet in a Business Meeting on Wednesday, February 4, 2026 at the hour of 7:00 p.m. The meeting will be held in the Tooele City Hall Council Chambers, located at 90 North Main Street, Tooele, Utah. The complete public notice is posted on the Utah Public Notice Website www.utah.gov, the Tooele City Website www.tooelecity.gov, and at Tooele City Hall. To request a copy of the public notice or for additional inquiries please contact Shilo Baker, City Recorder at (435)843-2111 or shilob@tooelecity.gov.

Tooele City public meetings may be recorded and transcribed for documentation and quality assurance purposes. By attending this meeting, you consent to being recorded. If you do not consent, we encourage you to join the City Council meeting electronically by visiting the Tooele City YouTube Channel, at <https://www.youtube.com/@tooelecity> or by going to YouTube.com and searching "Tooele City Channel". If you are attending electronically and would like to submit a written comment for the public comment period or for a public hearing item, please email cmpubliccomment@tooelecity.gov. If submission by email is not an option, written comments may be submitted to the City Recorder. Written comments must be submitted no later than the day prior to the meeting. Written comments will be addressed at the designated points in the meeting.

AGENDA

1. **Pledge of Allegiance**
2. **Roll Call**
3. **Mayor's Youth Recognition Awards**
4. **Utah Chief's Association Presentation**
Presented by Val Shupe, Executive Director of the Utah Chief of Police Association
5. **Public Comment Period**
6. **Resolution 2026-04** A Resolution of the Tooele City Council Consenting to Mayor Manzione's Appointment of Nathan L. Farrer to the Position of Director of the Public Works Department
Presented by Maresa Manzione, Mayor
7. **Swearing in of Nathan L. Farrer as the Public Works Director**
Presented by Shilo Baker, City Recorder
8. **Resolution 2026-02** A Resolution of the Tooele City Council Approving an Agreement with Nelson Brothers Construction Company for Construction of a New Salt Shed Building
Presented by Jamie Grandpre, Public Works Director
9. **Resolution 2026-03** A Resolution of the Tooele City Council Amending the Tooele City Fee Schedule, Adding an Annual Fee for Use of the Tooele City Police Department Gun Range
Presented by Adrian Day, Police Chief

10. **Resolution 2026-05** A Resolution of the Tooele City Council Authorizing Payment of a Fee in Lieu of Water Rights Conveyance for Holiday Oil on Franks Drive
Presented by John Perez, Economic Development Director

11. **Invoices & Purchase Orders**
Presented by Shilo Baker, City Recorder

12. **Minutes**
~January 21, 2026 Business Meeting

13. **Adjourn**

Shilo Baker, Tooele City Recorder

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations should notify Shilo Baker, Tooele City Recorder, at 435-843-2111 or shilob@tooelecity.gov, prior to the meeting.

TOOELE CITY CORPORATION

RESOLUTION 2026-02

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN AGREEMENT WITH NELSON BROTHERS CONSTRUCTION COMPANY FOR CONSTRUCTION OF A NEW SALT SHED BUILDING.

WHEREAS, Tooele City desires to construct a salt shed for its own reliable and accessible supplies of winter road salt ("Project"); and,

WHEREAS, the City solicited bids for the Project in accordance with the notice and bidding procedures of UCA §11-39-101 et seq.; and,

WHEREAS, City Council approval is required for all agreements in excess of the statutory cost threshold of \$30,000 established in TCC §1-5-10 (see *also* TCC §1-6-4, §1-14-4, §1-22-4); and,

WHEREAS, the City has complied with the requirements of the Tooele City Purchasing Policies and Procedures; and,

WHEREAS, only one bidder, Nelson Brothers Construction Company, submitted a bid, and inasmuch as the City finds the bid to be reasonable and acceptable, Nelson Brothers is the lowest responsible responsive bidder; and,

WHEREAS, Nelson Brothers submitted a cost proposal for building construction, construction management, supervision, and bonds for the Project in the amount of \$1,587,688.00 (see Exhibit A); and,

WHEREAS, the proposed Agreement is attached as Exhibit B; and,

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the agreement with Nelson Brothers Construction Company for building construction, construction management, supervision, and bonds for the Project in the amount of \$1,587,688.00, attached as Exhibit B, is hereby approved, and that the Mayor is authorized to sign the agreement on behalf of the City.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this day of _____, 2026.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

TOOELE CITY MAYOR

(Approved)

(Disapproved)

ATTEST:

Shilo Baker, City Recorder

S E A L

Approved as to Form:

Matthew C. Johnson, Tooele City Attorney

EXHIBIT A

Cost Proposal

NELSON BROTHERS CONSTRUCTION CO.

347 West 1600 South, Salt Lake City, Utah 84115

Phone: 801/487-5401 Fax: 801/487-8534

January 8, 2026

Jamie Grandpre
Tooele City
90 North Main Street
Tooele, Utah 84074

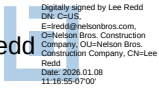
RE: Construction of City Salt Shed

We have prepared our Guaranteed Maximum Price (GMP) to construct the Tooele Salt Shed project based on the drawings prepared by J-U-B Engineers. The GMP is \$1,587,688.00 which includes all costs for site and building construction, construction management, supervision, and bonds.

We appreciate the opportunity to work with Tooele City on this project and look forward to the completion of the salt shed.

Please contact me if you have any questions.

Lee Redd



Digitally signed by Lee Redd
DN: cn=US,
E=leredd@nelsonbros.com,
O=Nelson Bros. Construction
Company, OU=Nelson Bros.
Construction Company, CN=Lee
Redd
Date: 2026.01.08
11:18:55 -07'00'

Lee Redd



Construction of Salt Shed for the City of Tooele, Utah

Guaranteed Maximum Price Proposal

Date: January 8, 2026

Owner: Tooele City

Engineer: JUB Engineers (Andrew Hobson and Braxton Porter)

Bid Item 1 Mobilization, Permits, SWPPP, Surveying, Testing

Item includes the cost of site surveying, traffic control as needed, quality control testing, mobilizing and demobilizing construction equipment, setting up a small field office.

Item Cost \$76,338

Bid Item 2 Site Work

Item includes the cost of all excavation, structural fill under asphalt paved areas, structural fill and crushed gravel under building, yard piping and boxes, ponds, pond liner, pipe bollards, drainage swales along entrance road, etc.

Item Cost \$587,200

Bid Item 3 Fencing

Item includes the cost of removing existing fencing and post, install new fencing along property lines, entrance gate and operator.

Item Cost \$87,350

Bid Item 4 Asphalt Pavement and Road base

Item includes the cost furnishing, spreading, and compacting 8" road base, 6" of asphalt, and shouldering the asphalt perimeter.

Item Cost \$184,600

Bid Item 5 Concrete Work, Rebar

Item includes the cost of concrete forming, pouring and finishing, and providing rebar as shown

Item Cost \$498,300

Bid Item 6 Erect Building

Item includes the cost to erect new metal building.

Item Cost \$59,750

Bid Item 7 Electrical Work

Item includes the cost of electrical work as designed.

Item Cost	\$94,150
-----------	----------

Guaranteed Maximum Cost of Project	\$1,587,688
------------------------------------	-------------

Note:

The above costs include all construction labor and materials, management, supervision, and bonding required to complete the project as designed by J-U-B Engineers.

TOOELE SALT SHED PROJECT COST BREAKDOWN

Item	Cost	% Salt Shed Cost	% Rogers Well	Cost to Salt Shed	Cost to Rogers Well	Comments
Package 1						
Metal Building	\$ 68,200.00	100%	0%	\$ 68,200.00	\$ -	Salt Shed Building Only
Taxes	\$ 4,774.00	100%	0%	\$ 4,774.00	\$ -	Salt Shed Building Only
Admin	\$ 7,026.00	100%	0%	\$ 7,026.00	\$ -	Salt Shed Building Only
Package 2						
Mobilization, Permits, SWPPP, Surveying, Testing	\$ 76,338.00	64%	36%	\$ 49,069.73	\$ 27,268.27	Percentage of cost to Salt Shed items below.
Site Work	\$ 587,200.00	50%	50%	\$ 293,600.00	\$ 293,600.00	Retention Pond and Foundation Earthwork to Salt Shed, Grading for access road and Detention Basin to Rogers Well.
Fencing	\$ 87,350.00	0%	100%	\$ -	\$ 87,350.00	Fencing to Rogers Well.
Asphalt Pavement and Road base	\$ 184,600.00	27%	73%	\$ 49,226.67	\$ 135,373.33	16,500 SF Access Road to Rogers Well, 6,000 sf around Salt Shed.
Concrete Work, Rebar	\$ 498,300.00	100%	0%	\$ 498,300.00	\$ -	All Concrete Work is for the Salt Shed Foundation and Apron.
Erect Building	\$ 59,750.00	100%	0%	\$ 59,750.00	\$ -	Building for Salt Shed.
Electrical Work	\$ 94,150.00	75%	25%	\$ 70,612.50	\$ 23,537.50	260LF single phase and building lights and receptacles to Salt Shed, Gate Operator and 150LF 3 phase to Rogers Well.
	\$1,667,688.00			\$1,100,558.90	\$ 567,129.10	

EXHIBIT B

Agreement

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

TOOELE CITY CORPORATION

TOOELE SALT SHED

JULY 2025

**J-U-B ENGINEERS, Inc.
83-24-015**



J-U-B ENGINEERS, INC.

NOTICE AND DISCLAIMER

THE PLANS AND/OR SPECIFICATIONS (DOCUMENTS) ARE THE PROPERTY OF J-U-B ENGINEERS, INC. ("J-U-B") AND BY USING THE DOCUMENTS YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS IN THIS NOTICE AND DISCLAIMER.

THE USE OF THE DOCUMENTS CREATES NO DUTY IN CONTRACT, TORT, EQUITY OR OTHERWISE OF J-U-B TO THE USER. THE USER SHALL NOT (I) DISSEMINATE THE DOCUMENTS, OR ANY PART THEREOF, TO OTHERS WITHOUT THE WRITTEN CONSENT OF J-U-B, OR (II) USE THE DOCUMENTS, OR ANY PART THEREOF, FOR ANY USE OTHER THAN AS DESIGNATED HEREIN FOR THE INTENDED PROJECT. THE DOCUMENTS ARE NOT INTENDED FOR USE IN CREATING DTM FOR GRADING OR EARTHWORK, SURVEY STAKING LAYOUT (UNLESS SPECIFICALLY IDENTIFIED AS SUCH IN THE DOCUMENTS), OR PROPERTY BOUNDARY LAYOUTS.

J-U-B AND ITS AGENTS SHALL NOT BE LIABLE FOR ANY DAMAGES OR CLAIMS ARISING OUT OF THE UNAUTHORIZED USE OR MISUSE OF THE DOCUMENTS, OR ANY PART THEREOF, WHETHER SUCH DAMAGE OR CLAIM IS BASED IN CONTRACT, TORT OR OTHERWISE. THE USER HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD J-U-B AND ITS AGENTS HARMLESS FROM ANY DAMAGES OR CLAIMS ARISING OUT OF, OR RELATED IN ANY WAY TO, THE USER'S UNAUTHORIZED USE OR MISUSE OF THE DOCUMENTS, OR ANY PART THEREOF.

IF THE DOCUMENTS ARE PROVIDED IN ELECTRONIC FORMAT, THE ELECTRONIC DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF J-U-B's "ELECTRONIC DOCUMENT/DATA LIMITED LICENSE" FOUND AT edocs.jub.com

**TOOELE CITY CORPORATION
TOOELE SALT SHED**

TABLE OF CONTENTS

Agreement	Document 00525
Notice to Proceed	Document 00550
Performance Bond	Document 00610
Payment Bond	Document 00615
Contractor’s Application for Payment.....	Document 00620
Certificate of Substantial Completion	Document 00625
General Conditions	Document 00700
Supplementary Conditions	Document 00800
Work Change Directive	Document 00940
Change Order	Document 00941
Field Order	Document 00942
Geotechnical Engineering Report, July 4, 2024	Attachment A
Technical Specifications – See Table of Contents at the front of the Technical Specification Section	

This page is intentionally left blank

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (COST-PLUS-FEE)

This Agreement is by and between **Tooele City** ("Owner") and **Nelson Brothers Construction Company** ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Package 1 - Includes the procurement of the pre-engineered steel building for the Tooele Salt Shed.

Package 2 – Includes the foundation and erection of the pre-engineered steel building, and all site work for the Tooele Salt Shed.

ARTICLE 2—THE PROJECT

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

ARTICLE 3—ENGINEER

3.01 The Owner has retained **J-U-B Engineers, Inc.** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by **Engineer**.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

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

4.02 *Contract Times: Dates – Not Used*

4.03 *Contract Times: Days*

A. The Work will be substantially complete within **365** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **395** days after the date when the Contract Times commence to run.

4.04 *Milestones – Not Used*

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion*: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
 4. Liquidated damages shall not exceed 10% of the contract price regardless of days past contract dates.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

5.01 *Cost-Plus-Fee*

- A. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the Cost of the Work plus Contractor's fee for overhead and profit, both of which will be determined as provided in Articles 6 and 7 below, subject to additions and deletions as provided in the Contract and subject to the limitations set forth in Article 8 below.

ARTICLE 6—COST OF THE WORK

- 6.01 Cost of the Work will be determined as provided in Paragraph 13.01 of the General Conditions, as duly modified.

ARTICLE 7—CONTRACTOR'S FEE – NOT USED

ARTICLE 8—GUARANTEED MAXIMUM PRICE

8.01 *Guaranteed Maximum Price*

- A. Contractor guarantees that the maximum amount payable by Owner (Guaranteed Maximum Price, or GMP) for the sum of the Cost of the Work under Article 6 plus Contractor's fee under Article 7 will not exceed **\$80,000 for package 1 and \$1,587,688 for package 2**, subject to increases or decreases for changes in the Work.

8.02 *Allocation of Savings – Not used*

ARTICLE 9—CHANGES IN THE CONTRACT PRICE

9.01 *Determination of Changes in Contract Price*

- A. If a Change Order entails a change in Contract Price under the provisions of the Contract, then under this Agreement:
 - 1. The change will include the applicable increase or decrease in Cost of the Work, pursuant to the provisions of Article 13 of the General Conditions.
 - 2. Changes in Contractor's fee will be determined as set forth in Paragraph 13.01.D of the General Conditions.
 - 3. If there is a Guaranteed Maximum Fee, it will increase or decrease in an amount equal to the increase or decrease in Cost of the Work.
 - 4. If there is a Guaranteed Maximum Price, it will increase or decrease in an amount equal to the increase or decrease in Contract Price, including Cost of the Work and Contractor's fee, as duly determined.

9.02 *Documentation of Changes*

- A. The amount of any increases or decreases in Contractor's fee, in any Guaranteed Maximum Price, or in any Guaranteed Maximum Fee, will be set forth in the applicable Change Order.

ARTICLE 10—PAYMENT PROCEDURES

10.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of Contractor's fee then payable. Applications for Payment will be processed by Engineer as provided in the General Conditions.

10.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment as recommended by Engineer on or about the 25th day of each month during construction as provided in Paragraphs 10.02.B.1 and 10.02.B.2 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
- B. *For Cost of the Work:* Progress payments on account of the Cost of the Work will be made:
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **95 (ninety-five)** percent of the value of the Work completed (with the balance being retainage).
 - 1) If 50 (fifty) percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. **95 (ninety-five)** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **200** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

10.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

10.04 *Consent of Surety*

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

10.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of **10** percent per annum per UCA 15-1-1.

ARTICLE 11—CONTRACT DOCUMENTS

11.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the table of contents of the project manual (copy of list attached).
 - 6. Drawings (not attached but incorporated by reference) consisting of **25** sheets with each sheet bearing the following general title: **Tooele Salt Shed**
 - 7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 11.01.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 11.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 12—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

12.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

12.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

12.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

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

This Agreement will be effective on **[indicate date on which Contract becomes effective]** (which is the Effective Date of the Contract).

Owner:

Contractor:

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

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

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

(If **[Type of Entity]** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

License No.: _____
(where applicable)

State: _____

NOTICE TO PROCEED

Owner: Tooele City Owner's Project No.: _____
Engineer: J-U-B Engineers Engineer's Project No.: 83-24-015
Contractor: Nelson Brothers Construction Company Contractor's Project No.: _____
Project: Tooele Salt Shed
Contract Name: Tooele Salt Shed
Effective Date of Contract: _____

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on **[date Contract Times are to start]** pursuant to Paragraph 4.01 of the General Conditions.

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

In accordance with the Agreement:

The number of days to achieve Substantial Completion is **180** from the date stated above for the commencement of the Contract Times, resulting in a date for Substantial Completion of **[date, calculated from commencement date above]**; and the number of days to achieve readiness for final payment is **210** from the commencement date of the Contract Times, resulting in a date for readiness for final payment of **[date, calculated from commencement date above]**.

Before starting any Work at the Site, Contractor must comply with the following:

Performance Bond for all work included in packages 1 and 2

Payment Bond for all work included in packages 1 and 2

Owner: Tooele City Corporation
By (signature): _____
Name (printed): _____
Title: _____
Date Issued: _____

Copy: Engineer

PERFORMANCE BOND

Contractor Name: Nelson Brothers Construction Company Address <i>(principal place of business)</i> : [Address of Contractor's principal place of business]	Surety Name: [Full formal name of Surety] Address <i>(principal place of business)</i> : [Address of Surety's principal place of business]
Owner Name: Tooele City Corporation Mailing address <i>(principal place of business)</i> : [Address of Owner's principal place of business]	Contract Description <i>(name and location)</i> : Tooele Salt Shed Contract Price: [Amount from Contract] Effective Date of Contract: [Date from Contract]
Bond Bond Amount: [Amount] Date of Bond: [Date] <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☐ None ☐ See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____	By: _____
<i>(Signature)</i>	<i>(Signature)(Attach Power of Attorney)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____	Attest: _____
<i>(Signature)</i>	<i>(Signature)</i>
Name: _____	Name: _____
<i>(Printed or typed)</i>	<i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: **None**

PAYMENT BOND

Contractor Name: Nelson Brothers Construction Company Address <i>(principal place of business)</i> : [Address of Contractor's principal place of business]	Surety Name: [Full formal name of Surety] Address <i>(principal place of business)</i> : [Address of Surety's principal place of business]
Owner Name: Tooele City Corporation Mailing address <i>(principal place of business)</i> : [Address of Owner's principal place of business]	Contract Description <i>(name and location)</i> : Tooele Salt Shed Contract Price: [Amount, from Contract] Effective Date of Contract: [Date, from Contract]
Bond Bond Amount: [Amount] Date of Bond: [Date] <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☐ None ☐ See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: **None**

Contractor's Application for Payment

Owner: <u>Tooele City Corporation</u>	Owner's Project No.: _____
Engineer: <u>J-U-B Engineers</u>	Engineer's Project No.: _____
Contractor: <u>Nelson Brothers Construction Company</u>	Contractor's Project No.: _____
Project: <u>Tooele Salt Shed</u>	
Contract: _____	
Application No.: _____	Application Date: _____
Application Period: From _____ to _____	

1. Original Contract Price	\$	-
2. Net change by Change Orders	\$	-
3. Current Contract Price (Line 1 + Line 2)	\$	-
4. Total Work completed and materials stored to date (Sum of Column G Lump Sum Total and Column J Unit Price Total)	\$	-
5. Retainage		
a. _____ X \$ - Work Completed	\$	-
b. _____ X \$ - Stored Materials	\$	-
c. Total Retainage (Line 5.a + Line 5.b)	\$	-
6. Amount eligible to date (Line 4 - Line 5.c)	\$	-
7. Less previous payments (Line 6 from prior application)		
8. Amount due this application	\$	-
9. Balance to finish, including retainage (Line 3 - Line 4)	\$	-

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:

(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor: _____	
Signature: _____	Date: _____

Recommended by Engineer	Approved by Owner
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____
Approved by Funding Agency	
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Contractor's Application for Payment

Owner:	Tooele City Corporation	Owner's Project No.:	
Engineer:	J-U-B Engineers	Engineer's Project No.:	
Contractor:	Nelson Brothers Construction Company	Contractor's Project No.:	
Project:	Tooele Salt Shed		
Contract:			

Application No.:	Application Period:	From	to	Application Date:
------------------	---------------------	------	----	-------------------

A	B	C	D	E	F	G	H	I
Item No.	Description	Scheduled Value (\$)	Work Completed		Materials Currently Stored (not in D or E) (\$)	Work Completed and Materials Stored to Date (D + E + F) (\$)	% of Scheduled Value (G / C) (%)	Balance to Finish (I - G) (\$)
			(D + E) From Previous Application (\$)	This Period (\$)				
Original Contract								
			-			-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
Original Contract Totals		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -

Contractor's Application for Payment

Lump Sum (c) 2018 National Society of Professional Engineers for EJCDC. All rights reserved. 9 of 12

Contractor's Application for Payment

Owner:	Tooele City Corporation
Engineer:	J-U-B Engineers
Contractor:	Nelson Brothers Construction Company
Project:	Tooele Salt Shed
Contract:	

Owner's Project No.: _____
 Engineer's Project No.: _____
 Contractor's Project No.: _____

Application No.:	Application Period:	From	to	Application Date:
------------------	---------------------	------	----	-------------------

A	B	C	D	E	F	G	H	I	J	K	L
Bid Item No.	Description	Contract Information				Work Completed		Materials Currently Stored (not in G) (\$)	Work Completed and Materials Stored to Date (H + I) (\$)	% of Value of Item (J / F) (%)	Balance to Finish (F - J) (\$)
		Item Quantity	Units	Unit Price (\$)	Value of Bid Item (C X E) (\$)	Estimated Quantity Incorporated in the Work	Value of Work Completed to Date (E X G) (\$)				
Original Contract											
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
Original Contract Totals					\$ -		\$ -	\$ -	\$ -		\$ -

Contractor's Application for Payment

Owner's Project No.: _____
 Engineer's Project No.: _____
 Contractor's Project No.: _____

Application No.: _____ Application Period: From _____ to _____ Application Date: _____

A	B	C	D	E	F	G	H	I	J	K	L
Bid Item No.	Description	Contract Information				Work Completed		Materials Currently Stored (not in G) (\$)	Work Completed and Materials Stored to Date (H + I) (\$)	% of Value of Item (J / F) (%)	Balance to Finish (F - J) (\$)
		Item Quantity	Units	Unit Price (\$)	Value of Bid Item (C X E) (\$)	Estimated Quantity Incorporated in the Work	Value of Work Completed to Date (E X G) (\$)				
Change Orders											
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
Change Order Totals					\$ -		\$ -	\$ -	\$ -		\$ -
Original Contract and Change Orders											
Project Totals					\$ -		\$ -	\$ -	\$ -		\$ -

Contractor's Application for Payment

Owner:	Tooele City Corporation	Owner's Project No.:	
Engineer:	J-U-B Engineers	Engineer's Project No.:	
Contractor:	Nelson Brothers Construction Company	Contractor's Project No.:	
Project:	Tooele Salt Shed		
Contract:			

Application No.: _____												
A	B	C	D	E	F	G	H	I	J	K	L	M
Item No. (Lump Sum Tab or Bid Item No. (Unit Price Tab)	Supplier Invoice No.	Submittal No. (with Specification Section No.)	Description of Materials or Equipment Stored	Storage Location	Application No. When Materials Placed in Storage	Materials Stored			Incorporated in Work			Materials Remaining in Storage (I-L) (\$)
						Previous Amount Stored (\$)	Amount Stored this Period (\$)	Amount Stored to Date (G+H) (\$)	Amount Previously Incorporated in the Work (\$)	Amount Incorporated in the Work this Period (\$)	Total Amount Incorporated in the Work (J+K) (\$)	
						-	-	-	-	-	-	
						-	-	-	-	-	-	
						-	-	-	-	-	-	
						-	-	-	-	-	-	
						-	-	-	-	-	-	
						-	-	-	-	-	-	
						-	-	-	-	-	-	
Totals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -				

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner: Tooele City Corporation
Engineer: J-U-B Engineers
Contractor: Nelson Brothers Construction Company
Project: Tooele Salt Shed Phase 1
Contract Name:
Owner's Project No.:
Engineer's Project No.:
Contractor's Project No.:

This ☐ Preliminary ☐ Final Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

[Describe the portion of the work for which Certificate of Substantial Completion is issued]

Date of Substantial Completion: **[Enter date, as determined by Engineer]**

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

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

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to Owner's Responsibilities: ☐ None ☐ As follows:

[List amendments to Owner's Responsibilities]

Amendments to Contractor's Responsibilities: ☐ None ☐ As follows:

[List amendments to Contractor's Responsibilities]

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

[List attachments such as punch list; other documents]

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.

Engineer

By (signature): _____

Name (printed): _____

Title: _____

Page Intentionally Left Blank

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1—Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology	6
Article 2—Preliminary Matters	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance.....	7
2.02 Copies of Documents	7
2.03 Before Starting Construction	7
2.04 Preconstruction Conference; Designation of Authorized Representatives	8
2.05 Acceptance of Schedules	8
2.06 Electronic Transmittals	8
Article 3—Contract Documents: Intent, Requirements, Reuse	9
3.01 Intent.....	9
3.02 Reference Standards	9
3.03 Reporting and Resolving Discrepancies	10
3.04 Requirements of the Contract Documents.....	10
3.05 Reuse of Documents	11
Article 4—Commencement and Progress of the Work	11
4.01 Commencement of Contract Times; Notice to Proceed	11
4.02 Starting the Work.....	11
4.03 Reference Points	11
4.04 Progress Schedule	12
4.05 Delays in Contractor’s Progress	12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions	13
5.01 Availability of Lands	13
5.02 Use of Site and Other Areas.....	14
5.03 Subsurface and Physical Conditions.....	15
5.04 Differing Subsurface or Physical Conditions	16

5.05	Underground Facilities.....	17
5.06	Hazardous Environmental Conditions at Site	19
Article 6—Bonds and Insurance.....		21
6.01	Performance, Payment, and Other Bonds	21
6.02	Insurance—General Provisions.....	22
6.03	Contractor’s Insurance.....	24
6.04	Builder’s Risk and Other Property Insurance	25
6.05	Property Losses; Subrogation	25
6.06	Receipt and Application of Property Insurance Proceeds	27
Article 7—Contractor’s Responsibilities		27
7.01	Contractor’s Means and Methods of Construction	27
7.02	Supervision and Superintendence	27
7.03	Labor; Working Hours	27
7.04	Services, Materials, and Equipment	28
7.05	“Or Equals”	28
7.06	Substitutes	29
7.07	Concerning Subcontractors and Suppliers.....	31
7.08	Patent Fees and Royalties.....	32
7.09	Permits	33
7.10	Taxes	33
7.11	Laws and Regulations.....	33
7.12	Record Documents.....	33
7.13	Safety and Protection	34
7.14	Hazard Communication Programs	35
7.15	Emergencies	35
7.16	Submittals	35
7.17	Contractor’s General Warranty and Guarantee	38
7.18	Indemnification	39
7.19	Delegation of Professional Design Services	39
Article 8—Other Work at the Site.....		40
8.01	Other Work	40
8.02	Coordination	41
8.03	Legal Relationships.....	41

Article 9—Owner’s Responsibilities	42
9.01 Communications to Contractor	42
9.02 Replacement of Engineer	42
9.03 Furnish Data	42
9.04 Pay When Due.....	42
9.05 Lands and Easements; Reports, Tests, and Drawings	43
9.06 Insurance.....	43
9.07 Change Orders	43
9.08 Inspections, Tests, and Approvals.....	43
9.09 Limitations on Owner’s Responsibilities	43
9.10 Undisclosed Hazardous Environmental Condition.....	43
9.11 Evidence of Financial Arrangements.....	43
9.12 Safety Programs	43
Article 10—Engineer’s Status During Construction	44
10.01 Owner’s Representative.....	44
10.02 Visits to Site.....	44
10.03 Resident Project Representative.....	44
10.04 Engineer’s Authority	44
10.05 Determinations for Unit Price Work	45
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work	45
10.07 Limitations on Engineer’s Authority and Responsibilities	45
10.08 Compliance with Safety Program.....	45
Article 11—Changes to the Contract	46
11.01 Amending and Supplementing the Contract	46
11.02 Change Orders	46
11.03 Work Change Directives.....	46
11.04 Field Orders.....	47
11.05 Owner-Authorized Changes in the Work	47
11.06 Unauthorized Changes in the Work.....	47
11.07 Change of Contract Price	47
11.08 Change of Contract Times.....	49
11.09 Change Proposals.....	49
11.10 Notification to Surety.....	50

Article 12—Claims.....	50
12.01 Claims.....	50
Article 13—Cost of the Work; Allowances; Unit Price Work	51
13.01 Cost of the Work	51
13.02 Allowances	55
13.03 Unit Price Work.....	55
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work	56
14.01 Access to Work.....	56
14.02 Tests, Inspections, and Approvals.....	56
14.03 Defective Work	57
14.04 Acceptance of Defective Work.....	58
14.05 Uncovering Work	58
14.06 Owner May Stop the Work	58
14.07 Owner May Correct Defective Work.....	59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period	59
15.01 Progress Payments.....	59
15.02 Contractor’s Warranty of Title	62
15.03 Substantial Completion.....	62
15.04 Partial Use or Occupancy	63
15.05 Final Inspection	64
15.06 Final Payment.....	64
15.07 Waiver of Claims	65
15.08 Correction Period.....	66
Article 16—Suspension of Work and Termination	67
16.01 Owner May Suspend Work	67
16.02 Owner May Terminate for Cause.....	67
16.03 Owner May Terminate for Convenience.....	68
16.04 Contractor May Stop Work or Terminate	68
Article 17—Final Resolution of Disputes	69
17.01 Methods and Procedures.....	69
Article 18—Miscellaneous	69
18.01 Giving Notice	69
18.02 Computation of Times.....	69

18.03	Cumulative Remedies	70
18.04	Limitation of Damages	70
18.05	No Waiver	70
18.06	Survival of Obligations	70
18.07	Controlling Law	70
18.08	Assignment of Contract.....	70
18.09	Successors and Assigns	70
18.10	Headings.....	70

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

- 22. *Engineer*—The individual or entity named as such in the Agreement.
- 23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- 24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
- 25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
- 27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
- 28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
- 29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
- 30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
- 31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
- 32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

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

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

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

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

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

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

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

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

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

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

5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then 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 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

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

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

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

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

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

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is 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; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

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

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. 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 will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

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

7.05 *"Or Equals"*

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

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

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

- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

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

7.09 *Permits*

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

7.10 *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.

7.11 *Laws and Regulations*

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

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. 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.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

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

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

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

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will 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.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

9.05 *Lands and Easements; Reports, Tests, and Drawings*

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

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will 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 Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

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

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which 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 will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of 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, 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.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. 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.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

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

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

14.03 *Defective Work*

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

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. 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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. 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.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1— Definitions and Terminology.....	1
Article 2— Preliminary Matters	1
Article 3— Contract Documents: Intent, Requirements, Reuse	5
Article 4— Commencement and Progress of the Work	5
Article 5— Site, Subsurface and Physical Conditions, Hazardous Environmental Conditions.....	6
Article 6— Bonds and Insurance	6
Article 7— Contractor’s Responsibilities	12
Article 8— Engineer’s Status During Construction	13
Article 9— Changes to the Contract	14
Article 10— Claims	14
Article 11— Cost of Work; Allowances, Unit Price Work.....	14
Article 12— Tests and Inspections; Correction, Removal, or Acceptance of Defective Work.....	15
Article 13— Payments to Contractor, Set Offs; Completions; Correction Period	15
Article 14— Suspension of Work and Termination	15
Article 15— Final Resolutions of Disputes.....	15
No suggested Supplementary Conditions in this Article.....	15
Article 16— Miscellaneous	15
Exhibit A— Software Requirements for Electronic Document Exchange.....	1

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

No suggested Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

SC-2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:

- B. *Evidence of Contractor's Insurance:* When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- C. *Evidence of Owner's Insurance:* After receipt from Contractor of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor copies of the policies of insurance to be provided by Owner in this Contract (if any). Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

2.02 *Copies of Documents*

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor one printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and one in electronic portable document format (PDF).

2.06 *Electronic Transmittals*

SC-2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:

- B. *Electronic Documents Protocol:* The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

1. *Basic Requirements*

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.
- e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.

2. *System Infrastructure for Electronic Document Exchange*

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.
 - 1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is 20 MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.

- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.
- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.
- h. The Owner will operate a Project information management system (also referred to in this EDP as "Project Website") for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications,

submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website:

- 1) Describe the period of time during which the Project Website will be operated and be available for reliance by the parties;
- 2) Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website;
- 3) Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.); and
- 4) Include any other Project Website attributes that may be pertinent to Contractor's use of the facility and pricing of such use.

C. *Software Requirements for Electronic Document Exchange; Limitations*

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.
3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Exhibit A to this EDP, including software versions, if listed.

SC-2.06 Supplement Paragraph 2.06 of the General Conditions by adding the following paragraph:

D. *Requests by Contractor for Electronic Documents in Other Formats*

1. Release of any Electronic Document versions of the Project documents in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be at the sole discretion of the Owner.
2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project documents and other Project information requested by Contractor ("Request") in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be subject to the provisions of the Owner's response to the Request, and to the following conditions to which Contractor agrees:
 - a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for

Engineer's purposes solely, and is being provided to Contractor on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, Contractor is advised and acknowledges that the content may not be suitable for Contractor's application, or may require substantial modification and independent verification by Contractor. The content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.

- b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to Contractor under the request are only for convenience of Contractor. Any conclusion or information obtained or derived from such data will be at the Contractor's sole risk and the Contractor waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.
- c. Contractor shall indemnify and hold harmless Owner and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from Contractor's use, adaptation, or distribution of any Electronic Documents provided under the Request.
- d. Contractor agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to Contractor's subcontractors. Contractor warrants that subsequent use by Contractor's subcontractors complies with all terms of the Contract Documents and Owner's response to Request.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

SC-3.01 Delete Paragraph 3.01.C in its entirety.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.05 *Delays in Contractor's Progress*

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

- 5. *Weather-Related Delays*
 - a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.

- b. The existence of abnormal weather conditions will be determined on a month-by-month basis upon mutual agreement between Owner and Contractor.

ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

5.03 Subsurface and Physical Conditions

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		

5.06 Hazardous Environmental Conditions

None known.

ARTICLE 6—BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C-610, Performance Bond (2010, 2013, or 2018 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C-615, Payment Bond (2010, 2013, or 2018 edition).

6.02 Insurance—General Provisions

SC-6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been

accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

6.03 *Contractor's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: None
- E. *Workers' Compensation and Employer's Liability:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	\$1,000,000
Bodily injury by disease—aggregate	\$1,000,000
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$1,000,000

- F. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
 - 1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 - 2. damages insured by reasonably available personal injury liability coverage, and
 - 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial

general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 4. Any exclusion of coverage relating to earth subsidence or movement.
 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
 6. Any limitation or exclusion based on the nature of Contractor's work.
 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000

Commercial General Liability	Policy limits of not less than:
Products—Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

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

Automobile Liability	Policy limits of not less than:
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

- K. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000

- L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$1,000,000 after accounting for partial attribution of its limits to underlying policies, as allowed above.
- M. *Contractor's Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$ 1,000,000
General Aggregate	\$ 2,000,000

- N. *Contractor's Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or

otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor's Professional Liability	Policy limits of not less than:
Each Claim	\$ 1,000,000
Annual Aggregate	\$ 1,000,000

- P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	\$ 100,000
General Aggregate	\$ 200,000

- Q. *Other Required Insurance:* **None**

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- F. *Builder's Risk Requirements:* The builder's risk insurance must:
1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
 - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies,

by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.

2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of **[\$15 percent of contract price]**.
5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of **[\$5 percent of contract price]**.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

- G. *Coverage for Completion Delays:* The builder's risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys' fees and engineering or other consultants' fees, if not otherwise covered.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- H. *Builder's Risk and Other Property Insurance Deductibles:* The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.
 1. The builder's risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than \$100,000 for direct physical loss in any one occurrence.

SC-6.04 Delete Paragraph 6.04.A of the General Conditions and substitute the following in its place:

A. *Installation Floater*

1. Contractor shall provide and maintain installation floater insurance on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work (“Covered Property”). Coverage under the Contractor’s installation floater will include loss from covered “all risk” causes (perils) to Covered Property:
 - a. of the Contractor, and Covered Property of others that is in Contractor’s care, custody, and control;
 - b. while in transit to the Site, including while at temporary storage sites;
 - c. while at the Site awaiting and during installation, erection, and testing;
 - d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.
2. The installation floater coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable.
3. The installation floater coverage will be in an amount sufficient to protect Contractor’s interest in the Covered Property. The Contractor will be solely responsible for any deductible carried under this coverage.
4. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.03 *Labor; Working Hours*

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **8:00am-5:00pm**
2. Owner's legal holidays are **[New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Juneteenth, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day and the following day, and Christmas Eve and Christmas Day]**.

SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to state “...all Work at the Site must be performed during regular working hours, **Monday** through **Friday**. Contractor will not perform Work on a **Saturday, Sunday**, or any legal holiday.”

SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:

- D. **Contractor** shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer’s services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

ARTICLE 8—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:
 - 1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 - 2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 - 3. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
 - 4. *Review of Work; Defective Work*
 - a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Observe whether any Work in place appears to be defective.
 - c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.
 - 5. *Inspections and Tests*
 - a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.
 - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.
 - 6. *Payment Requests:* Review Applications for Payment with Contractor.
 - 7. *Completion*
 - a. Participate in Engineer's visits regarding Substantial Completion.

- b. Assist in the preparation of a punch list of items to be completed or corrected.
 - c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - d. Observe whether items on the final punch list have been completed or corrected.
- D. The RPR will not:
 - 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.
 - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - 7. Authorize Owner to occupy the Project in whole or in part.

ARTICLE 9—CHANGES TO THE CONTRACT

No suggested Supplementary Conditions in this Article.

ARTICLE 10—CLAIMS

No suggested Supplementary Conditions in this Article.

ARTICLE 11—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

13.03 Unit Price Work

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

- E. *Adjustments in Unit Price*
 - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the extended price of a particular item of Unit Price Work amounts to **10** percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than **25** percent from the estimated quantity of such item indicated in the Agreement; and

- b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 12—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

No suggested Supplementary Conditions in this Article.

ARTICLE 13—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.03 Substantial Completion

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

ARTICLE 14—SUSPENSION OF WORK AND TERMINATION

No suggested Supplementary Conditions in this Article.

ARTICLE 15—FINAL RESOLUTIONS OF DISPUTES

No suggested Supplementary Conditions in this Article

ARTICLE 16—MISCELLANEOUS

No suggested Supplementary Conditions in this Article

EXHIBIT A—SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	Email w/ Attachment	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	Email w/ Attachment	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	Email w/ Attachment or LFE	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	Email w/ Attachment or LFE	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	Email w/ Attachment or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	Email w/ Attachment or LFE	DB	
Notes				
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.			
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.			
Key				
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies			
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)			
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version [2019] or later			
DWG	Autodesk® AutoCAD .dwg format Version [2023]			
DOC	Microsoft® Word .docx format Version [2019]			
EXC	Microsoft® Excel .xls or .xml format Version [2019]			
DB	Microsoft® Access .mdb format Version [2019]			

WORK CHANGE DIRECTIVE NO.: [Number of Work Change Directive]

Owner: Tooele City Corporation Owner's Project No.:
Engineer: J-U-B Engineers Engineer's Project No.:
Contractor: Nelson Brothers Construction Company Contractor's Project No.:
Project: Tooele Salt Shed
Contract Name:
Date Issued: Effective Date of Work Change Directive:

Contractor is directed to proceed promptly with the following change(s):

Description:

[Description of the change to the Work]

Attachments:

[List documents related to the change to the Work]

Purpose for the Work Change Directive:

[Describe the purpose for the change to the Work]

Directive to proceed promptly with the Work described herein, prior to agreeing to change in Contract Price and Contract Time, is issued due to:

Notes to User—Check one or both of the following

☐ Non-agreement on pricing of proposed change. ☐ Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: \$ _____ **[increase] [decrease] [not yet estimated].**

Contract Time: _____ days **[increase] [decrease] [not yet estimated].**

Basis of estimated change in Contract Price:

☐ Lump Sum ☐ Unit Price ☐ Cost of the Work ☐ Other

Recommended by Engineer

Authorized by Owner

By:

Title:

Date:

CHANGE ORDER NO.: [Number of Change Order]

Owner:	Tooele City Corporation	Owner's Project No.:
Engineer:	J-U-B Engineers	Engineer's Project No.:
Contractor:	Nelson Brothers Construction Company	Contractor's Project No.:
Project:	Tooele Salt Shed	
Contract Name:		
Date Issued:		Effective Date of Change Order:

The Contract is modified as follows upon execution of this Change Order:

Description:

[Description of the change]

Attachments:

[List documents related to the change]

Change in Contract Price		Change in Contract Times [State Contract Times as either a specific date or a number of days]	
Original Contract Price:	Original Contract Times:	Substantial Completion: _____	Ready for final payment: _____
\$ _____			
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order] :	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order] :	Substantial Completion: _____	Ready for final payment: _____
\$ _____			
Contract Price prior to this Change Order:	Contract Times prior to this Change Order:	Substantial Completion: _____	Ready for final payment: _____
\$ _____			
[Increase] [Decrease] this Change Order:	[Increase] [Decrease] this Change Order:	Substantial Completion: _____	Ready for final payment: _____
\$ _____			
Contract Price incorporating this Change Order:	Contract Times with all approved Change Orders:	Substantial Completion: _____	Ready for final payment: _____
\$ _____			

	Recommended by Engineer (if required)	Authorized by Owner
By:	_____	_____
Title:	_____	_____
Date:	_____	_____
	Authorized by Owner	Approved by Funding Agency (if applicable)
By:	_____	_____
Title:	_____	_____
Date:	_____	_____

FIELD ORDER NO.: [Number of Field Order]

Owner:	Tooele City Corporation	Owner's Project No.:
Engineer:	J-U-B Engineers	Engineer's Project No.:
Contractor:	Nelson Brothers Construction Company	Contractor's Project No.:
Project:	Tooele Salt Shed	
Contract Name:		
Date Issued:		Effective Date of Field Order:

Contractor is hereby directed to promptly perform the Work described in this Field Order, issued in accordance with Paragraph 11.04 of the General Conditions, for minor changes in the Work without changes in Contract Price or Contract Times. If Contractor considers that a change in Contract Price or Contract Times is required, submit a Change Proposal before proceeding with this Work.

Reference:

Specification Section(s):

Drawing(s) / Details (s):

Description:

[Description of the change to the Work]

Attachments:

[List documents supporting change]

Issued by Engineer

By: _____

Title: _____

Date: _____

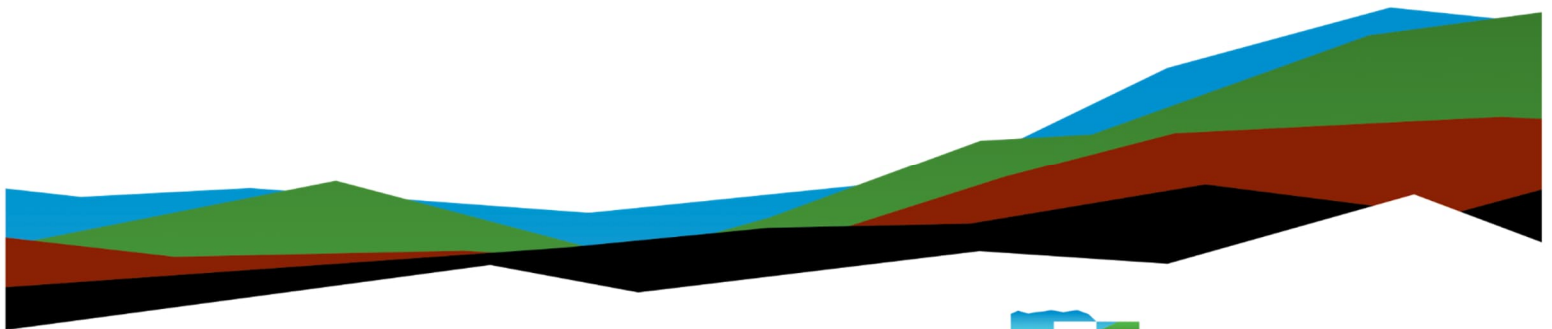
Tooele City Salt Shed

Geotechnical Engineering Report

July 3, 2024 | Terracon Project No. 61245083

Prepared for:

J-U-B Engineers, Inc.
392 E Winchester St., Ste. 300
Salt Lake City, UT 84107



Nationwide
[Terracon.com](https://www.terracon.com)

- Facilities
- Environmental
- Geotechnical
- Materials



6952 S. High Tech Drive Ste. B
Midvale, UT 84047
P (801) 545-8500
[Terracon.com](https://terracon.com)

July 3, 2024

J-U-B Engineers, Inc.
392 E Winchester St., Ste. 300
Salt Lake City, UT 84107

Attn: Lizel Allen
P: (385) 226-8334
E: lallen@jub.com

Re: Geotechnical Engineering Report
Tooele City Salt Shed
877 Rogers St.
Tooele, UT 84074
Terracon Project No. 61245083

Dear Ms. Allen:

We have completed the scope of Geotechnical Engineering services for the above-referenced project in general accordance with Terracon Proposal No. P61245083 dated May 13, 2024. This report presents the findings of the subsurface exploration and provides geotechnical recommendations concerning earthwork and the design and construction of foundations, floor slabs, and pavements for the proposed project.

We appreciate the opportunity to be of service to you on this project. If you have any questions concerning this report or if we may be of further service, please contact us.

Sincerely,

Terracon

A handwritten signature in black ink, appearing to read "E. Bodkin", with a long horizontal flourish extending to the right.

Elena R. Bodkin
Field Geologist

7/3/24

Charles V. Molthen P.E.
Department Manager III



Table of Contents

Introduction..... 1

Project Description..... 1

Site Conditions..... 2

Geotechnical Characterization 3

 Groundwater Conditions..... 3

Percolation / Infiltration 4

Seismic Site Class..... 4

Corrosivity 5

Geotechnical Overview 5

Earthwork 6

 Site Preparation..... 6

 Subgrade Preparation..... 7

 Excavation..... 7

 Soil Stabilization..... 7

 Fill Material Types..... 8

 Fill Placement and Compaction Requirements10

 Utility Trench Backfill.....11

 Grading and Drainage.....12

 Earthwork Construction Considerations12

 Construction Observation and Testing13

Shallow Foundations 13

 Design Parameters — Compressive Loads14

 Design Parameters — Overturning and Uplift Loads15

 Foundation Construction Considerations15

Floor Slabs 16

 Floor Slab Design Parameters17

 Floor Slab Construction Considerations17

Pavements 18

 General Pavement Comments18

 Pavement Design Parameters18

 Pavement Section Thicknesses.....18

 Pavement Drainage.....19

 Pavement Maintenance20

General Comments 21

Figures

GeoModel

Attachments

Exploration and Testing Procedures
Site Location and Exploration Plans
Exploration and Laboratory Results
Supporting Information

Note: This report was originally delivered in a web-based format. **Blue Bold** text in the report indicates a referenced section heading. The PDF version also includes hyperlinks that direct the reader to that section and clicking on the  logo will bring you back to this page. For more interactive features, please view your project online at client.terracon.com.

Refer to each individual Attachment for a listing of contents.

Introduction

This report presents the results of our subsurface exploration and Geotechnical Engineering services performed for the proposed salt shed and associated pavements to be located at 877 Rogers St. in Tooele, UT 84074. The purpose of these services was to provide information and geotechnical engineering recommendations relative to:

- subsurface soil conditions
- groundwater conditions
- recommended foundation options and engineering design parameters
- estimated settlement of foundations
- recommendations for design and construction of interior floor slabs
- Seismic Site Class
- earthwork recommendations including site/subgrade preparation
- recommended pavement options and design parameters

The geotechnical engineering Scope of Services for this project included the advancement of test borings, laboratory testing, engineering analysis, and preparation of this report.

Drawings showing the site and boring locations are shown in the [Site Location](#) and [Exploration Plan](#), respectively. The results of the laboratory testing performed on soil samples obtained from the site during our field exploration are included in the boring logs and/or as separate graphs in the [Exploration Results](#) section.

Project Description

Our initial understanding of the project was provided in our proposal and was discussed during project planning. A period of collaboration has transpired since the project was initiated, and our final understanding of the project conditions is as follows:

Item	Description
Information provided	An email request for proposal and project clarifications email were provided by Lizel Allen with J-U-B on 4/10/2024. The request included conceptual plan drawings of the layout of the planned salt shed and pavement development. ■ Conceptplan.pdf
Project description	The project consists of constructing a new salt storage building with associated driveways and parking lots.

Item	Description
Proposed structure	Structures associated with the project include a prefabricated metal salt storage building and concrete flatwork and asphalt pavement.
Building construction	Prefabricated steel building supported mat slabs and 4-foot strip footing.
Finished floor elevation	The finished floor of the building will be about ± 2 feet above the existing grade.
Maximum loads (assumed)	In the absence of information provided by the design team, we will use the following loads in estimating settlement based on our experience with similar projects. ■ Columns: 40 kips (max) ■ Walls: 2 kips per linear foot (klf) ■ Slabs: 250 pounds per square foot (psf)
Grading/slopes	Approximately 2 feet of cut and fill will be required to develop final grade.
Below-grade structures	None
Free-standing retaining walls	None
Pavements	We assume only flexible (asphalt) pavement sections should be considered per email clarification. Unless information is provided prior to the report, we assume that the traffic classification will consist of: ■ Class I: Parking stalls for autos and pickup trucks ■ Class III: Delivery lanes with up to 20 three-axle trucks per day The pavement design period is 20 years
Building code	2021 IBC

Terracon should be notified if any of the above information is inconsistent with the planned construction, especially the grading limits as modifications to our recommendations may be necessary.

Site Conditions

The following description of site conditions is derived from our site visit in association with the field exploration.

Item	Description
Parcel information	The project is located at 877 Rogers St. in Tooele, UT 84074. Latitude: 40.545381° N, Longitude: 112.327888° W (approximate). See Site Location
Existing improvements	An existing gravel parking lot located directly west of the project site with two small concrete areas located to the southwest and east.
Current ground cover	Earthen, lightly vegetated field with tall grasses
Existing topography	Relatively level site with minor topographic relief

Geotechnical Characterization

We have developed a general characterization of the subsurface conditions based on our review of the subsurface exploration, laboratory data, geologic setting, and our understanding of the project. This characterization, termed GeoModel, forms the basis of our geotechnical calculations and evaluation of the site. Conditions observed at each exploration point are indicated in the individual logs. The individual logs can be found in the [Exploration Results](#) and the GeoModel can be found in the [Figures](#) attachment of this report.

As part of our analyses, we identified the following model layers within the subsurface profile. For a more detailed view of the model layer depths at each boring location, refer to the GeoModel.

Model layer	Layer name	General description
1	Topsoil	Topsoil approximately 3 inches in depth
2	Fine-grained soils	Lean clays with varying amounts of sand and gravel
3	Coarse-grained soils	Sands with varying amounts of silt and gravel

Groundwater Conditions

Groundwater seepage was not encountered within the maximum drilling depth at the time of our field exploration. Groundwater conditions may be different at the time of construction. Groundwater conditions may change because of seasonal variations in

rainfall, runoff, and other conditions not apparent at the time of drilling. Long-term groundwater monitoring was outside the scope of services for this project.

Percolation / Infiltration

Field infiltration testing was performed in the potential stormwater pond area located in the [Exploration Plan](#). Boring logs can be found in [Exploration and Laboratory Results](#). An 8.5-inch diameter soil boring was drilled to approximately 5 feet below the existing site grade. Following drilling, a thin layer of sand or gravel of approximately 2 inches was placed at the bottom of the boring up to or extending above the ground surface. Approximately 6 inches of sand was then placed in the annulus between the outside of the pipe and the edge of the boring wall. Following placement of the sand, approximately 12 inches of bentonite chips was placed in the annulus on top of the sand and hydrated with approximately 5 gallons of water. Water was then added inside the pipe to presoak the soils exposed at the bottom of the pipe and to saturate the sand used to backfill the bottom 12 inches of the pipe and boring wall annulus. After saturation, the test pipe was refilled with water, and the time required for the water level to drop incrementally was measured until a stabilized rate was achieved. Rates were considered to be stable when the rate of percolation appeared to be relatively constant.

Test locations	Infiltration rate (inches / hour)
P-02	2

The permeability values provided are the field measured values with no safety factor added. The dry well designer should determine an appropriate factor of safety to apply to the permeability values shown in the table given that they represent only a single point, which does not account for natural variations that will occur and can be impacted (i.e., reduced by densification during construction as well as siltation during operation).

Seismic Site Class

The seismic design requirements for buildings and other structures are based on Seismic Design Category. Site Class is required to determine the Seismic Design Category for a structure. The Site Class is based on the upper 100 feet of the site profile defined by a weighted average value of either shear wave velocity, standard penetration resistance, or undrained shear strength in accordance with Section 20.4 of ASCE 7 and the International Building Code (IBC). Based on the soil properties observed at the site and as described in the exploration logs and results, the site classifies as Seismic Site Class D. Subsurface explorations at this site were extended to a maximum depth of 30.4 feet.

Corrosivity

The table below lists the results of laboratory soluble sulfate, soluble chloride, electrical resistivity, and pH testing. The values may be used to estimate potential corrosive characteristics of the on-site soils with respect to contact with the various underground materials that will be used for project construction.

Corrosivity Test Results Summary

Boring	Sample depth (feet)	Soil description	Soluble sulfate (mg / kg)	Soluble chloride (mg / kg)	Electrical resistivity (Ω -cm)	pH
B-01	0.3-2.5	Lean clay with sand	3	88	4,853	6.5
B-02	0.3-2.5	Lean clay with sand	7	81	5,472	6.9

Results of soluble sulfate testing can be classified in accordance with ACI 318 — Building Code Requirements for Structural Concrete. Numerous sources are available to characterize the corrosion potential to buried metals using the parameters above. ANSI/AWWA is commonly used for ductile iron, while threshold values for evaluating the effect on steel can be specific to the buried feature (e.g., piling, culverts, or welded wire reinforcement) or agency for which the work is performed. Imported fill materials may have significantly different properties than the site materials noted above and should be evaluated if expected to be in contact with metals used for construction. Consultation with a NACE-certified corrosion professional is recommended for buried metals on the site.

Mapping by the NRCS includes qualitative severity of corrosion to concrete and steel. Based on this source, the near-surface materials are rated “Moderate” for corrosion to concrete and steel.

Geotechnical Overview

The site appears suitable for the proposed construction based on the geotechnical conditions encountered in the test borings, provided that the recommendations provided in this report are implemented in the design and construction phases of this project.

Based on our subsurface exploration, the shallow subsurface primarily consists of medium stiff to hard soils extending to a depth of approximately 20 feet below existing grade. These medium stiff to hard soils are underlain by very dense granular soils.

Groundwater was not encountered within the maximum depths of exploration during or at the completion of drilling.

The proposed building and structures can be supported on shallow foundations bearing on properly placed and compacted Structural Fill as discussed in [Shallow Foundations](#). Excessively wet or dry material should either be removed or moisture conditioned and recompacted. Site preparation recommendations, including subgrade improvement and fill placement, are provided in the [Earthwork](#) section. The [Floor Slabs](#) section addresses slab-on-grade support.

The near-surface, medium stiff to stiff lean clay could become unstable with typical earthwork and construction traffic, especially after precipitation events. Effective drainage should be completed early in the construction sequence and maintained after construction to avoid potential issues. If possible, the grading should be performed during the warmer and drier times of the year. If grading is performed during the winter months, an increased risk for possible undercutting and replacement of unstable subgrade will persist. Additional site preparation recommendations, including subgrade improvement and fill placement, are provided in the [Earthwork](#) section.

The recommendations contained in this report are based on the results of field and laboratory testing (presented in the [Exploration Results](#)), engineering analyses, and our current understanding of the proposed project. The [General Comments](#) section provides an understanding of the report's limitations.

Earthwork

Earthwork is anticipated to include clearing and grubbing, excavations, and engineered fill placement. The following sections provide recommendations for use in the preparation of specifications for the work. Recommendations include critical quality criteria, as necessary, to render the site in the state considered in our geotechnical engineering evaluation for foundations, floor slabs, and pavements.

Site Preparation

Complete stripping of any vegetation or topsoil should be performed in the proposed structures. Although not noted in our borings, any debris, unstable or frozen soil, and other deleterious materials encountered during construction should be removed from beneath structures.

Although no evidence of other underground facilities (such as septic tanks, cesspools, basements, and utilities) was observed during the exploration and site reconnaissance, such features could be encountered during construction. If unexpected fills or

underground facilities are encountered, such features should be removed and the excavation thoroughly cleaned prior to backfill placement and/or construction.

Subgrade Preparation

The subgrade should be proofrolled with an adequately loaded vehicle such as a fully loaded tandem-axle dump truck. The proofrolling should be performed under the observation of the Geotechnical Engineer or their representative. Areas excessively deflecting under the proofroll should be delineated and subsequently addressed by the Geotechnical Engineer. Such areas should be removed and replaced with properly compacted Structural Fill. Excessively wet or dry material should either be removed, or moisture conditioned and recompacted.

Based on the subsurface conditions determined from the geotechnical exploration, subgrade soils exposed during construction are anticipated to be relatively workable; however, the workability of the subgrade may be affected by precipitation, repetitive construction traffic, or other factors. If unworkable conditions develop, workability may be improved by scarifying and drying.

Excavation

We anticipate that excavations for the proposed construction can be accomplished with conventional earthmoving equipment. The bottom of excavations should be thoroughly cleaned of loose soils and disturbed materials prior to backfill placement and/or construction.

Soil Stabilization

Methods of subgrade improvement, as described below, could include scarification, moisture conditioning and recompaction, removal of unstable materials and replacement with granular fill (with or without geosynthetics), and chemical stabilization. The appropriate method of improvement, if required, would depend on factors such as schedule, weather, the size of the area to be stabilized, and the nature of the instability. More detailed recommendations can be provided during construction as the need for subgrade stabilization occurs. Performing site grading operations during warm seasons and dry periods would help reduce the amount of subgrade stabilization required.

If the exposed subgrade is unstable during proofrolling operations, it could be stabilized using one of the methods outlined below.

- Scarification and Recompaction — It may be feasible to scarify, dry, and recompact the exposed soils. The success of this procedure would depend primarily upon favorable weather and sufficient time to dry the soils. Stable

subgrades likely would not be achievable if the thickness of the unstable soil is greater than about 1 foot, if the unstable soil is at or near groundwater levels, or if construction is performed during a period of wet or cool weather when drying is difficult.

- **Crushed Stone** — The use of crushed stone or crushed gravel is a common procedure to improve subgrade stability. Typical undercut depths would be expected to be 12 inches below finished subgrade elevation. The use of high modulus geotextiles (i.e., engineering fabric or geogrid) could also be considered after underground work, such as utility construction, is completed. Prior to placing the fabric or geogrid, we recommend that all below-grade construction, such as utility line installation, be completed to avoid damaging the fabric or geogrid. Equipment should not be operated above the fabric or geogrid until one full lift of crushed stone fill is placed above it. The maximum particle size of granular material placed over geotextile fabric or geogrid should not exceed 1½ inches.
- **Chemical Modification** — Improvement of subgrades with Portland cement or class C fly ash could be considered for improving unstable soils. Chemical modification should be performed by a prequalified contractor experienced with successfully stabilizing subgrades in the project area on similarly sized projects with similar soil conditions. Results of chemical analysis of the additive materials should be provided to the geotechnical engineer prior to use. The hazards of chemicals blowing across the site or onto adjacent property should also be considered. Additional testing would be needed to develop specific recommendations to improve subgrade stability by blending chemicals with the site soils. Additional testing could include, but not be limited to, determining the most suitable stabilizing agent, the optimum amounts required, the presence of sulfates in the soil, and the freeze-thaw durability of the subgrade.

Further evaluation of the need and recommendations for subgrade stabilization can be provided during construction as the geotechnical conditions are exposed.

Fill Material Types

Fill required to achieve design grade should be classified as Structural Fill and General Fill. Structural Fill is material used below or within 10 feet of structures, pavements, or constructed slopes. General Fill is material used to achieve grade outside of these areas.

Reuse of On-Site Soil: Excavated on-site soil is not suitable for reuse as Structural Fill and should not be placed beneath settlement-sensitive structures and within foundation-bearing zones. Portions of the on-site soil have an elevated fines content and will be sensitive to moisture conditions (particularly during seasonally wet periods) and may not be suitable for reuse when above optimum moisture content.

Material property requirements for on-site soil for use as General Fill and Structural Fill are noted in the table below:

Property	General Fill	Structural Fill
Composition	Free of deleterious material	Free of deleterious material
Maximum particle size	6 inches (or ⅔ of the lift thickness)	3 inches
Fines content	Not limited	Less than 15% Passing No. 200 sieve (local standard)
Plasticity	Not limited	Maximum plasticity index of <10

Imported Fill Materials: Imported fill materials should meet the following material property requirements. Regardless of its source, compacted fill should consist of approved materials that are free of organic matter and debris. Frozen material should not be used, and fill should not be placed on a frozen subgrade.

All fill materials should be inorganic soils free of vegetation, debris, and fragments larger than 4 inches in size. Pea gravel or other similar noncementitious, uniformly graded materials should not be used as fill or backfill without the prior approval of the geotechnical engineer. Fill material should meet the following requirements:

Fill Type ¹	Application	Material specifications		
		Gradation		Plasticity
		Size	Percent finer by weight	
Structural Fill	Below foundations, concrete slabs, or other structural areas	3 inches No. 4 Sieve No. 200 Sieve	100 30–80 <35	Liquid Limit 20 max Plasticity Index 5 max
General Fill	Fill in nonstructural areas	4 inches No. 200 sieve	100 <50	Liquid Limit 35 max Plasticity Index 15 max

Fill Type ¹	Application	Material specifications		
		Gradation		Plasticity
		Size	Percent finer by weight	
Stabilization Fill ²	Fill used to stabilize yielding, potentially pumping subgrade	6 inches No. 200 Sieve	100 5 max	--

1. All fills should consist of approved materials that are free of organic matter and debris. Frozen material should not be used, and fill should not be placed on a frozen subgrade. A sample of each material type should be submitted to the geotechnical engineer for evaluation.
2. Stabilization fill should consist of crushed rock.

Fill Placement and Compaction Requirements

Structural and General Fill should meet the following compaction requirements.

Item	Structural Fill	General Fill
Maximum lift thickness	8 inches or less in loose thickness when heavy, self-propelled compaction equipment is used 4 to 6 inches in loose thickness when hand-guided equipment (e.g., jumping jack or plate compactor) is used	Same as Structural Fill
Minimum compaction requirements ^{1,2,3}	98% of max below foundations and within 1 foot of finished pavement subgrade 95% of max above foundations, below floor slabs, and more than 1 foot below finished pavement subgrade	92% of max
Water content range ¹	Low plasticity cohesive: -2% to +3% of optimum High plasticity cohesive: 0 to +4% of optimum Granular: -3% to +3% of optimum	As required to achieve minimum compaction requirements

Item	Structural Fill	General Fill
1.	Maximum density and optimum water content as determined by the modified Proctor test (ASTM D 1557).	
2.	High plasticity cohesive fill should not be compacted to more than 100% of standard Proctor maximum dry density.	
3.	If the granular material is a coarse sand or gravel, of a uniform size, or has a low fines content, compaction comparison to relative density may be more appropriate. In this case, granular materials should be compacted to at least 70% relative density (ASTM D 4253 and D 4254). Materials not amenable to density testing should be placed and compacted to a stable condition observed by the Geotechnical Engineer or representative.	

Utility Trench Backfill

Any soft or unsuitable materials encountered at the bottom of utility trench excavations should be removed and replaced with Structural Fill or bedding material in accordance with public works specifications for the utility to be supported. This recommendation is particularly applicable to utility work requiring grade control and/or in areas where subsequent grade raising could cause settlement in the subgrade supporting the utility. Trench excavation should not be conducted below a downward 1:1 projection from existing foundations without an engineering review of shoring requirements and geotechnical observation during construction.

On-site materials are considered suitable for backfill of utility and pipe trenches from 1 foot above the top of the pipe to the final ground surface, provided the material is free of organic matter and deleterious substances.

Trench backfill should be mechanically placed and compacted as discussed earlier in this report. Compaction of initial lifts should be accomplished with hand-operated tampers or other lightweight compactors. Where trenches are placed beneath slabs or footings, the backfill should satisfy the gradation and expansion index requirements of engineered fill discussed in this report. Flooding or jetting for placement and compaction of backfill is not recommended.

For low-permeability subgrades, utility trenches are a common source of water infiltration and migration. Utility trenches penetrating beneath the building should be effectively sealed to restrict water intrusion and flow through the trenches, which could migrate below the building. The trench should provide an effective trench plug that extends at least 5 feet from the face of the building exterior. The plug material should consist of cementitious flowable fill or low permeability clay. The trench plug material should be placed to surround the utility line. If used, the clay trench plug material should be placed and compacted to comply with the water content and compaction recommendations for Structural Fill stated previously in this report.

Grading and Drainage

All grades must provide effective drainage away from the building during and after construction and should be maintained throughout the life of the structure. Water retained next to the building can result in soil movements greater than those discussed in this report. Greater movements can result in unacceptable differential floor slab and/or foundation movements, cracked slabs and walls, and roof leaks. The roof should have gutters/drains with downspouts that discharge onto splash blocks at a distance of at least 10 feet from the building.

Exposed ground should be sloped and maintained at a minimum of 5% away from the building for at least 10 feet beyond the perimeter of the building. Locally, flatter grades may be necessary to transition ADA access requirements for flatwork. After building construction and landscaping have been completed, final grades should be verified to document that effective drainage has been achieved. Grades around the structure should also be periodically inspected and adjusted, as necessary, as part of the structure's maintenance program. Where paving or flatwork abuts the structure, a maintenance program should be established to effectively seal and maintain joints and prevent surface water infiltration.

Earthwork Construction Considerations

Shallow excavations for the proposed structure are anticipated to be accomplished with conventional construction equipment. Upon completion of filling and grading, care should be taken to maintain the subgrade water content prior to the construction of grade-supported improvements such as floor slabs and pavements. Construction traffic over the completed subgrades should be avoided. The site should also be graded to prevent ponding of surface water on the prepared subgrades or in excavations. Water collecting over or adjacent to construction areas should be removed. If the subgrade freezes, desiccates, saturates, or is disturbed, the affected material should be removed or scarified, moisture conditioned, and recompacted prior to floor slab construction.

As a minimum, excavations should be performed in accordance with OSHA 29 CFR, Part 1926, Subpart P, "Excavations" and its appendices and in accordance with any applicable local and/or state regulations.

Construction site safety is the sole responsibility of the contractor who controls the means, methods, and sequencing of construction operations. Under no circumstances shall the information provided herein be interpreted to mean Terracon is assuming responsibility for construction site safety or the contractor's activities; such responsibility shall neither be implied nor inferred.

Excavations or other activities resulting in ground disturbance have the potential to affect adjoining properties and structures. Our scope of services does not include review

of available final grading information or consider potential temporary grading performed by the contractor for potential effects such as ground movement beyond the project limits. A preconstruction/precondition survey should be conducted to document nearby property/infrastructure prior to any site development activity. Excavation or ground disturbance activities adjacent to or near property lines should be monitored or instrumented for potential ground movements that could negatively affect adjoining property and/or structures.

Construction Observation and Testing

The earthwork efforts should be observed by the Geotechnical Engineer (or others under their direction). Observation should include documentation of adequate removal of surficial materials (vegetation, topsoil, and pavements), evaluation and remediation of existing fill materials, and proofrolling and mitigation of unsuitable areas delineated by the proofroll.

Each lift of compacted fill should be tested, evaluated, and reworked, as necessary, as recommended by the Geotechnical Engineer prior to the placement of additional lifts. Each lift of fill should be tested for density and water content at a frequency of at least one test for every 2,500 square feet of compacted fill in the building areas and 5,000 square feet in pavement areas. Where not specified by local ordinance, one density and water content test should be performed for every 100 linear feet of compacted utility trench backfill, and a minimum of one test should be performed for every 12 vertical inches of compacted backfill.

In areas of foundation excavations, the bearing subgrade should be evaluated by the Geotechnical Engineer. If unanticipated conditions are observed, the Geotechnical Engineer should prescribe mitigation options.

In addition to the documentation of the essential parameters necessary for construction, the continuation of the Geotechnical Engineer's presence into the construction phase of the project provides the continuity to maintain the Geotechnical Engineer's evaluation of subsurface conditions, including assessing variations and associated design changes.

Shallow Foundations

If the site has been prepared in accordance with the requirements noted in [Earthwork](#), the following design parameters are applicable for shallow foundations.

Design Parameters — Compressive Loads

Item	Description
Maximum net allowable bearing pressure ^{1, 2}	2,000 psf
Required bearing stratum ³	Undisturbed native soil or properly placed and compacted Structural Fill
Minimum foundation dimensions	Column: 2 feet x 2 feet Wall: 2 feet wide
Maximum foundation dimensions	Column: 8 feet x 8 feet Wall: 5 feet wide
Ultimate passive resistance ⁴ (equivalent fluid pressures)	480 pcf (granular backfill) 224 pcf (native clay)
Sliding resistance ⁵	0.45 granular material 0.3 native clays
Minimum embedment below finished grade ⁶	Exterior footings in heated areas: 30 inches Interior footings in heated areas: 18 inches
Estimated total settlement from structural loads ²	Less than about 1 inch
Estimated differential settlement ^{2, 7}	About ½ of total settlement

1. The maximum net allowable bearing pressure is the pressure in excess of the minimum surrounding overburden pressure at the footing base elevation. Values assume that exterior grades are no steeper than 20% within 10 feet of the structure.
2. Values provided are for maximum loads noted in [Project Description](#). Additional geotechnical consultation will be necessary if higher loads are anticipated.
3. Unsuitable or soft soils should be overexcavated and replaced per the recommendations presented in [Earthwork](#).
4. Use of passive earth pressures requires the sides of the excavation for the spread footing foundation to be nearly vertical and the concrete placed neat against these vertical faces or that the footing forms be removed and compacted Structural Fill be placed against the vertical footing face. Assumes no hydrostatic pressure.
5. Can be used to compute sliding resistance where foundations are placed on suitable soil/materials. Frictional resistance for granular materials is dependent on the bearing pressure which may vary due to load combinations. For fine-grained materials, lateral resistance using cohesion should not exceed ½ the dead load.
6. Embedment necessary to minimize the effects of frost and/or seasonal water content variations. For sloping ground, maintain depth below the lowest adjacent exterior grade within 5 horizontal feet of the structure.
7. Differential settlements are noted for equivalent-loaded foundations and bearing elevation as measured over a span of 50 feet.

Design Parameters — Overturning and Uplift Loads

Shallow foundations subjected to overturning loads should be proportioned such that the resultant eccentricity is maintained in the center third of the foundation (e.g., $e < b/6$, where b is the foundation width). This requirement is intended to keep the entire foundation area in compression during the extreme lateral/overturning load event. Foundation oversizing may be required to satisfy this condition.

Uplift resistance of spread footings can be developed from the effective weight of the footing and the overlying soils with consideration of the IBC basic load combinations.

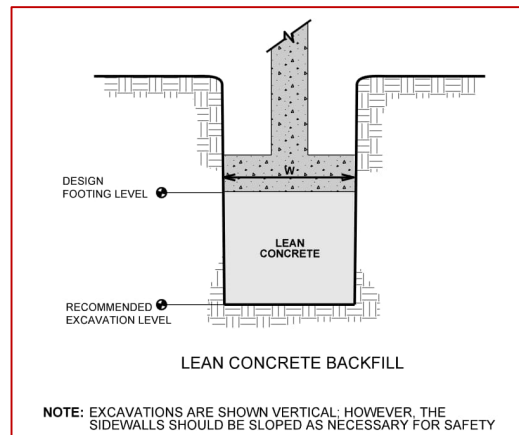
Item	Description
Soil moist unit weight	120 pcf
Soil effective unit weight	Not applicable
Soil weight included in uplift resistance	Soil included within the prism extending up from the top perimeter of the footing at an angle of 20 degrees from vertical to ground surface

Foundation Construction Considerations

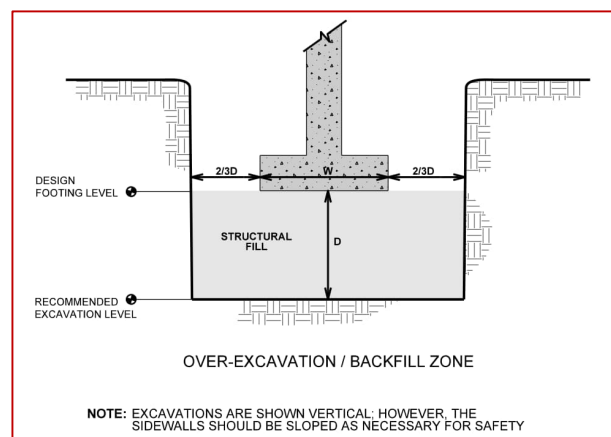
As noted in [Earthwork](#), the footing excavations should be evaluated under the observation of the Geotechnical Engineer. The base of all foundation excavations should be free of water and loose soil prior to placing concrete. Concrete should be placed soon after excavating to reduce bearing soil disturbance. Care should be taken to prevent wetting or drying of the bearing materials during construction. Excessively wet or dry material or any loose/disturbed material in the bottom of the footing excavations should be removed/reconditioned before the foundation concrete is placed.

Sensitive soils exposed at the surface of footing excavations may require surficial compaction with handheld dynamic compaction equipment prior to placing Structural Fill, steel, and/or concrete. Should surficial compaction not be adequate, construction of a working surface consisting of either crushed stone or a lean concrete mud mat may be required prior to the placement of reinforcing steel and construction of foundations.

If unsuitable bearing soils are observed at the base of the planned footing excavation, the excavation should be extended deeper to suitable soils; the footings could bear directly on these soils at the lower level or on lean concrete backfill placed in the excavations. The lean concrete replacement zone is illustrated in the sketch below.



Overexcavation for Structural Fill placement below footings should be conducted as shown below. The overexcavation should be backfilled up to the footing base elevation, with properly compacted Structural Fill placed, as recommended in the [Earthwork](#) section.



Floor Slabs

Design parameters for floor slabs assume the requirements for [Earthwork](#) have been followed. Specific attention should be given to positive drainage away from the structure and positive drainage of the aggregate base beneath the floor slab.

Depending on the finished floor elevation, unsuitable, weak, and/or soft to medium stiff soils may be observed at the floor slab subgrade level. These soils should be replaced with Structural Fill so the floor slab is supported on at least 12 inches of compacted suitable natural soils or Structural Fill.

Floor Slab Design Parameters

Item	Description
Floor slab support ¹	Use 4 inches base course meeting material specifications of ACI 302 underlain by undisturbed native or properly placed and compacted Structural Fill Subgrade compacted to recommendations in Earthwork
Estimated modulus of subgrade reaction ²	90 pounds per square inch per inch (psi/in.) for point loads

1. Floor slabs should be structurally independent of building footings or walls to reduce the possibility of floor slab cracking caused by differential movements between the slab and foundation.
2. Modulus of subgrade reaction is an estimated value based on our experience with the subgrade condition, the requirements noted in [Earthwork](#), and the floor slab support as noted in this table. It is provided for point loads. For large area loads, the modulus of subgrade reaction would be lower.

The use of a vapor retarder should be considered beneath concrete slabs-on-grade covered with wood, tile, carpet, or other moisture sensitive or impervious coverings; when the project includes humidity-controlled areas; or when the slab will support equipment sensitive to moisture. When conditions warrant the use of a vapor retarder, the slab designer should refer to ACI 302 and/or ACI 360 for procedures and cautions regarding the use and placement of a vapor retarder.

Saw-cut contraction joints should be placed in the slab to help control the location and extent of cracking. For additional recommendations, refer to the ACI Design Manual. Joints or cracks should be sealed with a waterproof, nonextruding compressible compound specifically recommended for heavy-duty concrete pavement and wet environments.

Where floor slabs are tied to perimeter walls or turn-down slabs to meet structural or other construction objectives, our experience indicates differential movement between the walls and slabs will likely be observed in adjacent slab expansion joints or floor slab cracks beyond the length of the structural dowels. The Structural Engineer should account for potential differential settlement through the use of sufficient control joints, appropriate reinforcing, or other means.

Floor Slab Construction Considerations

Finished subgrade, within and for at least 10 feet beyond the floor slab, should be protected from traffic, rutting, or other disturbance and maintained in a relatively moist condition until floor slabs are constructed. If the subgrade should become damaged or

desiccated prior to the construction of floor slabs, the affected material should be removed, and Structural Fill should be added to replace the resulting excavation. Final conditioning of the finished subgrade should be performed immediately prior to placement of the floor slab support course.

The Geotechnical Engineer should observe the condition of the floor slab subgrades immediately prior to placement of the floor slab support course, reinforcing steel, and concrete. Attention should be paid to high-traffic areas that were rutted and disturbed earlier and to areas where backfilled trenches are located.

Pavements

General Pavement Comments

Pavement designs are provided for the traffic conditions and pavement life conditions as noted in [Project Description](#) and in the following sections of this report. A critical aspect of pavement performance is site preparation. Pavement designs noted in this section must be applied to the site that has been prepared as recommended in the [Earthwork](#) section.

Pavement Design Parameters

A California Bearing Ratio (CBR) of 2 was used for the subgrade for the asphaltic concrete (AC) pavement designs. The value was empirically derived based on our experience with the Structural Fill subgrade soils and our expectation of the quality of the subgrade as prescribed by the Site Preparation conditions as outlined in [Earthwork](#).

Pavement Section Thicknesses

The following table provides our opinion on minimum thickness for AC sections:

Recommended Pavement Sections

Section	Thickness (inches) ¹		
	Asphalt Concrete pavement (AC) ³	Untreated Aggregate Base Course ²	Total section thickness
Class I	3.0	6.0	9.0

Recommended Pavement Sections

Section	Thickness (inches) ¹		
	Asphalt Concrete pavement (AC) ³	Untreated Aggregate Base Course ²	Total section thickness
Class III	5.0	6.0	11.0

- 1. The individual and total material thickness values presented herein represent minimum thickness values, not averages.
- 2. Requirements specified in the Fill Material Types section of [Earthwork](#).
- 3. A minimum 1.5-inch surface course should be used on ACC pavements.

Areas for parking heavy vehicles, concentrated turns, and start/stop maneuvers could require thicker pavement sections. Edge restraints (e.g., concrete curbs or aggregate shoulders) should be planned along curves and areas of maneuvering vehicles.

Openings in pavements, such as decorative landscaped areas, are sources for water infiltration into surrounding pavement systems. Water can collect in the islands and migrate into the surrounding subgrade soils, thereby degrading support of the pavement. Islands with raised concrete curbs, irrigated foliage, and low-permeability near-surface soils are particular areas of concern. The civil design for the pavements with these conditions should include features to restrict or collect and discharge excess water from the islands. Examples of such features are edge drains connected to the stormwater collection system, longitudinal subdrains, or other suitable outlets and impermeable barriers preventing lateral migration of water such as a cutoff wall installed to a depth below the pavement structure.

Pavement Drainage

Pavements should be sloped to provide rapid drainage of surface water. Water allowed to pond on or adjacent to the pavements could saturate the subgrade and contribute to premature pavement deterioration. In addition, the pavement subgrade should be graded to provide positive drainage within the granular base section. Appropriate subdrainage or connection to a suitable daylight outlet should be provided to remove water from the granular subbase.

Based on the possibility of shallow and/or perched groundwater, we recommend installing a pavement subdrain system to control groundwater, improve stability, and improve long-term pavement performance.

Due to frost-susceptible soils and the possibility of perched groundwater, consideration should be given to installing a pavement subdrain system to control subgrade moisture, improve stability, and improve long-term pavement performance.

We recommend that at least 6 inches of free-draining granular material be placed beneath the pavements. The use of a free-draining granular base will also reduce the potential for frost action. We recommend pavement subgrades be crowned at least 2% to promote the flow of water toward the subdrains and to reduce the potential for ponding of water on the subgrade.

Pavement Maintenance

The pavement sections represent minimum recommended thicknesses and, as such, periodic upkeep should be anticipated. Preventive maintenance should be planned and provided for through an ongoing pavement management program. Maintenance activities are intended to slow the rate of pavement deterioration and to preserve the pavement investment. Pavement care consists of both localized (e.g., crack and joint sealing and patching) and global maintenance (e.g., surface sealing). Additional engineering consultation is recommended to determine the type and extent of a cost-effective program. Even with periodic maintenance, some movements and related cracking may still occur, and repairs may be required.

Pavement performance is affected by its surroundings. In addition to providing preventive maintenance, the civil engineer should consider the following recommendations in the design and layout of pavements:

- Final grade adjacent to paved areas should slope down from the edges at a minimum of 2%.
- Subgrade and pavement surfaces should have a minimum 2% slope to promote proper surface drainage.
- Install pavement drainage systems surrounding areas where frequent wetting is anticipated.
- Install joint sealant and seal cracks immediately.
- Seal all landscaped areas in or adjacent to pavements to reduce moisture migration to subgrade soils.
- Place compacted, low permeability backfill against the exterior side of the curb and gutter.
- Place curb, gutter, and/or sidewalk directly on clay subgrade soils rather than on unbound granular base course materials.

General Comments

Our analysis and opinions are based on our understanding of the project, the geotechnical conditions in the area, and the data obtained from our site exploration. Variations will occur between exploration point locations or due to the modifying effects of construction or weather. The nature and extent of such variations may not become evident until during or after construction. Terracon should be retained as the Geotechnical Engineer, where noted in this report, to provide observation and testing services during pertinent construction phases. If variations appear, we can provide further evaluation and supplemental recommendations. If variations are noted in the absence of our observation and testing services on-site, we should be immediately notified so that we can provide evaluation and supplemental recommendations.

Our Scope of Services does not include either specifically or by implication any environmental or biological (e.g., mold, fungi, or bacteria) assessment of the site or identification or prevention of pollutants, hazardous materials, or hazardous conditions. If the owner is concerned about the potential for such contamination or pollution, other studies should be undertaken.

Our services and any correspondence are intended for the sole benefit and exclusive use of our client for specific application to the project discussed and are accomplished in accordance with generally accepted geotechnical engineering practices with no third-party beneficiaries intended. Any third-party access to services or correspondence is solely for information purposes to support the services provided by Terracon to our client. Reliance upon the services and any work product is limited to our client and is not intended for third parties. Any use or reliance of the provided information by third parties is done solely at their own risk. No warranties, either express or implied, are intended or made.

Site characteristics as provided are for design purposes and not to estimate excavation cost. Any use of our report in that regard is done at the sole risk of the excavating cost estimator as there may be variations on the site that are not apparent in the data that could significantly affect excavation cost. Any parties charged with estimating excavation costs should seek their own site characterization for specific purposes to obtain the specific level of detail necessary for costing. Site safety and cost estimating including excavation support and dewatering requirements/design are the responsibility of others.

Construction and site development have the potential to affect adjacent properties. Such impacts can include damage due to vibration, modification of groundwater/surface water flow during construction, foundation movement due to undermining or subsidence from excavation, and noise or air quality concerns. Evaluation of these items on nearby properties is commonly associated with contractor means and methods and is not addressed in this report. The owner and contractor should consider a preconstruction/precondition survey of the surrounding development. If changes in the

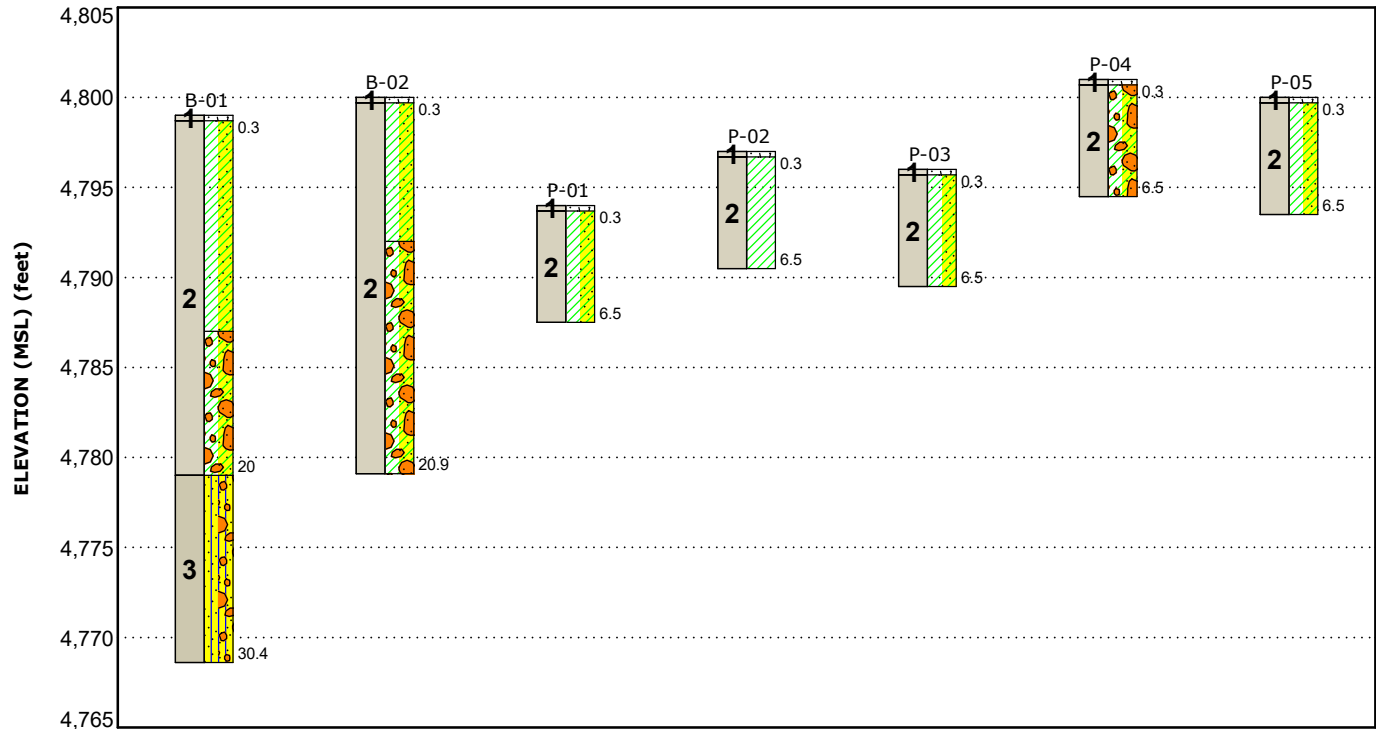
nature, design, or location of the project are planned, our conclusions and recommendations shall not be considered valid unless we review the changes and either verify or modify our conclusions in writing.

Figures

Contents:

GeoModel

GeoModel



This is not a cross section. This is intended to display the Geotechnical Model only. See individual logs for more detailed conditions.

Model Layer	Layer Name	General Description	Legend	
1	Topsoil	Topsoil approximately 3 inches in depth	 Topsoil	 Lean Clay with Sand
2	Fine-grained soils	Lean clays with varying amounts of sand and gravel	 Gravelly Lean Clay with Sand	 Silty Sand with Gravel
3	Coarse-grained soils	Sands with varying amounts of silt and gravel	 Lean Clay	

NOTES:
Layering shown on this figure has been developed by the geotechnical engineer for purposes of modeling the subsurface conditions as required for the subsequent geotechnical engineering for this project. Numbers adjacent to soil column indicate depth below ground surface.

Attachments

Exploration and Testing Procedures

Field Exploration

Number of explorations	Depth	Location
2	30.4 and 20.9 feet	Building area
4	6.5 feet ¹	Parking/driveway area
1		Retention pond

1. Percolation test performed at boring in retention pond location.

Boring Layout and Elevations: Terracon personnel provided the boring layout using handheld GPS equipment (estimated horizontal accuracy of about ±10 feet) and referencing existing site features. Approximate ground surface elevations were estimated using Google Earth. If elevations and a more precise boring layout are desired, we recommend borings be surveyed.

Subsurface Exploration Procedures: We advanced the borings with a truck-mounted, drill rig using continuous hollow-stem flight augers. Four samples were obtained in the upper 10 feet of each boring and at intervals of 5 feet thereafter. In the thin-walled tube sampling procedure, a thin-walled, seamless steel tube with a sharp cutting edge was pushed hydraulically into the soil to obtain a relatively undisturbed sample. In the split-barrel sampling procedure, a standard 2-inch outer diameter split-barrel sampling spoon was driven into the ground by a 140-pound automatic hammer falling a distance of 30 inches. The number of blows required to advance the sampling spoon the last 12 inches of a normal 18-inch penetration is recorded as the Standard Penetration Test (SPT) resistance value. The SPT resistance values, also referred to as *N*-values, are indicated in the boring logs at the test depths. We observed and recorded groundwater levels during drilling and sampling. For safety purposes, all borings were backfilled with auger cuttings after their completion.

The sampling depths, penetration distances, and other sampling information were recorded in the field boring logs. The samples were placed in appropriate containers and taken to our soil laboratory for testing and classification by a Geotechnical Engineer. Our exploration team prepared field boring logs as part of the drilling operations. These field logs included visual classifications of the materials observed during drilling and our interpretation of the subsurface conditions between samples. Final boring logs were prepared from the field logs. The final boring logs represent the Geotechnical Engineer's interpretation of the field logs and include modifications based on observations and tests of the samples in our laboratory.

Laboratory Testing

The project engineer reviewed the field data and assigned laboratory tests. The laboratory testing program included the following types of tests:

- moisture content (ASTM D2216)
- grain size analysis (ASTM D422)
- Atterberg limits (ASTM D4318)
- chemical analyses — pH, sulfates, chloride ion, and electrical resistivity (ASTM G51, ASTM C1580, ASTM D512, ASTM G187)
- moisture-density relationship (ASTM D698)
- California Bearing Ratio (CBR) (ASTM D1883)

The laboratory testing program often included examination of soil samples by an engineer. Based on the results of our field and laboratory programs, we described and classified the soil samples in accordance with the Unified Soil Classification System.

Site Location and Exploration Plans

Contents:

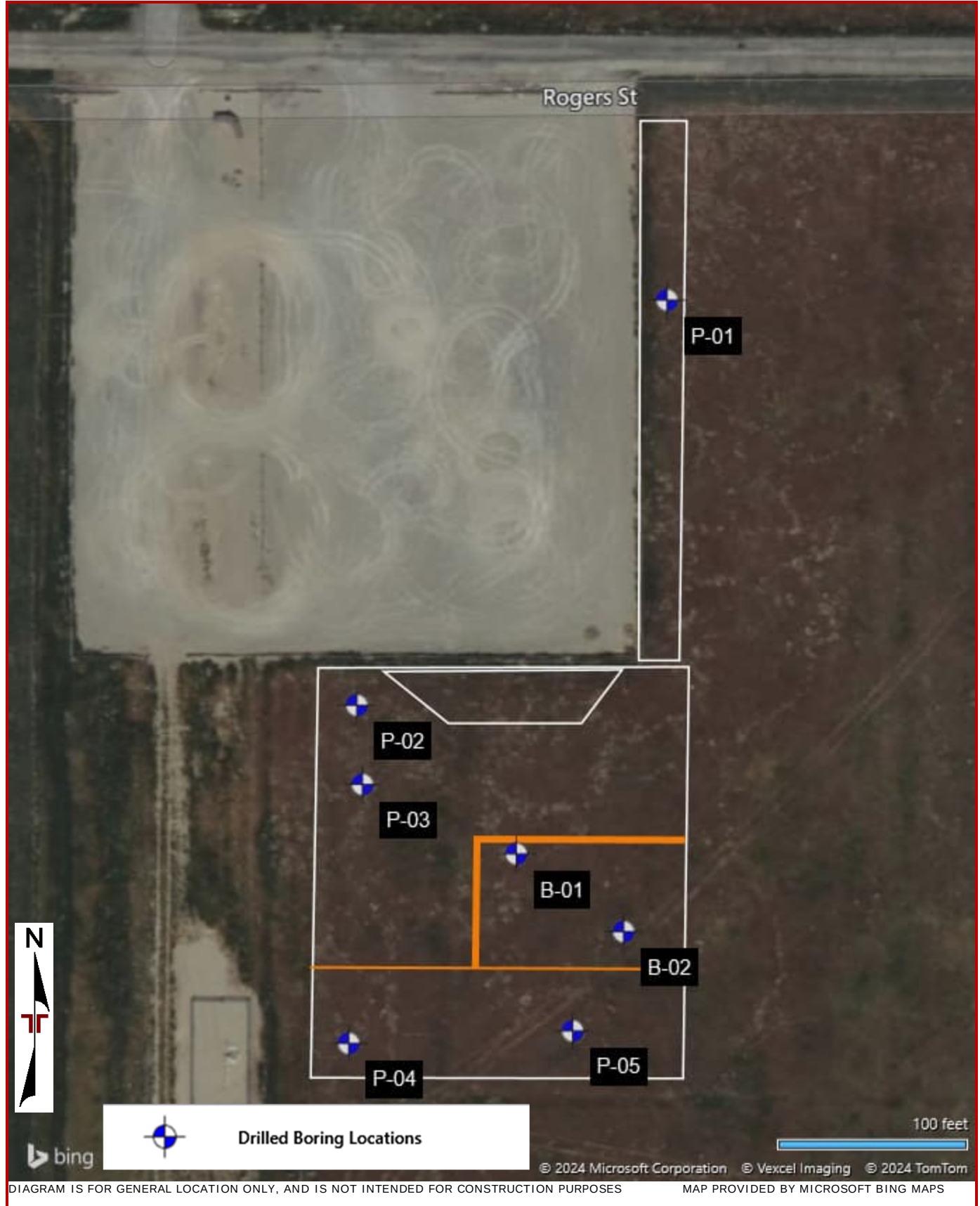
Site Location Plan
Exploration Plan

Note: All attachments are one page unless noted above.

Site Location



Exploration Plan



Exploration and Laboratory Results

Contents:

Boring Logs (B-01 through B-02)
Pavement Logs (P-01 through P-05)
Grain Size Distribution
Corrosivity
Moisture-Density Relationship
California Bearing Ratio (CBR)

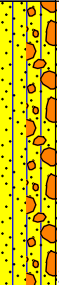
Note: All attachments are one page unless noted above.

Boring Log No. B-01

Model Layer	Graphic Log	Location: See Exploration Plan Latitude: 40.5445° Longitude: -112.3283° Depth (Ft.) Elevation.: 4799 (Ft.)	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	
										LL-PL-PI	Percent Fines
1		0.3 TOPSOIL , approximately 3 inches LEAN CLAY WITH SAND (CL) , trace organics, medium brown, stiff to very stiff, with trace gravel with trace pinholes	4798.7					6.5			
2			5								
			10								
			15								
			20								
3			25								

See Exploration and Testing Procedures for a description of field and laboratory procedures used and additional data (If any). See Supporting Information for explanation of symbols and abbreviations. Elevation Reference: Elevation obtained from Google Earth	Water Level Observations Groundwater not encountered	Drill Rig Geoprobe 3100 GT Hammer Type Automatic Driller DPS
	Advancement Method Hollow Stem Auger	Logged by EB & KF
	Abandonment Method Boring backfilled with auger cuttings upon completion.	Boring Started 06-11-2024 Boring Completed 06-11-2024

Boring Log No. B-01

Model Layer	Graphic Log	Location: See Exploration Plan Latitude: 40.5445° Longitude: -112.3283° Depth (Ft.) Elevation.: 4799 (Ft.)	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	Percent Fines
										LL-PL-PI	
3		SILTY SAND WITH GRAVEL (SM) , light to dark brown, very dense, with oxidation stains (<i>continued</i>) 30.4 4768.6	30		☒	9	29-50/5"	2.5			
						4	30-50/-1"				
		Boring Terminated at 30.4 Feet									

Notes	See Exploration and Testing Procedures for a description of field and laboratory procedures used and additional data (If any). See Supporting Information for explanation of symbols and abbreviations. Elevation Reference: Elevation obtained from Google Earth	Water Level Observations Groundwater not encountered	Drill Rig Geoprobe 3100 GT
			Hammer Type Automatic
			Driller DPS
		Advancement Method Hollow Stem Auger	Logged by EB & KF
		Abandonment Method Boring backfilled with auger cuttings upon completion.	Boring Started 06-11-2024
			Boring Completed 06-11-2024

Boring Log No. B-02

Model Layer	Graphic Log	Location: See Exploration Plan Latitude: 40.5444° Longitude: -112.3281° Depth (Ft.)Elevation.: 4800 (Ft.)	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	Percent Fines
										LL-PL-PI	
1		0.3 TOPSOIL, approximately 3 inches4799.7									
		LEAN CLAY WITH SAND (CL), light brown, medium stiff, with trace rootlets									
			5		X	12	3-3-4 N=7	6.8		28-17-11	72
					X	13	3-3-4 N=7				
		8.0			X	12	5-9-11 N=20				
2		GRAVELLY LEAN CLAY WITH SAND (CL), light brown, hard, with oxidation stains4792	10			16	14-26-46	7.6		32-17-15	53
			15		X	13	22-35-50 N=85				
			20		X	8	47-50/5"	2.6			
		20.9 Boring Terminated at 20.9 Feet4779.1									

Notes	See Exploration and Testing Procedures for a description of field and laboratory procedures used and additional data (If any).	Water Level Observations Groundwater not encountered	Drill Rig Geoprobe 3100 GT Hammer Type Automatic Driller DPS
	See Supporting Information for explanation of symbols and abbreviations.		
	Elevation Reference: Elevation obtained from Google Earth		
Notes	Advancement Method Hollow Stem Auger	Abandonment Method Boring backfilled with auger cuttings upon completion.	Logged by EB & KF Boring Started 06-11-2024 Boring Completed 06-11-2024

Boring Log No. P-01

Model Layer	Graphic Log	Location: See Exploration Plan Latitude: 40.5453° Longitude: -112.3280° Depth (Ft.) Elevation.: 4794 (Ft.)	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	Percent Fines
										LL-PL-PI	
1		0.3 TOPSOIL , approximately 3 inches	4793.7								
2		LEAN CLAY WITH SAND (CL) , light to medium brown, medium stiff to stiff with rootlets	5			13	3-3-5 N=8	8.4		29-17-12	77
		6.5 Boring Terminated at 6.5 Feet	4787.5			13	3-4-5 N=9				

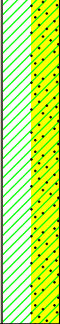
Notes	See Exploration and Testing Procedures for a description of field and laboratory procedures used and additional data (If any).	Water Level Observations Groundwater not encountered	Drill Rig Geoprobe 3100 GT
	See Supporting Information for explanation of symbols and abbreviations.		
	Elevation Reference: Elevation obtained from Google Earth		
Notes		Hammer Type Automatic	Driller DPS
Notes		Advancement Method Hollow Stem Auger	Logged by EB & KF
Notes		Abandonment Method Boring backfilled with auger cuttings upon completion.	Boring Started 06-11-2024
Notes			Boring Completed 06-11-2024

Boring Log No. P-02

Model Layer	Graphic Log	Location: See Exploration Plan Latitude: 40.5447° Longitude: -112.3286° Depth (Ft.) Elevation.: 4797 (Ft.)	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	Percent Fines
										LL-PL-PI	
1		0.3 TOPSOIL , approximately 3 inches	4796.7								
2		LEAN CLAY (CL) , trace gravel, medium brown, medium stiff to stiff, with trace organics									
			5		X	7	4-5-5 N=10				
					X	12	3-3-3 N=6	8.3		30-17-13	85
		6.5 Boring Terminated at 6.5 Feet	4790.5								

Notes	See Exploration and Testing Procedures for a description of field and laboratory procedures used and additional data (If any).	Water Level Observations Groundwater not encountered	Drill Rig Geoprobe 3100 GT
	See Supporting Information for explanation of symbols and abbreviations.		
	Elevation Reference: Elevation obtained from Google Earth		
Notes		Hammer Type Automatic	Driller DPS
Notes		Advancement Method Hollow Stem Auger	Logged by EB & KF
Notes		Abandonment Method Boring backfilled with Auger Cuttings and/or Bentonite	Boring Started 06-11-2024
Notes			Boring Completed 06-11-2024

Boring Log No. P-03

Model Layer	Graphic Log	Location: See Exploration Plan Latitude: 40.5446° Longitude: -112.3286° Depth (Ft.) Elevation.: 4796 (Ft.)	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	Percent Fines
										LL-PL-PI	
1		0.3 TOPSOIL , approximately 3 inches	4795.7								
2		LEAN CLAY WITH SAND (CL) , trace gravel, light brown, medium stiff to stiff trace organics	5		X	10	4-6-6 N=12	5.7			
					X	14	3-3-3 N=6				
		6.5 Boring Terminated at 6.5 Feet	4789.5								

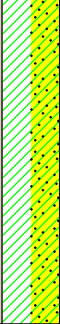
Notes	See Exploration and Testing Procedures for a description of field and laboratory procedures used and additional data (If any).	Water Level Observations Groundwater not encountered	Drill Rig Geoprobe 3100 GT
	See Supporting Information for explanation of symbols and abbreviations.		
	Elevation Reference: Elevation obtained from Google Earth		
Notes		Hammer Type Automatic	Driller DPS
Notes		Advancement Method Hollow Stem Auger	Logged by EB & KF
Notes		Abandonment Method Boring backfilled with auger cuttings upon completion.	Boring Started 06-11-2024
Notes			Boring Completed 06-11-2024

Model Layer	Graphic Log	Location: See Exploration Plan	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	Percent Fines
		Latitude: 40.5442° Longitude: -112.3286°								LL-PL-PI	
1		Depth (Ft.) 0.3 Elevation.: 4801 (Ft.) 4800.7 TOPSOIL , approximately 3 inches									
2		GRAVELLY LEAN CLAY WITH SAND (CL) , medium brown, medium stiff to very stiff	5			12	6-12-11 N=23				
		6.5 4794.5				15	3-2-4 N=6	6.7			
Boring Terminated at 6.5 Feet											

Boring Started
06-11-2024

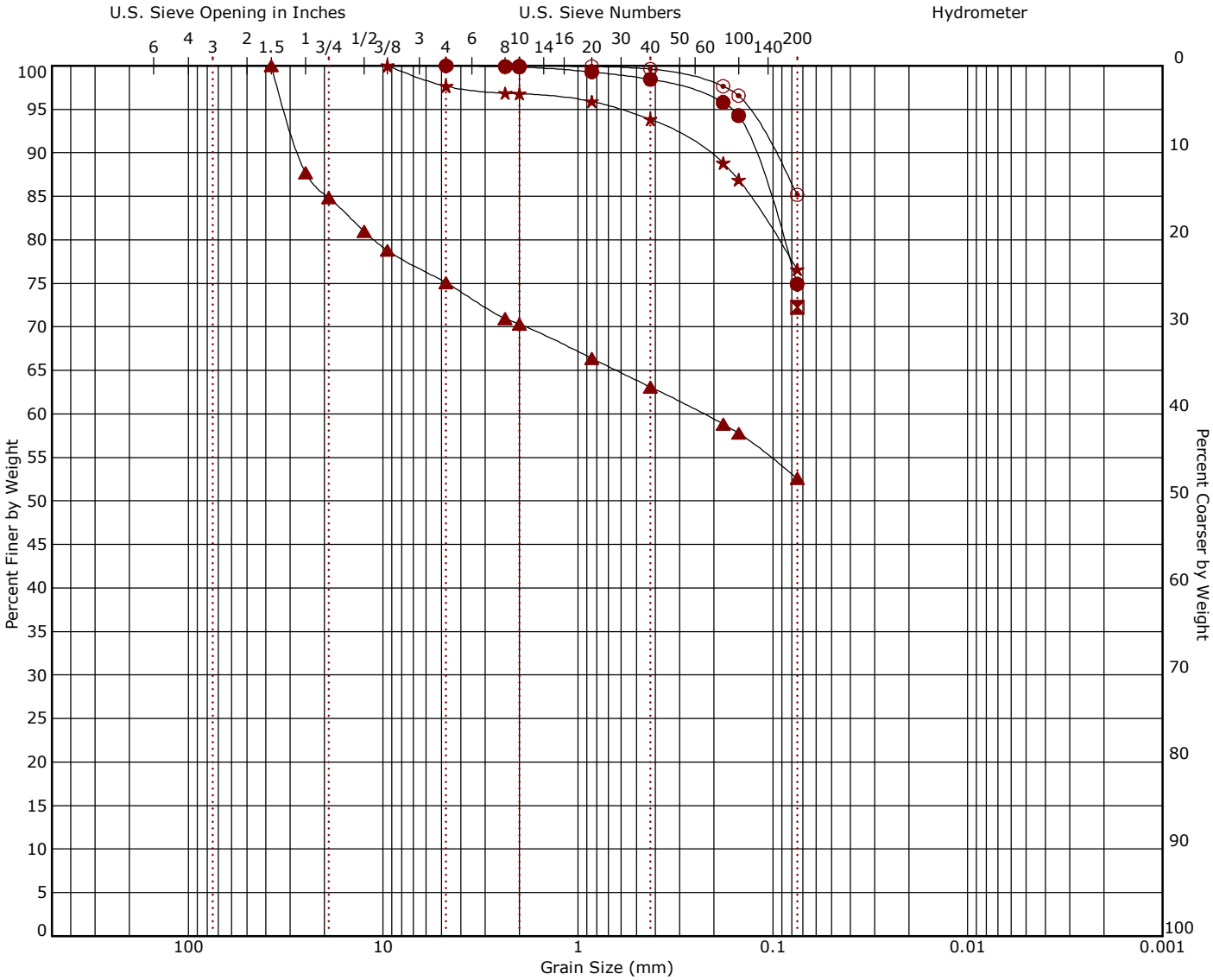
Boring Completed
06-11-2024

Boring Log No. P-05

Model Layer	Graphic Log	Location: See Exploration Plan Latitude: 40.5442° Longitude: -112.3282° Depth (Ft.) Elevation.: 4800 (Ft.)	Depth (Ft.)	Water Level Observations	Sample Type	Recovery (In.)	Field Test Results	Water Content (%)	Dry Unit Weight (pcf)	Atterberg Limits	Percent Fines
										LL-PL-PI	
1		0.3 TOPSOIL , approximately 3 inches	4799.7								
2		LEAN CLAY WITH SAND (CL) , with organics, medium brown, medium stiff to stiff with organics	5 6.5		X	13	3-2-4 N=6	7.4			
					X	13	4-5-4 N=9				
		Boring Terminated at 6.5 Feet	4793.5								

Notes	See Exploration and Testing Procedures for a description of field and laboratory procedures used and additional data (If any).	Water Level Observations Groundwater not encountered	Drill Rig Geoprobe 3100 GT
	See Supporting Information for explanation of symbols and abbreviations.		
	Elevation Reference: Elevation obtained from Google Earth		
		Advancement Method Hollow Stem Auger	Hammer Type Automatic
			Driller DPS
			Logged by EB & KF
		Abandonment Method Boring backfilled with auger cuttings upon completion.	Boring Started 06-11-2024
			Boring Completed 06-11-2024

Grain Size Distribution
ASTM D422 / ASTM C136 / AASHTO T27



Cobbles		Gravel		Sand			Silt or Clay				
		coarse	fine	coarse	medium	fine					
Boring ID	Depth (Ft)	Description					LL	PL	PI	Cc	Cu
● B-01	5 - 6.5	LEAN CLAY with SAND					29	18	11		
⊠ B-02	2.5 - 4	LEAN CLAY with SAND					28	17	11		
▲ B-02	10 - 11.5	GRAVELLY LEAN CLAY with SAND					32	17	15		
★ P-01	0.3 - 5	LEAN CLAY with SAND					29	17	12		
⊙ P-02	5 - 6.5	LEAN CLAY					30	17	13		
Boring ID	Depth (Ft)	D ₁₀₀	D ₆₀	D ₃₀	D ₁₀	%Cobbles	%Gravel	%Sand	%Fines	%Silt	%Clay
● B-01	5 - 6.5	4.75				0.0	0.0	25.1	74.9		
⊠ B-02	2.5 - 4	0.075							72.2		
▲ B-02	10 - 11.5	37.5	0.228			0.0	24.9	22.5	52.6		
★ P-01	0.3 - 5	9.5				0.0	2.3	21.0	76.6		
⊙ P-02	5 - 6.5	2				0.0	0.0	14.8	85.2		

CHEMICAL LABORATORY TEST REPORT

Project Number: 61245083

Service Date: 06/28/24

Report Date: 07/02/24



10400 State Highway 191

Midland, Texas 79707

432-684-9600

Client

J-U-B ENGINEERS, Inc.
392 East Winchester Street, Suite 300
Salt Lake City, UT 84107

Project

J-U-B - Tooele City Salt Shed
877 Rogers Street
Tooele, UT

<i>Sample Location</i>	B-1	B-2
<i>Sample Depth (ft.)</i>	0.3-2.5	0.3-2.5
pH Analysis, ASTM G51-18	6.5	6.9
Water Soluble Sulfate (SO ₄), ASTM C1580 (mg/kg)	3	7
Sulfides, AWWA 4500-S D, (mg/kg)	nil	nil
Chlorides, ASTM D512, (mg/kg)	88	81
RedOx, ASTM D1498, (mV)	+440	+425
Total Salts, ASTM D1125-14, (mg/kg)	554	578
Resistivity, ASTM G187, (ohm-cm)	4,853	5,472

Analyzed By:

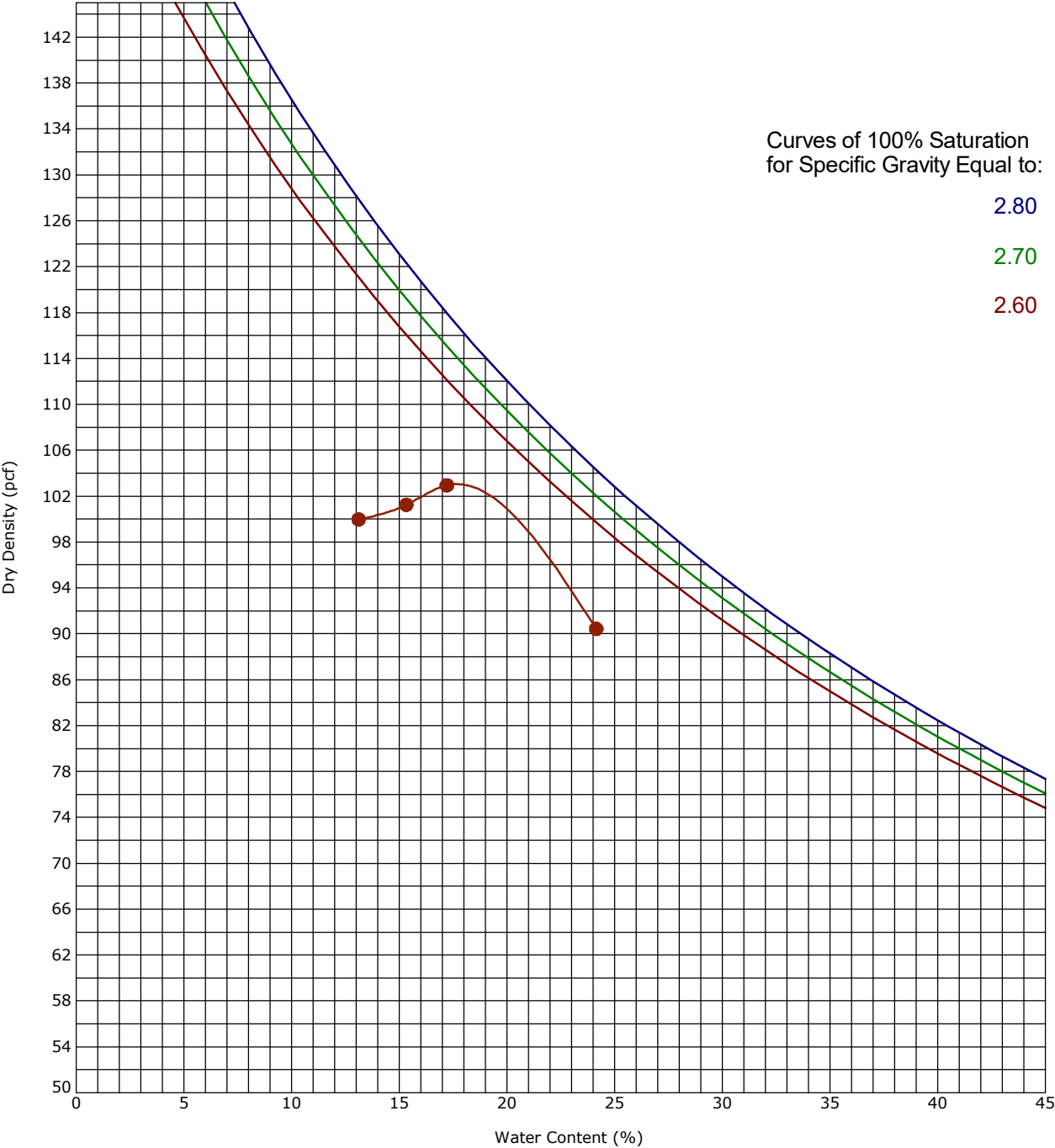
A handwritten signature in black ink that reads 'Zach Robertson'.

Zach Robertson
Laboratory Coordinator

The tests were performed in general accordance with applicable ASTM, AASHTO, or DOT test methods. This report is exclusively for the use of the client indicated above and shall not be reproduced except in full without the written consent of our company. Test results transmitted herein are only applicable to the actual samples tested at the location(s) referenced and are not necessarily indicative of the properties of other apparently similar or identical materials.

Moisture-Density Relationship

ASTM D698-Method A



Boring ID		Depth (Ft)		Description of Materials			
P-01		0.3 - 5		LEAN CLAY with SAND(CL)			
Fines (%)	Fraction > mm size	LL	PL	PI	Test Method	Maximum Dry Density (pcf)	Optimum Water Content (%)
77	0.0	29	17	12	ASTM D698-Method A	103.0	17.6

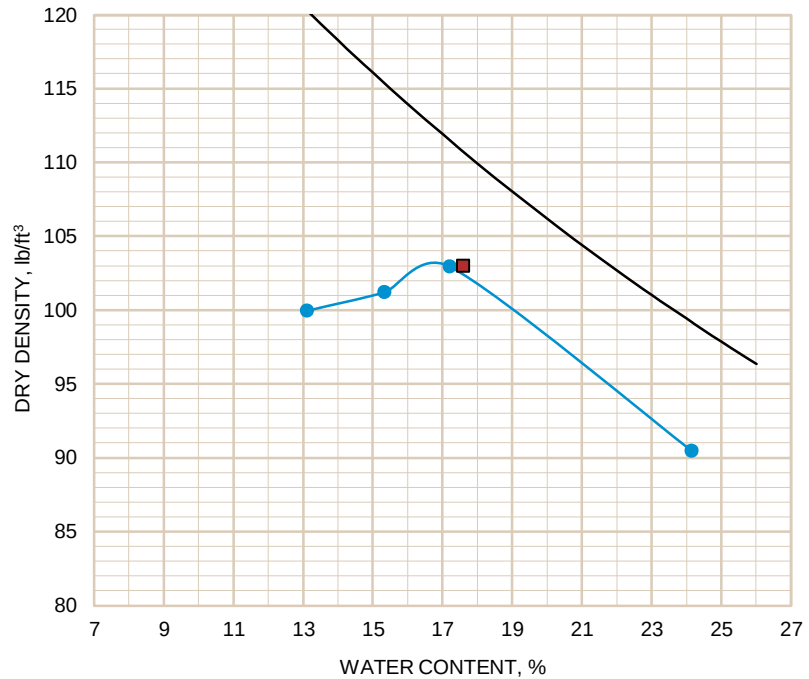
GRADATION RESULTS

SIEVE SIZE	PERCENT PASSING
3/8"	100
No. 4	98
No. 8	97
No. 10	97
No. 20	96
No. 40	94
No. 80	90
No. 100	88
No. 200	78

Liquid Limit: **29**
Plasticity Index: **12**

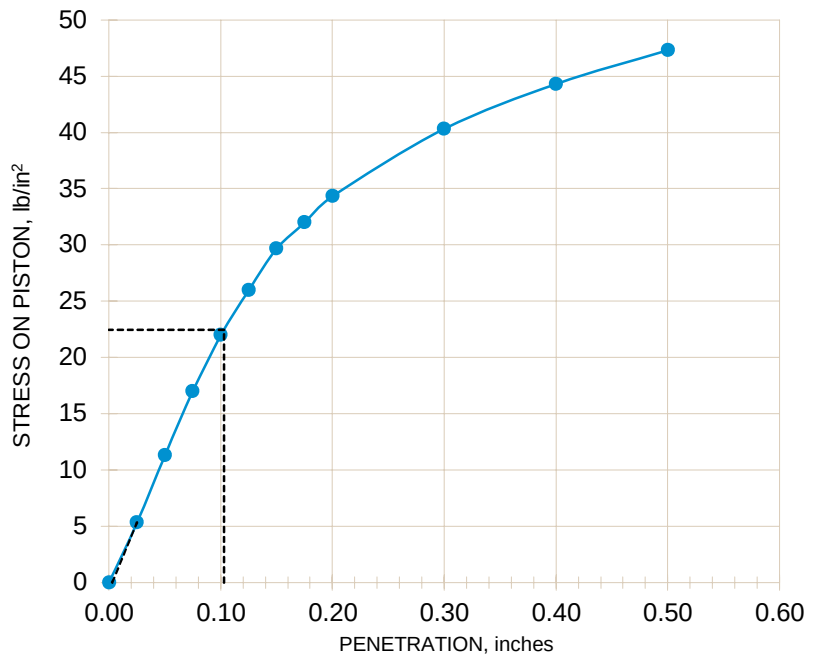
Maximum Dry Density, lb/ft³:
Optimum Moisture, %:

103 Test Method: **ASTM 698A**
17.6 (ZERO AIR VOIDS FOR SPECIFIC GRAVITY OF 2.58)



CALIFORNIA BEARING RATIO

Dry Density,
Before Soaking, lb/ft³: **97.7**
After Soaking, lb/ft³: **94.8**
Relative Compaction, %: **95**
Moisture Content,
Before Compaction, %: **19.0**
Top 1-inch After Soaking, %: **20.0**
Average After Soaking, %: **23.1**
Surcharge Weight, lb: **10**
Soaking Period, hr: **96**
Swell, %: **2.5**
CBR Value, %: **2.2**



SAMPLE - IDENTIFICATION
P-01 @ 0.3 - 5.0

CLASSIFICATION
Lean Clay with Sand



GRADATION, MOISTURE-DENSITY, AND CALIFORNIA BEARING RATIO TEST RESULTS

Project Name: **Tooele City Salt Shed**
Location: **Tooele, UT**
Project No.: **61245083**
Date: **7/1/2024**

Supporting Information

Contents:

General Notes

Unified Soil Classification System

Note: All attachments are one page unless noted above.

General Notes

Sampling	Water Level	Field Tests
 Auger Cuttings  Modified Dames & Moore Ring Sampler  Standard Penetration Test	 Water Initially Encountered  Water Level After a Specified Period of Time  Water Level After a Specified Period of Time  Cave In Encountered Water levels indicated on the soil boring logs are the levels measured in the borehole at the times indicated. Groundwater level variations will occur over time. In low permeability soils, accurate determination of groundwater levels is not possible with short term water level observations.	N Standard Penetration Test Resistance (Blows/Ft.) (HP) Hand Penetrometer (T) Torvane (DCP) Dynamic Cone Penetrometer UC Unconfined Compressive Strength (PID) Photo-Ionization Detector (OVA) Organic Vapor Analyzer

Descriptive Soil Classification

Soil classification as noted on the soil boring logs is based Unified Soil Classification System. Where sufficient laboratory data exist to classify the soils consistent with ASTM D2487 "Classification of Soils for Engineering Purposes" this procedure is used. ASTM D2488 "Description and Identification of Soils (Visual-Manual Procedure)" is also used to classify the soils, particularly where insufficient laboratory data exist to classify the soils in accordance with ASTM D2487. In addition to USCS classification, coarse grained soils are classified on the basis of their in-place relative density, and fine-grained soils are classified on the basis of their consistency. See "Strength Terms" table below for details. The ASTM standards noted above are for reference to methodology in general. In some cases, variations to methods are applied as a result of local practice or professional judgment.

Location And Elevation Notes

Exploration point locations as shown on the Exploration Plan and as noted on the soil boring logs in the form of Latitude and Longitude are approximate. See Exploration and Testing Procedures in the report for the methods used to locate the exploration points for this project. Surface elevation data annotated with +/- indicates that no actual topographical survey was conducted to confirm the surface elevation. Instead, the surface elevation was approximately determined from topographic maps of the area.

Strength Terms

Relative Density of Coarse-Grained Soils (More than 50% retained on No. 200 sieve.) Density determined by Standard Penetration Resistance			Consistency of Fine-Grained Soils (50% or more passing the No. 200 sieve.) Consistency determined by laboratory shear strength testing, field visual-manual procedures or standard penetration resistance			
Relative Density	Standard Penetration or N-Value (Blows/Ft.)	Ring Sampler (Blows/Ft.)	Consistency	Unconfined Compressive Strength Qu (tsf)	Standard Penetration or N-Value (Blows/Ft.)	Ring Sampler (Blows/Ft.)
Very Loose	0 - 3	0 - 6	Very Soft	less than 0.25	0 - 1	< 3
Loose	4 - 9	7 - 18	Soft	0.25 to 0.50	2 - 4	3 - 4
Medium Dense	10 - 29	19 - 58	Medium Stiff	0.50 to 1.00	4 - 8	5 - 9
Dense	30 - 50	59 - 98	Stiff	1.00 to 2.00	8 - 15	10 - 18
Very Dense	> 50	> 99	Very Stiff	2.00 to 4.00	15 - 30	19 - 42
			Hard	> 4.00	> 30	> 42

Relevance of Exploration and Laboratory Test Results

Exploration/field results and/or laboratory test data contained within this document are intended for application to the project as described in this document. Use of such exploration/field results and/or laboratory test data should not be used independently of this document.

Unified Soil Classification System

Criteria for Assigning Group Symbols and Group Names Using Laboratory Tests ^A				Soil Classification	
				Group Symbol	Group Name ^B
Coarse-Grained Soils: More than 50% retained on No. 200 sieve	Gravels: More than 50% of coarse fraction retained on No. 4 sieve	Clean Gravels: Less than 5% fines ^C	Cu≥4 and 1≤Cc≤3 ^E	GW	Well-graded gravel ^F
			Cu<4 and/or [Cc<1 or Cc>3.0] ^E	GP	Poorly graded gravel ^F
		Gravels with Fines: More than 12% fines ^C	Fines classify as ML or MH	GM	Silty gravel ^{F, G, H}
			Fines classify as CL or CH	GC	Clayey gravel ^{F, G, H}
	Sands: 50% or more of coarse fraction passes No. 4 sieve	Clean Sands: Less than 5% fines ^D	Cu≥6 and 1≤Cc≤3 ^E	SW	Well-graded sand ^I
			Cu<6 and/or [Cc<1 or Cc>3.0] ^E	SP	Poorly graded sand ^I
		Sands with Fines: More than 12% fines ^D	Fines classify as ML or MH	SM	Silty sand ^{G, H, I}
			Fines classify as CL or CH	SC	Clayey sand ^{G, H, I}
Fine-Grained Soils: 50% or more passes the No. 200 sieve	Silts and Clays: Liquid limit less than 50	Inorganic:	PI > 7 and plots above “A” line ^J	CL	Lean clay ^{K, L, M}
			PI < 4 or plots below “A” line ^J	ML	Silt ^{K, L, M}
		Organic:	$\frac{LL\ oven\ dried}{LL\ not\ dried} < 0.75$	OL	Organic clay ^{K, L, M, N}
	Silts and Clays: Liquid limit 50 or more	Inorganic:	PI plots on or above “A” line	CH	Fat clay ^{K, L, M}
			PI plots below “A” line	MH	Elastic silt ^{K, L, M}
		Organic:	$\frac{LL\ oven\ dried}{LL\ not\ dried} < 0.75$	OH	Organic clay ^{K, L, M, P}
Highly organic soils:	Primarily organic matter, dark in color, and organic odor			PT	Peat

- ^A Based on the material passing the 3-inch (75-mm) sieve.

^B If the field sample contained cobbles or boulders, or both, add "with cobbles or boulders, or both" to the group name.

^C Gravels with 5 to 12% fines require dual symbols: GW-GM well-graded gravel with silt, GW-GC well-graded gravel with clay, GP-GM poorly graded gravel with silt, GP-GC poorly graded gravel with clay.

^D Sands with 5 to 12% fines require dual symbols: SW-SM well-graded sand with silt, SW-SC well-graded sand with clay, SP-SM poorly graded sand with silt, SP-SC poorly graded sand with clay.

^E $Cu = D_{60}/D_{10}$ $Cc = \frac{(D_{30})^2}{D_{10} \times D_{60}}$

^F If soil contains ≥ 15% sand, add "with sand" to the group name.

^G If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.
- ^H If fines are organic, add "with organic fines" to the group name.

^I If soil contains ≥ 15% gravel, add "with gravel" to the group name.

^J If Atterberg limits plot in shaded area, soil is a CL-ML, silty clay.

^K If soil contains 15 to 29% plus No. 200, add "with sand" or "with gravel," whichever is predominant.

^L If soil contains ≥ 30% plus No. 200 predominantly sand, add "sandy" to the group name.

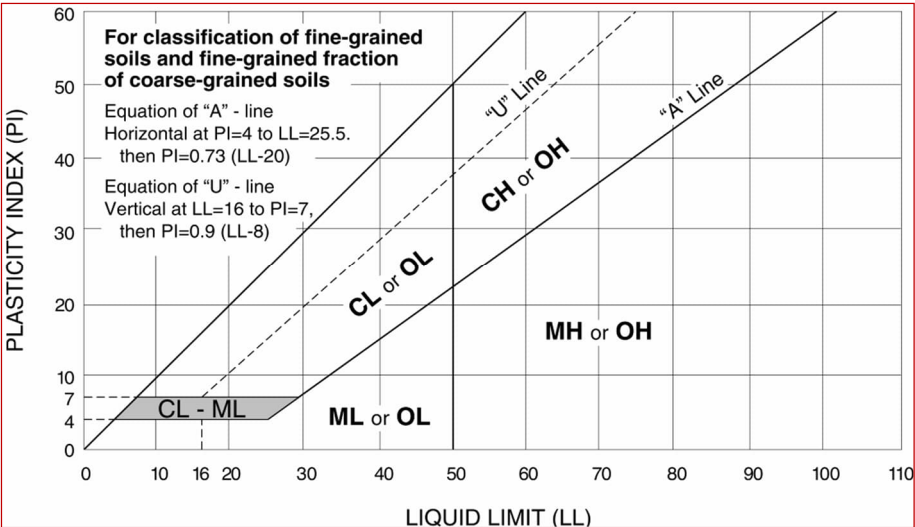
^M If soil contains ≥ 30% plus No. 200, predominantly gravel, add "gravelly" to the group name.

^N PI ≥ 4 and plots on or above "A" line.

^O PI < 4 or plots below "A" line.

^P PI plots on or above "A" line.

^Q PI plots below "A" line.



TOOELE CITY CORPORATION

RESOLUTION 2026-03

A RESOLUTION OF THE TOOELE CITY COUNCIL AMENDING THE TOOELE CITY FEE SCHEDULE, TO ESTABLISH A FEE FOR USE OF THE TOOELE CITY PISTOL RANGE BY OTHER LAW ENFORCEMENT AGENCIES FOR POLICE OFFICER TRAINING.

WHEREAS, Tooele City Code §1-26-1 authorizes the City Council to establish City fees by resolution for activities regulated by the City and services provided by the City; and,

WHEREAS, Utah Code §§ 10-3-717 and 10-3-718 authorize the City Council to exercise administrative powers, such as establishing city fees and regulating the use of city property, by resolution; and,

WHEREAS, under the Council-Mayor form of municipal government, established and governed by the Tooele City Charter (2024) and Utah Code §10-3b-201 et seq., the Mayor exercises all executive and administrative powers; however, it has been the practice of Tooele City for all fees proposed by the Mayor and City Administration to be approved by the City Council; and,

WHEREAS, under an Agreement with ARCO Environmental Remediation, LLC, attached as Exhibit A, the City leases and Tooele City Police Department ("TCPD") operates and maintains the Tooele City Pistol Range (the "Range"), and wishes to allow other law enforcement agencies use of the gun range for police officer training; and,

WHEREAS, use of the Range by other agencies creates a need for a fee in order to cover additional costs, including additional costs incurred in the supervision of the Range, and additional costs incurred in the operation of the Range, including utilities, lead shot reclamation, and construction, repair, and replacement of improvements upon the Range; and,

WHEREAS, City administration recommends an annual fee of \$1,000 per year for use of the Range by another law enforcement agency for police officer training, and the City desires to add this existing fee to the Tooele City Fee Schedule; and,

WHEREAS, the City Council finds that the proposed fee is reasonable; and,

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Tooele City Fee Schedule is hereby amended to include the above-listed fee for use of the Tooele City Pistol Range by other law enforcement agencies for police training.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of _____, 2026.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

ATTEST:

Shilo Baker, City Recorder

S E A L

Approved as to Form:

Matthew C. Johnson, City Attorney

Exhibit A

Lease Agreement
with ARCO Environmental Remediation, LLC

EXHIBIT A

(to Amended and Restated Lease Agreement)

Description of the Premises

TOOELE CITY PISTOL RANGE

BEGINNING AT A POINT WHICH IS N89°59'51"E A DISTANCE OF 616.65 FEET ALONG THE SECTION LINE BETWEEN SECTIONS 18 & 19, T3S, R3W, S.L.B. & M. AND S00°00'09"E A DISTANCE OF 710.06 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 19. (POINT OF BEGINNING IS ALSO AN EXISTING FENCE CORNER)

THENCE N78°45'54"E A DISTANCE OF 247.52 FEET;

THENCE N07°36'14"W A DISTANCE OF 40.19 FEET;

THENCE N74°22'47"E A DISTANCE OF 64.87 FEET;

THENCE S12°32'20"E A DISTANCE OF 308.90 FEET;

THENCE S81°30'08"W A DISTANCE OF 385.58 FEET;

THENCE N03°12'50"E A DISTANCE OF 254.14 FEET TO THE POINT OF BEGINNING. CONTAINS 2.12 ACRES.

(THE BASIS OF BEARING IS N89°59'51"E BETWEEN THE NORTHWEST AND NORTHEAST CORNERS OF SAID SECTION 19. BOTH CORNERS ARE MONUMENTED BY TOOELE COUNTY SURVYOR PIPE & CAP MONUMENTS.)

Description of the Joint Right of Way

JOINT RIGHT OF WAY

A 60 FOOT WIDE RIGHT OF WAY EXTENDING 30 FEET ON BOTH SIDES OF THE FOLLOWING DESCRIBED CENTERLINE. BEGINNING AT A POINT WHICH IS N89°59'51"E A DISTANCE OF 850.08 FEET ALONG THE SECTION LINE BETWEEN SECTIONS 18 & 19, T3S, R3W, S.L.B. & M. AND S00°00'09"E A DISTANCE OF 592.03 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 19.

THENCE N75°03'22"E A DISTANCE OF 1077.52 FEET TO A POINT WITHIN "SMELTER ROAD" (A 200 FOOT WIDE TOOELE COUNTY ROAD)

(THE BASIS OF BEARING IS N89°59'51"E BETWEEN THE NORTHWEST AND NORTHEAST CORNERS OF SAID SECTION 19. BOTH CORNERS ARE MONUMENTED BY TOOELE COUNTY SURVYOR PIPE & CAP MONUMENTS.)

**AMENDED AND RESTATED
LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease") is made and entered into effective as of the 28th day of November, 2018 (the "Amended and Restated Effective Date"), by and between **ARCO ENVIRONMENTAL REMEDIATION, L.L.C.**, a Delaware limited liability company, as successor in interest to **ATLANTIC RICHFIELD COMPANY**, a Delaware corporation, herein referred to as "lessor", whose address is P.O. Box 941744, Plano, Texas 75094-1744 and **TOOELE CITY CORPORATION**, a municipal corporation; whose address is 90 North Main, Tooele, Utah 84074, herein referred to as "lessee".

RECITALS

A. Atlantic Richfield Company, as lessor, and City of Tooele, Utah, as lessee, are parties to that certain Lease Agreement (the "Original Lease Agreement") dated February 5, 1992 (the "Original Effective Date").

B. ARCO Environmental Remediation, L.L.C. ("AERL") acquired the lessor's rights under the Original Lease Agreement effective January 7, 1997.

C. AERL, as successor in interest to Atlantic Richfield Company under the Original Lease Agreement, and the City of Tooele, Utah acknowledge that since commencement of the Original Lease there have been changes in circumstances and issues have arisen which effect the rights and obligations of the respective parties that are not clear and/or adequately addressed in the Lease, and that given the long remaining Lease term the parties desire to amend and restate the Original Lease Agreement as provided herein.

D. This Amended and Restated Lease Agreement supersedes and replaces in its entirety the Original Lease Agreement as of the Amended and Restated Effective Date. This Amended and Restated Lease Agreement is only a modification and restatement of the Original Lease Agreement and it does not serve as a termination of the Original Lease Agreement. Nothing herein is intended to impair the priority or effect of the Original Lease Agreement and lessor shall have no obligation to refund or return any payments previously made by lessee under the Original Lease Agreement.

NOW THEREFORE, in consideration of the forgoing recitals and the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lease is Amended and Restated as follows:

**SECTION ONE
DEMISE, DESCRIPTION, AND USE OF PREMISES**

(a) **General.** Lessor leases to lessee and lessee leases from lessor, for use as a police pistol range, with limited shotgun and rifle use, for police officer training and for no other purpose, those certain premises with the appurtenances thereto, situated in the

County of Tooele, State of Utah, and more particularly described as "Tooele City Pistol Range" on Exhibit A and depicted on Exhibit B attached hereto and made a part hereof. As used herein, the terms "premises" and "demised premises" refer to the real property above described and to any improvements located thereon from time to time during the term hereof. Lessor hereby acknowledges that the buildings now in place on the premises belong to lessee. Lessor also grants to lessee the non-exclusive right to use as an access route the property described as the "Joint Right Of Way" on Exhibit A and depicted on Exhibit B pursuant to the provisions of Section Twelve of this Lease.

(b) **Condition of Premises.** Lessee acknowledges that lessor has informed lessee that the premises and Joint Right of Way may have been impacted by historic mining and smelting operations. Lessee further acknowledges that lessee has inspected the premises and Joint Right of Way as a part of its occupancy of the premises and use of the Joint Right of Way pursuant to the Original Lease Agreement. Lessee agrees that it has accepted the premises and Joint Right of Way "AS IS" and "WITH ALL FAULTS". Lessee acknowledges that lessor has made no representations or warranties of any nature whatsoever, express or implied, including any representation or warranty concerning the physical condition of the premises or Joint Right of Way, and lessee has relied solely on its inspection and occupancy of the premises and Joint Right of Way in entering into this Lease. Lessee further agrees to, and hereby does, release and covenant not to sue lessor from and for any claims, liabilities or obligations of any nature arising from or by reason of (i) the historic mining and smelting operations that may have impacted the premises and Joint Right of Way, (ii) the existing physical or environmental condition of the premises and Joint Right of Way, or (iii) any claim based on alleged breach of any express or implied representation or warranty.

(c) **Construction of Improvements.** Lessee shall be entitled to construct, reconstruct, repair, replace and improve buildings and other improvements on the premises from time to time so long as (i) such improvements are for a purpose or purposes permitted under this Lease, and (ii) lessee complies with the requirements of this section and any other applicable provisions of the Lease, and with all applicable laws, codes, regulations and ordinances. Except as otherwise provided below, if lessee desires to construct any improvement on the premises, lessee shall prepare plans and specifications for the proposed improvements and submit them to lessor for approval. Lessor shall promptly review such plans and specifications. Within thirty (30) days following delivery of the plans and specifications to lessor, lessor shall inform lessee in writing of its approval of, or objections to, the proposed plans. If lessor approves the proposed plans and specifications, lessee may proceed with construction of the improvements. If lessor notifies lessee of any objections, lessee shall not proceed with construction of the improvements. Lessor and lessee shall promptly attempt in good faith to resolve the objections. If lessor and lessee are unable to resolve the objections within sixty (60) days following delivery of the notice of objections by lessor to lessee, lessee shall not be permitted to construct the improvements and lessee may terminate this Lease by delivery of written notice of termination to lessor. Such notice shall refer to this clause and specify the effective date of termination. Notwithstanding the foregoing, lessee may make routine repairs, minor replacements and minor improvements to the premises without the prior approval of lessor. For purposes of this Lease, any repair, replacement or improvement which costs less than

\$25,000 shall be deemed routine or minor and shall not require lessor approval.

(i) If lessee makes any material changes in the approved plans and specifications, lessee shall notify lessor of the changes and obtain lessor's approval of such changes using the same procedures as outlined above prior to completing the work.

(ii) By approving lessee's plans and specifications, lessor makes no representations or warranties concerning the design or construction of the proposed improvements. Lessee assumes any and all risks involved with respect to any construction work contemplated by the plans and specifications and hereby releases and discharges, and indemnifies and holds harmless lessor from and against any and all liability or loss, damage or injury suffered or incurred by lessee or third parties in any way arising out of or in connection with any construction work done by lessee on the demised premises.

(iii) At all times during construction of any improvements and at all times thereafter, lessee shall keep the premises and Joint Right of Way free from any unnecessary accumulation of waste materials and rubbish and keep and leave the premises and Joint Right of Way in a neat and orderly fashion. Any waste materials used in or created by the construction of any improvements on the premises shall be stored and disposed of properly by lessee.

(iv) All improvements constructed on the premises shall be the property of lessee during the term of this Lease. At all times during the term of this Lease, the improvements that are owned by lessee shall not be conveyed, transferred or assigned unless such conveyance, transfer, or assignment shall be to a person, corporation or other entity to whom this Lease is being transferred or assigned simultaneously therewith in compliance with the provisions of Section Seventeen hereof. At all times during the term of this Lease, the lessee under this Lease shall be the owner of the improvements.

(v) If either party delivers to the other party notice of termination of this Lease pursuant to Section Nineteen of this Lease, unless otherwise agreed by the parties, lessee shall remove all of the improvements from the premises prior to the termination date specified in the notice. If lessor terminates this Lease by reason of lessee's default, or if this Lease is terminated for any other reason, unless otherwise agreed by the parties, lessee shall remove all of the improvements from the premises within sixty (60) days following delivery of the notice of termination. If for any reason lessee fails to timely remove any or all the improvements, all of lessee's right, title, and interest therein shall cease and terminate, and title to the improvements shall immediately vest in lessor. No further deed or other instrument shall be necessary to confirm the vesting in lessor of title to the remaining improvements. However, upon any termination of this Lease, if requested by lessor, lessee shall execute and deliver to lessor a deed or other instrument requested by lessor, acknowledging lessee's right, title, and interest in or to the improvements has expired, and that title to the improvements has vested in lessor. Lessor shall pay the cost of recording said deed or other instrument.

SECTION TWO

TERM

The initial term of this Lease is for ninety-nine (99) years. The initial term commenced January 1, 1992 and, unless sooner terminated as provided herein, shall end on December 31, 2090. As used herein the expression "term hereof" refers to such initial term. The initial term of this Lease may be extended only by mutual written agreement of the parties.

SECTION THREE

RENT

On or before each anniversary date of the commencement of the term of this Lease (January 1 of each year of the term hereof), lessee shall pay to lessor the sum of One Hundred Dollars (\$100.00) per year at the address hereinafter specified as rent for the forthcoming year of the Lease term.

SECTION FOUR

WARRANTIES OF TITLE AND QUIET POSSESSION

Lessor covenants that lessor is seized of the demised premises in fee simple and has full right to make this Lease and, so long as lessee complies with the terms and conditions of this Lease, lessee shall have quiet and peaceable possession of the demised premises during the term hereof.

SECTION FIVE

USE LIMITATIONS AND RESTRICTIONS

(a) **Uses Prohibited.** Lessee shall not use, or permit the demised premises, or any part thereof, or the Joint Right of Way, to be used for any purpose or purposes other than the purpose or purposes for which the demised premises are hereby leased, and for which the right of access to the Joint Right of Way is granted. Grazing of livestock and other agricultural uses and residential uses are expressly prohibited.

(b) **Use by Police Officers and Others.** The parties acknowledge that lessee is using the demised premises as a shooting range for its police officers and such persons undergoing police sponsored firearm training under the supervision of an authorized police firearms instructor. Lessee shall be solely responsible for supervising the activities of the users of the facility while on the premises. Such supervision shall include without limitation (i) adopting, communicating to users and enforcing appropriate use and safety measures, and (ii) requiring written releases of liability for the benefit of lessor from all persons using the shooting range.

SECTION SIX
WASTE, NUISANCE AND HAZARDOUS MATERIALS

(a) **Compliance with Laws/Waste and Nuisance Prohibited.** During the term of this Lease, lessee shall comply with all applicable federal, state and local laws and regulations affecting the demised premises and the Joint Right of Way. Lessee shall not commit, or suffer to be committed, any waste on the demised premises or the Joint Right of Way, or any nuisance.

(b) **Repairs and Maintenance.** Lessee shall at all times during the term of this Lease, at lessee's own cost and expense, keep the premises and any improvements thereon, and the Joint Right of Way in good order, condition, and repair, ordinary wear and tear excepted, and in such condition as may be required by (i) applicable laws, regulations, requirements and ordinances, (ii) requirements of any federal, state or local governmental authorities having jurisdiction over the premises, and (iii) the terms of the insurance policies furnished pursuant to this Lease.

(c) **Hazardous Materials Prohibited.** Except for lead shot, lessee shall not cause or permit any materials defined as "hazardous" or "toxic" under applicable federal, state or local environmental laws, regulations, requirements and ordinances to be used, stored, released, generated or disposed of on or in the demised premises or the Joint Right of Way by lessee or its agents, employees, representatives, police officers, citizens, guests or invitees (collectively, "lessee or its invitees"). Lessee shall indemnify, defend and hold harmless lessor from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses, including attorneys' fees, consultants or experts' fees arising as a result of (a) a breach of the covenants set forth in this subsection, or (b) the presence of or release of any such materials onto the demised premises or Joint Right of Way caused, permitted or suffered by lessee or its invitees. This indemnification includes, without limitation, the duty to defend lessor from and against any claims for which indemnification is provided under this subsection as well as the obligation to pay any and all fees (including attorneys' fees) and costs incurred due to any litigation, investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision.

(d) **Lead Reclamation Program.** Lessee has instituted a lead reclamation program whereby lessee (or a contractor on lessee's behalf) searches for and removes lead shot from the soils of the demised premises on a periodic basis. At the present time, the lead reclamation program is conducted at such time as more than one million (1,000,000) lead shots have been discharged at lessee's firing range since the previous reclamation work. Lessee shall continue such program during the term of this Lease on the same basis as currently implemented, provided that in any event the lead shot reclamation shall be conducted at the earlier of (i) every ten (10) years or (ii) upon one million (1,000,000) rounds having been discharged. Notwithstanding the foregoing, if due to circumstances beyond the reasonable control of lessee, lessee determines that it likely will be unable to complete a lead shot reclamation program within any given ten (10) year period, lessee may request that lessor extend the time period for such program to the extent reasonably necessary to permit completion of the program. Such request shall be in writing, shall set forth a detailed description of reasons for the extension, and shall specify the length of the

time period of the requested extension. Lessor shall promptly review the request and duly consider the reasons for such request. Lessor shall provide lessee a written response to such request within thirty (30) days following delivery of the request by lessee to lessor. In its response, lessor may (i) grant the requested extension, (ii) grant the requested extension with conditions, or (iii) deny the requested extension. Lessor may include conditions to approval of a requested extension, or deny a requested extension, at its discretion in order to protect its interests.

(e) **Lessor Access.** Lessee agrees to allow lessor's representatives access to the demised premises, lessee's operations and lessee's records for the purpose of determining lessee's compliance with its obligations under this section.

(f) **Breach of Obligations.** Lessee agrees that any breach by lessee of obligations under this section shall be deemed a default and a breach of this Lease.

SECTION SEVEN LESSOR'S RIGHT OF ENTRY

Lessee shall permit lessor and the agents, employees and contractors of lessor to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the same, conducting site investigations (including soil and water sampling, drilling test wells and otherwise gathering site data) and for the purpose of undertaking any environmental remediation or reclamation which may be required or advisable (as determined by lessor in its discretion) under any applicable local, state, or federal requirements, including, but not limited to, CERCLA requirements, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned and without any cost or expense to lessor, its agents, its contractors or its employees.

SECTION EIGHT RIGHT OF FIRST OFFER

During the Lease term, lessee shall have right to make the first offer for the purchase and sale of the demised premises (the "First Offer Right") when lessor determines to actively market the demised premises for sale to third parties.

(a) **Notice to Tenant.** At any time during the Lease term that lessor determines to actively market all or any part of the demised premises for sale to third parties, lessor shall first provide lessee with written notice of its intent to market the demised premises (the "Offer Notice"). The Offer Notice shall include without limitation (i) a legal description of the property to be offered for sale, (ii) a summary of the proposed financial terms and conditions of the proposed offer for sale (including the purchase price and, if applicable, any financing terms), (iii) a summary of any other material terms of the proposed offer for sale, and (iv) the date upon which the demised premises is to be placed on the market for sale.

(b) **Procedure for Acceptance.** On or before the date which is thirty (30) days after lessee's receipt of the Offer Notice (the "Election Date"), lessee shall deliver written notice to lessor ("Lessee's Election Notice") pursuant to which lessee shall have the right to elect either to: (i) purchase the demised premises as described in the Offer Notice upon the terms set forth in the Offer Notice; or (ii) not purchase the demised premises. If lessee timely delivers Lessee's Election Notice, the provisions of subsection (c) below shall apply. If lessee does not timely deliver Lessee's Election Notice electing one of the options in clauses (i) or (ii) hereinabove by the Election Date, lessee shall be deemed to have elected not to purchase the demised premises. If lessee elects or is deemed to have elected not to purchase the demised premises, then lessee's right of first offer shall terminate with respect to the demised premises and lessor shall thereafter have the right to sell the demised premises to anyone to whom lessor desires on any terms lessor desires.

(c) **Purchase and Sale Agreement.** Within thirty (30) days following delivery by lessee to lessor of a Lessee's Election Notice exercising its right to purchase the demised premises, lessor shall deliver to lessee a draft of a purchase and sale agreement incorporating the terms and conditions of the purchase and sale summarized in the Offer Notice (the "Draft PSA"). Lessor and lessee shall negotiate in good faith the terms and conditions of the Draft PSA for a period of not more than sixty (60) days. If at the end of the sixty (60) day period, the parties are unable to reach final agreement on the terms and conditions of the purchase and sale, either party may terminate the negotiations by written notice to the other party. Upon such termination, the parties shall have no further obligations to each other under this section and lessor shall thereafter have the right to sell the demised premises to anyone to whom lessor desires on any terms lessor desires.

(d) **Rights and Obligations after Execution.** Upon mutual execution of a purchase and sale agreement (execution by all parties), lessee's and lessor's rights and obligations shall be governed by the terms and conditions thereof. Notwithstanding the foregoing, unless otherwise provided in the purchase and sale agreement, this Lease shall remain in full force and effect until closing of the sale of the demised premises, at which time it shall terminate.

SECTION NINE SUBLETTING AND ASSIGNMENT

Lessee may not assign this Lease or sublet all or any part of the premises without the express written consent of lessor, which consent lessor may withhold in its sole discretion. Any assignment or sublease of the demised premises in violation of the provisions of this Section shall render this Lease null and void.

SECTION TEN NOTICES

All notices, demands, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be sent to the addresses set forth below. Any notice, demand or other writing shall be deemed

to have been fully given or made either (i) one (1) day following delivery to a nationally recognized overnight delivery carrier (prepaid), or (ii) two (2) days following deposit in the United States mail, certified and postage prepaid and addressed as follows:

TO LESSOR: ARCO Environmental Remediation, L.L.C.
P.O. Box 941744
Plano, TX 75094-1744
Attention: Project Manager

TO LESSEE: Tooele City Corporation
90 North Main Street
Tooele, Utah 84074

The address to which any notice, demand, or other writing may be given or made or sent to either party as above provided may be changed by written notice given by such party as above provided.

SECTION ELEVEN UTILITIES AND TAXES

Except as specifically provided below, lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the premises (if any) throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the premises and all activities conducted thereon, and lessor shall have no responsibility of any kind for any disruption thereof.

Lessor shall pay the real property taxes attributable to the land described on Exhibit A attached hereto, if any.

SECTION TWELVE PROPERTY ACCESS – JOINT RIGHT OF WAY

Lessee shall be permitted to use the land described as the Joint Right of Way on Exhibit A and depicted on Exhibit B solely for ingress and egress to the premises. Lessee shall maintain the Joint Right of Way at lessee's own expense in accordance with all applicable laws, regulations and requirements. Lessee shall also allow the Tooele Gun Club and all of its members in good standing to use that portion of the Joint Right of Way necessary to gain entry to the property leased by the Tooele Gun Club from lessor, without charge to either lessor or the Tooele Gun Club or its members.

SECTION THIRTEEN LIENS

Lessee shall keep all of the premises and every part thereof and all buildings and other improvements, at any time located thereon free and clear of any and all mechanics', materialmen's, and other liens for or arising out of or in connection with work or labor

done, services performed, or materials or appliances used or furnished for or in connection with any operations of lessee, any alteration, improvement, or repairs or additions which lessee may make or permit or cause to be made, or any work or construction, by, for, or permitted by lessee on or about the premises, or any obligations of any kind incurred by lessee, and at all times promptly and shall fully pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify lessor against all such liens and claims of liens and suits or other proceedings pertaining thereto.

SECTION FOURTEEN LIMITATION OF LESSOR LIABILITY AND INDEMNIFICATION OF LESSOR

(a) **Limitation of Lessor Liability.** Lessor shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by lessee or by any person whosoever that may at any time be using or occupying or visiting the demised premises or be in, on, or about the same, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of lessee or of any occupant, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth.

(b) **Indemnification by Lessee.** Lessee shall indemnify, defend and hold harmless the lessor and Atlantic Richfield Company, together with all their respective predecessors and successors (merged, acquired or otherwise), parents, affiliates, divisions and subsidiaries and all their respective shareholders, directors, officers, employees, attorneys, contractors, agents, transferees and assigns (collectively, the "Indemnified Parties") from and against any actions, claims, damages, losses, liabilities, costs or expenses, including reasonable attorneys fees, (collectively, "Liabilities") which lessor or the Indemnified Parties may incur, or which may be asserted against them, arising from or by reason of, (i) lessee's use of the demised premises or the Joint Right of Way, (ii) the use of the demised premises or the Joint Right of Way by employees or agents of lessee, by lessee's police officers, guests, or invitees, and (ii) lessee's breach of, or failure to perform, any of its obligations under this Lease, except that lessee shall not be liable for any of the foregoing to the extent arising out of the sole negligence or willful misconduct of lessor. Lessee shall be obligated to provide and pay for a defense by counsel satisfactory to lessor and the applicable Indemnified Parties for all claims to which the indemnity provisions of this subsection (b) apply. Each of the Indemnified Parties is a third party beneficiary of this Lease entitled to seek enforcement of all rights and benefits provided them in this subsection (b).

(c) **Waiver by Lessee.** Lessee hereby waives all claims against lessor for damages to the building and improvements that are now on or hereafter placed or built on the premises and to the property of lessee in, on, or about the premises, and for injuries to persons or property in or about the premises or the Joint Right of Way, from any cause arising at any time.

SECTION FIFTEEN

REDELIVERY OF PREMISES

Lessee shall pay the rent and all other sums required to be paid by lessee hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all the terms and conditions hereof on its part to be kept and performed, and, at the expiration or sooner termination of this Lease, peaceably and quietly quit and surrender to lessor the premises free and clear of all liens and encumbrances and in good order and condition, subject to the other provisions of this Lease. Upon termination of this Lease (at the end of the term or otherwise), lessee shall return the premises to substantially the same condition as existed prior to commencement of the Lease. Lessee's obligations shall include without limitation (i) removal of all lead shot from the soils to background levels, and (ii) reclamation of any other hazardous materials (as defined in Section Six (c) above) on the demised premises caused, suffered or permitted by lessee or its agents, employees, contractors, members, guests, invitees or other users of the facility. In the event of the non-performance by lessee of any of the covenants of lessee undertaken herein, this Lease may be terminated as herein provided.

SECTION SIXTEEN REMEDIES CUMULATIVE

All remedies heretofore and hereafter conferred on lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

SECTION SEVENTEEN INSURANCE

Lessee shall maintain in effect throughout the term of this Lease the following types and amounts of insurance:

(a) Commercial or General Liability Insurance including coverage for premises and operations, contractual liability, insuring the indemnity agreement set forth in Section Fourteen, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence, applicable to bodily injury, sickness or death and loss of or damage to property in any one occurrence and including liability for lead contamination if not covered under a separate policy; and

(b) Workers' Compensation Insurance, including Occupational Disease, in accordance with the laws of the State of Utah.

(c) Notwithstanding the foregoing, or anything else contained herein to the contrary, (i) as of the Amended and Restated Effective Date, the limit set forth in subsection (a) above shall be changed from "\$1,000,000" to "\$5,000,000.00" and (ii) within thirty (30) days after the Amended and Restated Effective Date, lessee shall deliver to lessor a Certificate of Insurance confirming lessee has obtained coverage with such increased limit, and otherwise in compliance with the paragraph below describing the requirements of any such Certificate of Insurance.

If lessee acquires vehicles for use in its operation during the term of this Lease (by purchase, lease or otherwise), lessee shall maintain in effect Automobile Liability Insurance covering owned, non-owned, hired and all vehicles used by lessee with a combined single limit of not less than \$1,000,000 applicable to bodily injury, sickness or death and/or loss of or damage to property in any one occurrence.

Except for Workers' Compensation Insurance, lessor and Atlantic Richfield Company shall be included in each policy of insurance purchased or maintained by lessee pursuant to this Section as an additional insured and the additional insured endorsement shall state that coverage is afforded the additional insureds with respect to claims and occurrences arising out of operations performed by or on behalf of lessee. All policies required under this section shall be endorsed to provide that underwriters and insurance companies of lessee shall not have any right of subrogation against the lessor or Atlantic Richfield Company, or their respective underwriters and insurance companies.

Within thirty (30) days following the Effective Date, and upon request at anytime, lessee shall furnish Certificates of Insurance to lessor evidencing the insurance required under this Section Seventeen. Each certificate shall provide that at least thirty (30) days' prior written notice shall be given lessor in the event of cancellation or material change in the policies. All Certificates of Insurance must contain reference to endorsements (i.e., additional insureds, waiver of subrogation, etc.) as required herein. In no event shall any failure of lessor to receive Certificates of Insurance required under this Section Seventeen or to demand receipt of such certificates prior to lessee's execution of this Lease be construed as a waiver by lessor of lessee's obligations to obtain insurance pursuant to this Section Seventeen. The obligation to procure and maintain any insurance required by this Section Seventeen is a separate responsibility of lessee and independent of the duty to furnish a Certificate of Insurance. Further, lessee will furnish lessor with copies of the underlying insurance policies at lessor's request.

Lessee shall require any of its contractors that perform work on the premises or the Joint Right of Way to obtain, maintain and keep in force during the time in which they are engaged in performing any work on the premises or the Joint Right of Way, the same types and limits of insurance coverage identified in this Section Seventeen and furnish lessor acceptable evidence of such insurance upon request. All policies of contractors shall be endorsed to provide a waiver of subrogation as set forth above.

Lessor shall have the right from time to time during the Term (but not more often than once every ten years during the Term) to review the foregoing insurance limits required of lessee and increase such limits as deemed necessary by lessor, which increase shall be effective within thirty (30) days after written notice of such increase from lessor to lessee, and lessee shall deliver a current Certificate of Insurance within such thirty day period confirming lessee has obtained coverage with such increased limit, and otherwise in compliance with the paragraph above describing the requirements of any such Certificate of Insurance.

SECTION EIGHTEEN
PROHIBITION OF ENCUMBRANCE AND INVOLUNTARY ASSIGNMENT

(a) **No Encumbrance.** Lessee shall not permit or suffer any mortgage, deed of trust, lien or other encumbrance of any nature against the premises or lessee's leasehold estate without the prior written approval of lessor, which approval lessor may withhold in its discretion.

(b) **No Involuntary Assignment.** Neither this Lease nor the leasehold estate of lessee nor any interest of lessee hereunder in the demised premises or in the building or improvements thereon shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever (except through statutory merger or consolidation, or devise, or intestate succession) any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

SECTION NINETEEN
DEFAULT

(a) **Default by Lessee.** The occurrence of any of the following shall constitute a default and breach of this Lease by lessee:

(i) Any failure by lessee to pay the rent required to be paid by lessee under this Lease within thirty (30) days following the due date thereof; or

(ii) Any failure by lessee to perform any other agreement, covenant, term or condition of this Lease and such failure is not cured within thirty (30) days following written notice from lessor.

Upon the occurrence of a default by the lessee, then in addition to any other remedies available to the lessor at law or in equity, the lessor shall have the immediate option to terminate this Lease and all rights of the lessee hereunder by giving written notice of such intention to terminate in the manner specified in this Lease. In the event that the lessor shall elect to so terminate this Lease, then the lessor may recover from the lessee any unpaid rent which had been earned at the time of such termination, plus any other amount necessary and proper to compensate the lessee for any harm or loss proximately caused by the lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. In the event of any such default by the lessee, lessor shall also have the right, with or without terminating this Lease, to re-enter the premises and remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of the lessee.

(b) **Lessor's Right to Cure Lessee Defaults.** Whenever and as often as lessee shall fail or neglect to comply with and perform any term, covenant, condition, or agreement to be complied with or performed by lessee hereunder, then, upon thirty (30) days prior written notice to lessee, lessor at lessor's option, in addition to all other remedies available to lessor, may perform, or cause to be performed, such work, labor, services, acts,

or things, and take such other steps, including entry onto the premises and the improvements thereon, as lessor may deem advisable, to comply with and perform any such term, covenant, condition, or agreement, which is in default. In such event, lessee shall reimburse lessor upon demand, and from time to time, for all costs and expenses suffered or incurred by lessor in so complying with or performing such term, covenant, condition, or agreement. The commencement of any work or the taking of any other steps or performance of any other act by lessor pursuant to the immediately preceding sentence shall not be deemed to obligate lessor to complete the curing of any term, covenant, condition, or agreement which is in default.

(c) **Default by Lessor.** Lessor shall not be in default under this Lease unless lessor fails to perform any agreement, covenant, term or condition of this Lease to be performed by lessor, and such failure is not cured within thirty (30) days following written notice from lessee to lessor specifying such default, or such longer time as may be reasonably necessary if such failure cannot reasonably be cured within such thirty (30) day period (so long as lessee commences to cure such failure within such 30-day period, and thereafter diligently pursues completion of same). Upon a default of any term of this Lease by lessor hereunder as provided above, lessee's sole and exclusive remedies under this Lease shall be to terminate this Lease or pursue a claim against lessor for any actual damages suffered by lessee as a direct result of such lessor default (or, if appropriate, pursue a claim for injunction or specific performance). Lessee hereby waives any and all rights to recover consequential, incidental, indirect, punitive and/or exemplary damages against lessor.

(d) **Waiver of Jury Trial.** Lessor and lessee each waive the right to a trial by jury in respect of any litigation based on this Lease, or arising out of, under or in connection with this Lease.

SECTION TWENTY TERMINATION

Either party shall have the right to terminate this Lease by giving the other party at least 180 days prior written notice for any reason or no reason. There shall be no adjustment of rental under such termination.

SECTION TWENTY-ONE EFFECT OF EMINENT DOMAIN

(a) **Effect of total condemnation.** In the event the entire demised premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and lessee and lessor shall thereupon be released from any liability thereafter accruing hereunder.

(b) **Effect of partial condemnation.** In the event a portion of the demised premises shall be so appropriated or taken and the remainder of the premises shall not be suitable for the use of the premises as permitted by this Lease, or if the remainder of the

premises is not one undivided parcel of property, lessee shall have the right to terminate this Lease as of the date of such taking or giving to lessor written notice of such termination within thirty (30) days after lessor has notified lessee in writing that the premises has been so appropriated or taken.

In the event of such partial taking and lessee does not so terminate this Lease, then this Lease shall continue in full force and effect as to the part not taken and the rental shall be paid by lessee in the amount previously specified herein.

(c) **Condemnation award.** In the event of the termination of this Lease by reason of the total or partial taking of the premises by eminent domain, then in any such condemnation proceedings lessor and lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result thereof.

SECTION TWENTY-TWO WAIVER

The waiver by lessor of, or the failure of lessor to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition therein contained. The subsequent acceptance of rent hereunder by lessor shall not be deemed to be a waiver of any preceding breach by lessee of any term, covenant, or condition of this Lease, other than the failure of lessee to pay the particular rental so accepted, regardless of lessor's knowledge of such preceding breach at the time of acceptance of such rent.

SECTION TWENTY-THREE PARTIES BOUND

The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of each of the respective parties hereto.

SECTION TWENTY-FOUR MISCELLANEOUS

(a) **Negation of Agency Relationship.** This Lease shall not be construed to create, either expressly or by implication, the relationship of agency, partnership, or joint venture between the lessor and lessee. Neither party to this Lease is authorized to act on behalf of the other party in any manner relating to the subject matter of this Lease.

(b) **No Oral Changes.** This Lease may not be changed or modified orally, but only by an agreement in writing signed by the parties hereto.

(c) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Utah.

(d) **Lessor's Expenses.** Lessee shall reimburse lessor upon demand for all reasonable expenses, including attorneys fees, incurred by lessor in connection with the collection of any rent in default hereunder, or the termination of this Lease by reason of a default of lessee, as such term is defined above, or the enforcement of any other obligation of lessee which is in default hereunder, or the protection of lessor's rights hereunder, or any litigation or dispute in which lessor becomes a party or otherwise becomes involved, without fault on its part, relating to the premises, the Joint Right of Way or lessee's rights or obligations hereunder.

(e) **Counterparts.** The parties may sign this Lease in one or more counterparts, each of which constitutes an original and all of which will be one and the same agreement. The parties agree that an electronic transmission including email (provided that the email contains this Lease in PDF format) and facsimile, of any duly executed copy of this Lease constitutes an original and binding document.

(f) **Code of Conduct.** Lessee is aware that lessor's Code of Conduct Policy prohibits the giving or receiving of any bribe, facilitation or kickback payments, and lessee agrees and confirms that it has not and, to the actual knowledge of lessee, its Affiliates (as defined herein), contractors, subcontractors and its and their respective directors, officers, employees, agents and representatives, have not, in connection with the transaction contemplated by this Lease, made, offered, or promised to make, and will not make, offer, or promise to make, any payments or other transfer of anything of value, including without limitation the provision of any service, gift or entertainment, directly or indirectly, to (a) any Government Official (as defined herein), (b) any director, officer, employee, agent or representative of lessor or any of its Affiliates (as defined herein), (c) any political party, official of a political party, or candidate for public office, or (d) an agent or intermediary for payment to any of the foregoing; for the purpose of obtaining or influencing the award of or carrying out of the Lease. For the purposes of this Section, (1) the term "Affiliate" means any entity which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of, a party; and (2) the term "Government Official" means any director, officer, employee, agent or representative of any government or any department, agency or instrumentality thereof, and includes any person acting in any official, administrative or judicial capacity for or on behalf of any such government or department, agency or instrumentality. In the event that lessor has any basis for a good faith belief that lessee may not be in compliance with the requirements set forth in this Section, lessor shall advise lessee in writing of its good faith belief and lessee shall cooperate fully with any and all reasonable inquiries undertaken by or on behalf of lessor in connection therewith, including reasonable access by lessor to lessee's personnel and records. The provisions of this Section shall survive any termination of the Lease.

(g) **OFAC.** Lessee hereby represents, certifies and warrants to lessor as follows: (1) lessee is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by, any Executive Order, including, without limitation, Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted,

enforced or administered by the Office of Foreign Assets Control ("OFAC"); (2) lessee is not engaged in the transaction which is the subject of this Lease, directly or indirectly, for or on behalf of, or instigating or facilitating the transaction which is the subject of this Lease, directly or indirectly on behalf of, any such person, group, entity or nation; and (3) none of the proceeds used to pay the rent have been or will be derived from a "specified unlawful activity" as defined in, and lessee is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, lessee agrees to immediately notify lessor if lessee was, is, or in the future becomes a "senior foreign political figure," or an immediate family member or close associate of a "senior foreign political figure", within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything to the contrary, lessee acknowledges and agrees that the foregoing representations, certifications and warranties shall be and remain true and in full force and effect on the date hereof and throughout the term of this Lease and that any breach thereof shall be a default under this Lease (not subject to any notice or cure period) giving rise to lessor's remedies. Lessee agrees to cooperate with lessor and complete and execute such documentation as may be required in order to comply with the provisions of such laws, rules and regulations referenced under this Section 24(g). This Section shall survive the expiration or any earlier termination of this Lease.

SECTION TWENTY-FIVE SECTION CAPTIONS

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

In witness whereof, the parties have executed this Lease- on the day and year first above written.

Lessor:

ARCO ENVIRONMENTAL REMEDIATION, L.L.C.

By: James C. Barratt

Name: James C. Barratt

Title: Vice President

Lessee:

TOOELE CITY CORPORATION, a municipal corporation

By: Debra E. Winn

Name: Debra E. Winn

Title: Mayor

ATTEST:

Michael J. [Signature]
Tooele City
Est. 1853

Approved as to Form:

[Signature]
Tooele City Attorney

TOOELE CITY CORPORATION

RESOLUTION 2026-04

A RESOLUTION OF THE TOOELE CITY COUNCIL CONSENTING TO MAYOR MANZIONE’S APPOINTMENT OF NATHAN L. FARRER TO THE POSITION OF DIRECTOR OF THE PUBLIC WORKS DEPARTMENT.

WHEREAS, Section 2-06 of the Tooele City Charter (amended 2024) states that “The Mayor, shall, with the consent of a majority of the Council, designate a head of each department of City government”; and,

WHEREAS, under Tooele City Code §1-6-4(2), the Mayor exercises “direct supervision and responsibility over operations in the . . . Public Works Department,” including the appointment of qualified employees (§1-6-4(1)); and,

WHEREAS, Mayor Manzione conducted a thorough process of soliciting and evaluating applications and applicants, and desires to appoint Nathan L. Farrer to the position of Director of the Department of Public Works;

WHEREAS, Mr. Farrer earned a Master of Arts degree in Professional Communications and has 19 years of professional experience in the area of public works, the last 6 months of which have been serving as Assistant Public Works Director for Tooele City:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that consent is hereby given by the City Council to Mayor Maresa T. Manzione’s appointment of Nathan L. Farrer to the position of Director of the Department of Public Works.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of _____, 2026.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

ATTEST:

Shilo Baker, City Recorder

S E A L

Approved as to Form:

Matthew C. Johnson, City Attorney

TOOELE CITY CORPORATION

RESOLUTION 2026-05

A RESOLUTION OF THE TOOELE CITY COUNCIL AUTHORIZING PAYMENT OF A FEE IN LIEU OF WATER RIGHTS CONVEYANCE FOR HOLIDAY OIL ON FRANKS DRIVE.

WHEREAS, Tooele City Code Chapter 7-26 governs the exaction by Tooele City of water rights as a condition of land use approval (see also UCA 10-20-911); and,

WHEREAS, TCC Section 7-26-3(2) empowers the City Council to adopt a legislative policy allowing for the payment of a fee in lieu of water rights conveyance: "Fee-in-lieu. Pursuant to established City Council policy, in lieu of actual conveyance of water rights pursuant to this Chapter, certain development applicants may pay to the City an amount per acre-foot for access to water rights controlled by the City in a quantity necessary to satisfy the anticipated future water needs of the proposed development to be served and supplied by the City water system"; and,

WHEREAS, on November 1, 2023, the City Council approved Resolution 2023-92, adopting an updated fee-in-lieu of water rights conveyance policy referred to in TCC 7-26-3(2), with an effective date of November 1, 2023 (with the original policy being adopted in 2007) (see the November 1 policy attached as Exhibit B); and,

WHEREAS, the November 1 policy encourages the consideration of at least the following factors in considering requests to pay the fee-in-lieu:

- The number of jobs the development is anticipated to create, together with the nature of the jobs (e.g., full-time) and job compensation (e.g., wage levels, benefits).
- The amount of sales tax the Project is anticipated to generate.
- The amount of property tax the Project is anticipated to generate.
- The anticipated environmental and social benefits and impacts of the Project.
- The number of acre-feet requested against the number of water credits available, given the annual limit and the availability of water rights as described in the November 1 policy.

WHEREAS, the City Council retains sole and exclusive legislative discretion in deciding to allow the payment of the fee-in-lieu; and,

WHEREAS, Tooele City received from Brent Neel (representing Holiday Oil) a letter dated January 26, 2026, requesting the allocation of 2.27 acre-feet of City-owned municipal water rights for development of a convenience store with gas station in the area

of 1000 North and Franks Drive ("the Project"), or, in other words, requesting to pay the fee-in-lieu rather than convey water rights for the Project (see the letter attached as Exhibit A); and,

WHEREAS, the Project will involve new commercial construction; and,

WHEREAS, the Project proposal addresses the policy considerations identified above and in the November 1 policy in the following ways:

- The Project requests 2.27 acre-feet of water.
- An estimated capital investment of \$7.5 million to \$8 million.
- The creation of an estimated 10 to 15 jobs, with average remuneration for a cashier at \$14 to \$18 per hour, \$35,000 to \$55,000 annually for an assistant manager, and \$80,000+ for a manager position.
- The opportunity for seasonal workers during summer months when high school is on summer break.
- The generation of new sales tax and commercial activity: Holiday Oil anticipates over \$15 million in sales annually (\$11.8 million in fuel sales, \$3.5 million in C-Store sales).

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that, in light of the legislative policies and considerations discussed above, the City Council hereby authorizes the payment of the fee-in-lieu of water rights for the Project, for up to 2.27 acre-feet of municipal water rights, for the fee amount established in the November 1 policy of \$35,000 per acre-foot, subject to the terms and conditions outlined in the November 1 policy.

This Resolution is necessary for the immediate preservation of the peace, health, safety, or welfare of Tooele City and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of _____, 2026.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

TOOELE CITY MAYOR

(Approved)

(Disapproved)

ATTEST:

Shilo Baker, City Recorder

S E A L

Approved as to Form:

Matthew C. Johnson, Tooele City Attorney

Exhibit A

Letter Requesting Fee in Lieu

1/26/2026

Tooele City

Attn: John Perez, MPA

Economic Development Director

Subject: Request for 2.27 Acre-Feet of Water Rights for Convenience Store that includes a Drive-Thru and 6 Dispensers Fuel Canopy

Dear Mr. John Perez,

I am writing to formally request approval for 2.27 acre-feet of water rights through a payment in lieu for a proposed convenience store, drive-thru, and fuel canopy development located at the northeast corner of 1000 N and Franks Drive in Tooele City. The site plan for this project is currently under review by the City (see site plan on second page)

As advised by City Engineer Paul Hansen, I understand that this request will require approval from the City Council.

This development is expected to provide meaningful economic benefits to the community by offering essential services in an area experiencing significant commercial and residential growth. The project will also contribute through job creation, capital investment, and future sales tax revenue.

- Expected Number of Jobs:
 - 10-15 employees
 - Opportunity for seasonal workers during the summer months (high school)
- Estimated Average Remuneration:
 - Cashier: \$14-18/hour
 - Assistant Store Manager: \$35,000 - \$55,000 annually
 - Store Manager: \$80,000+
- Total Capital Investment:
 - \$7.5 - \$8 million
- Estimated Sales Tax Revenue:
 - Estimated C-Store Revenue: \$3,500,000
 - Fuel Revenue: \$11,811,974

We appreciate the City's support in facilitating this development, and Holiday Oil is excited about the opportunity to open our second location within Tooele City limits.

Managing Director

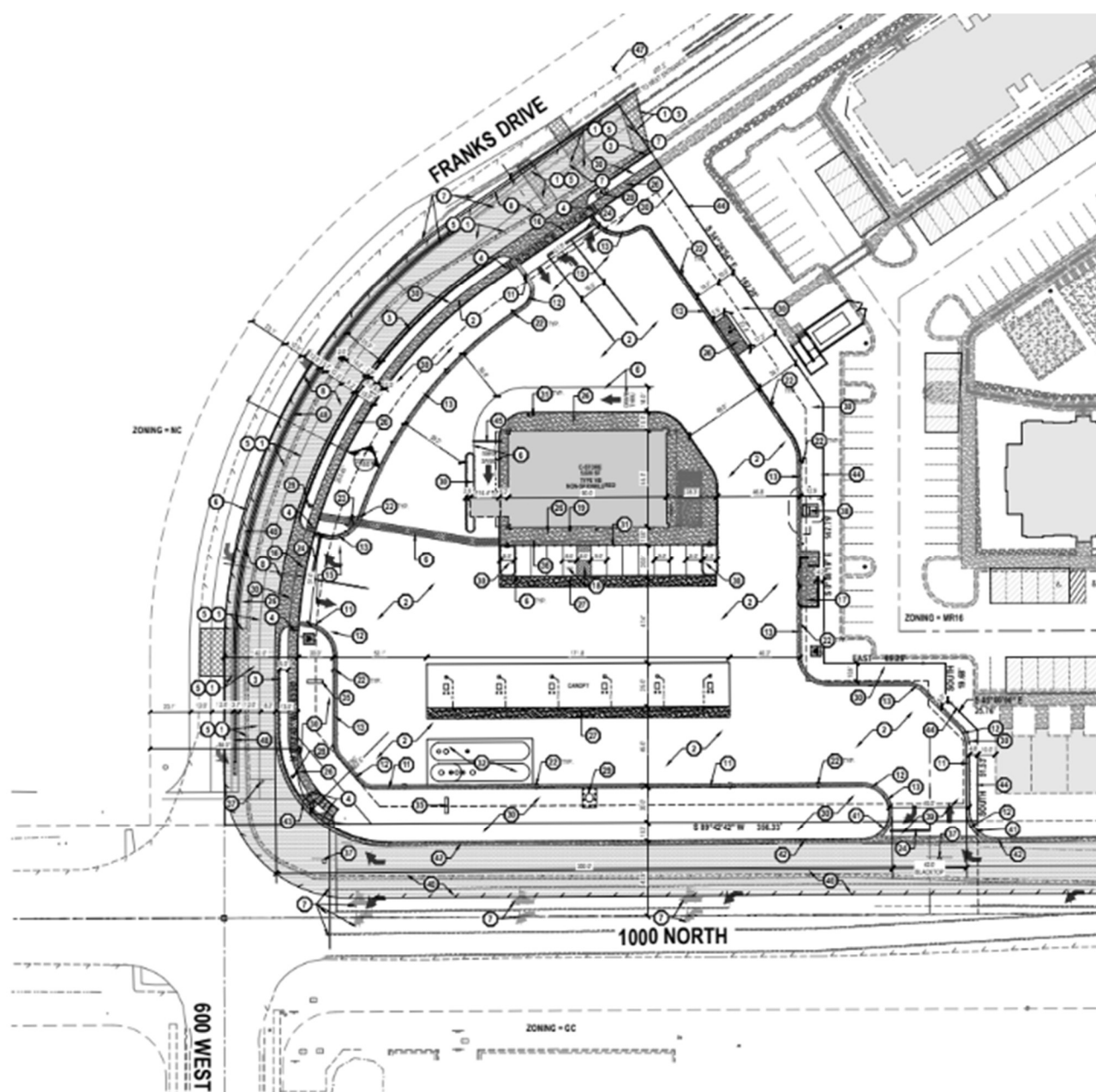


Exhibit B

November 1, 2023, Fee-in-lieu Policy



City Council Policy

RE: Payment of a Fee In Lieu Of Water Rights Conveyance under Tooele City Code §7-26-3(2).

Effective Date: November 1, 2023

Tooele City Code Chapter 7-26 requires the conveyance of water rights as a condition of approval of all land use applications. Section 7-26-3(2) states the following:

Fee-in-lieu. Pursuant to established City Council policy, in lieu of actual conveyance of water rights pursuant to this Chapter, certain development applicants may pay to the City an amount per acre-foot for access to water rights controlled by the City in a quantity necessary to satisfy the anticipated future water needs of the proposed development to be served and supplied by the City water system.

This City Council Policy is established pursuant to the legislative authority embodied in §7-26-3(2).

Residential Development. Beginning on the Effective Date, Tooele City will allow the owner(s) of an existing single-family parcel of record that, as of the Effective Date, is not part of a recorded subdivision, and the owner(s) of a single-family lot that is part of a recorded subdivision, either of which parcel or lot is subdivided through a two-lot subdivision (e.g., a lot split), to pay a fee (the "Fee") for the new lot in lieu of the residential water right requirement established in TCC §7-26-2(1). The administrative departments are authorized to determine eligibility and to approve payment of the Fee for such a two-lot residential subdivision. The item for which the Fee is paid shall be known for purposes of this Policy as a Water Rights Credit or Credit.

Persons who are eligible under this Policy may purchase Credits by paying the Fee. Credits will be purchased on a first-come first-served basis. The Fee shall be paid in full prior to building permit issuance. Should a building permit for which the Fee was paid expire under the terms of the permit, the City will refund the Fee, minus a \$100 administrative service charge. A person who previously paid the Fee and received a Fee refund due to an expired building permit may submit a new building permit application and may again request to pay the Fee on a first-come first-served basis behind others who paid the Fee and whose building permits remain valid.

Non-residential Development. Beginning on the Effective Date, Tooele City will allow owners of a non-residential development project ("Project") to request to pay the Fee if the Project is determined by the City to need less than 20 acre-feet of municipal water rights. Additional Credits may be made available, upon recommendation of the Public Works Director and Economic Development Director, and with written approval of the Mayor. A Request shall be in

writing from the property owner or agent and addressed to the City Council or Mayor. Approval of a request may be granted only after full consideration of the following criteria in relation to the amount of water used for the Project:

- The number of jobs the Project is anticipated to create, together with the nature of the jobs (e.g., full-time) and job compensation (e.g., wage levels, benefits).
- The amount of sales tax the Project is anticipated to generate.
- The amount of property tax the Project is anticipated to generate.
- The anticipated environmental and social benefits and impacts of the Project.

The Council may consider additional criteria as it thinks appropriate. Persons who are eligible under this Policy and approved by the City Council may purchase Credits by paying the Fee. Credits will be purchased on a first-come first-served basis. The Fee shall be paid in full prior to building permit issuance. Should a building permit for which the Fee was paid expire under the terms of the permit, the City will refund the Fee, minus a \$100 administrative service charge. A person who previously paid the Fee and received a Fee refund due to an expired building permit, or due to the approval sunseting, may submit a new building permit application and may again request to pay the Fee. If authorized by the City Council, the Credits may be purchased on a first-come first-served basis behind others who paid the Fee and whose building permits remain valid. The City Council may partially approve a request, for example, by authorizing 10 Credits out of 20 Credits requested.

Sunset for Non-residential Projects.

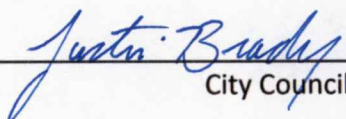
The City Council's authorization to pay the Fee for one or more buildings in a non-residential development Project containing more than one primary structure (e.g., more than one restaurant or store) is conditioned upon the Project obtaining City approval of a building permit for a first primary structure in the Project, and commencing vertical construction of the permitted structure, within two years of the date of approval of the Resolution authorizing payment of the Fee. Thereafter, the Project shall obtain a building permit for at least one additional primary structure, and commence vertical construction, within each successive twelve months following the commencement of construction of the prior building. By way of example, if a Resolution is approved on January 1, 2024, a first building permit must be obtained, and vertical construction commenced, prior to December 31, 2025; the next building must be permitted and construction commenced prior to December 31, 2026; and so on. Should any of these events not occur before the applicable sunset date, the City Council approval shall lapse and the remaining Credits shall revert to the City. The City Council, in its sole discretion, may extend these sunset deadlines or modify these conditions in a public meeting.

General.

1. **Fee Cost.** The Fee shall be established at \$35,000 per 1.0 acre-foot of depletion of municipal water rights. This Fee amount is not intended or calculated to reflect market value. The Fee applicable to any Request shall be the Fee in effect on the date of the Request, provided the

building permit application for which the Fee is paid is filed with the City within one year of the Request, and otherwise shall be the Fee in effect on the date of the building permit application.

2. Annual Limit. The number of Credits purchased pursuant to this Policy shall not exceed a total of 50 in any calendar year or in any period of 12 consecutive months without the approval of the City Council, in its discretion.
3. Acceptance of Credits. Upon payment of the Fee, the City will indicate the payment on the approved building permit. Payment of the Fee to the City constitutes surrender of the Credits to the City. No Credit certificate is required.
4. Integration. This Policy shall supersede any prior oral or written policies, practices, and understandings on the subject of this Policy.
5. Use of Revenues. Revenues derived from payment of the Fee shall be utilized for the protection of existing water rights and/or the acquisition of additional water rights, except that the City Council may authorize the use of the revenues for other Tooele City water-related projects and needs upon a finding of good cause. The water rights revenue fund is a fund in the City's General Fund and is not an enterprise fund.
6. Limited Availability. The payment of the Fee under this Policy is subject to the availability of corresponding water rights, in the sole discretion of Tooele City.
7. Resolution Required. The City Council's authorization to pay the Fee for a non-residential Project shall be pursuant to approved City Council Resolution.
8. No Entitlement or Security. Approval of a Resolution for a Project containing multiple lots or buildings (e.g., subdivision, site plan) shall be a temporary reservation of Credits for the Project's building permit applicants. Approval of a Resolution shall not constitute a vested development right or a land use entitlement, or the creation of a marketable security. The City will accept the Fee only from building owners, the authorized agents of building owners, or building permit applicants for buildings in a Project.
9. No Assignment or Transfer. Credits shall not be assignable or transferrable but are reserved by the City in the City's sole discretion for specific Projects and sold for specific buildings.
10. No Pre-payment. Project owners may not pre-purchase Credits for their Project or any Project building in advance of building permit application.
11. No Precedent. City Council authorization to pay the Fee for one Project, at whatever Fee amount per Credit, shall not be considered a precedent in any way in reference to any other Project.
12. Refunds. If water usage projection for a building are reduced by the City after payment of the Fee for that building, the City will reimburse the difference between the Fee paid and the Fee that would have been paid under the reduced usage projection. If a Fee payor withdraws a building permit application prior to its approval, the City will reimburse the Fee, with a \$100 administrative charge.


City Council Chair

TOOELE CITY CORPORATION
FISCAL NOTE TO PROPOSED EXPENDITURE

01/22/26

DESCRIPTION OF EXPENDITURE:

VENDOR: RING CENTRAL

V# 12327

RING CENTRAL SUBSCRIPTION - IT

REVENUE LINE ITEM:	ACCOUNT NUMBER	CURRENT BUDGET	RECEIPTS TO DATE	ADDITIONAL FUNDING	TOTAL FUNDING
					0.00

EXPENDITURE LINE ITEM	ACCOUNT NUMBER	ADJUSTED BUDGET	Y. T. D. EXPENSES	PROPOSED EXPENSE	BUDGET BALANCE
OPERATION & MAINTENANCE	10 4136 252000	120,000.00	59,661.00	34,397.98	25,941.02
TOTAL:				34,397.98	

*Will need a line item adjustment

REQUESTED Is Chris Wilson
DEPARTMENT HEAD

REVIEWED Shannon Wimmer
FINANCE DIRECTOR

APPROVED _____
MAYOR

APPROVED _____
COUNCIL CHAIRMAN

RingCentral® Invoice

Billed To

Tooele City
90 North Main St.
Tooele UT 84074
United States
Phone: (435) 830-9526
Customer Email:
chrisn@tooelecity.org

Account Information

Customer User ID: 63245394031
Invoice No.: CD_001307146
Currency: US Dollar
Terms: Net 45
Invoice Date: 12/25/2025
Invoice Amount to Pay: \$34,397.98
Due Date: 02/08/2026

Discover
what's new
at RingCentral.

Learn more. >



Statement Summary

SERVICE	AMOUNT
Subscription	
Charges	
Additional Local Number	\$1,758.24
DigitalLine Basic Advanced	\$239.52
DigitalLine Unlimited Advanced	\$17,319.60
Taxes, Fees and Surcharges	
Compliance and Administrative Cost Recovery Fee	\$7,938.00
Federal - Universal Service Fund	\$2,264.62
State Taxes	\$2,610.00
e911 Service Fee	\$2,268.00
Subscription Subtotal	\$34,397.98
Amount Due	\$34,397.98

12327
F.O. #
DEPT. # Jan 21st 26 10.4136.252000
DATE 1/21/26
AMOUNT \$34,397.98
SIGNATURE Chris Bill
1/21/26



RingCentral Inc., 20 Davis Drive, Belmont, CA 94002, United States

©2025 RingCentral, Inc. All rights reserved.

Statement Details

Description	Start Date	End Date	Qty	Rate	Amount
Subscription - Charges					
DigitalLine Unlimited Advanced	12/22/2025	12/21/2026	170	\$101.88	\$17,319.60
DigitalLine Basic Advanced	12/22/2025	12/21/2026	4	\$59.88	\$239.52
Additional Local Number	12/22/2025	12/21/2026	148	\$11.88	\$1,758.24
Subscription - Charges Subtotal					\$19,317.36
Subscription - Taxes, Fees and Surcharges					
Compliance and Administrative Cost Recovery Fee	12/22/2025	12/21/2026	189	\$42.00	\$7,938.00
e911 Service Fee	12/22/2025	12/21/2026	189	\$12.00	\$2,268.00
Federal - Universal Service Fund					\$2,264.62
State Taxes					\$2,610.00
Subscription - Taxes, Fees and Surcharges Subtotal					\$15,080.62
Subscription Subtotal					\$34,397.98
Total				Amount Due (Tax Included)	\$34,397.98



RingCentral Inc., 20 Davis Drive, Belmont, CA 94002, United States
©2025 RingCentral Inc. All rights reserved.

**TOOELE CITY RECORDERS OFFICE**

90 N MAIN ST
TOOELE, UTAH 84074
PH: (435)843-2111

PURCHASE ORDER**PO Number:** 88729**Date:** 01/22/2026**Requisition #:** REQ122929**Vendor #:** 12327

ISSUED TO: RINGCENTRAL, INC.
20 DAVIS DR
BELMONT, CA 94002

SHIP TO: TOOELE CITY I.T. DEPARTMENT
90 N MAIN ST
TOOELE, UT 84074

ITEM	UNITS DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	RING CENTRAL 2026 INVOICE	10-4136-252000			34,397.98

Shilo Baker

SUBTOTAL:	34,397.98
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	34,397.98

1. Original invoice plus one copy must be sent to: Tooele City, 90 N Main St, Tooele Utah 84074.
2. Payment may be expected within 30 days of receipt of goods, unless otherwise stated.
3. C.O.D. shipment will not be accepted.
4. Purchase Order numbers must appear on all shipping containers, packing slips and invoices. Failure to comply with the above request may delay payment.
5. All goods are to be shipped F.O.B. Destination unless otherwise stated.
6. All materials and services are subject to approval based on the description on the face of the purchase order or appendages thereof. Substitutions are not permitted without approval of the Requesting Department. Material not approved will be returned at no cost to the [City].
7. All goods and equipment must meet or exceed all necessary city, state and federal standards and regulations.
8. Vendor or manufacturer bears risk of loss or damage until property received and/or installed.
9. Tooele City is exempt from all federal excise and state tax - ID#11885616-002

City Council Business Meeting Minutes

Date: January 21, 2026

Time: 7:00 p.m.

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele City, Utah

Council Members Present:

Justin Brady
Ed Hansen
Melodi Gochis
Jon Gossett, via phone

Excused:

Dave McCall

Staff Present:

Maresa Manzione, Mayor
Matthew Johnson, City Attorney
Andrew Aagard, Community Development Director
Jamie Grandpre, Public Works Director
John Perez, Economic Development Director
Kelly Anderson, Planning Commissioner
Nathan Farrer, Assistant Public Works Director
Adrian Day, Police Chief
Paul Hansen, City Engineer
Shannon Wimmer, Finance Director
Shilo Baker, City Recorder
Loretta Herron, Deputy City Recorder
Tiffany Day, Executive Assistant to Mayor

Minutes Prepared by Teresa Young

1. Pledge of Allegiance

Chairman Brady opened the meeting at 7:00 p.m. and led the Pledge of Allegiance.

2. Roll Call

Melodi Gochis, Present
Ed Hansen, Present
Jon Gossett (via phone)
Justin Brady, Present
Dave McCall, Excused

3. America 250 Tribute

Musical Number by Skye Clark, "God Bless America"

Chairman Brady reminded the public that 250 years ago is when this country received our independence, it's birthday, so as a city we will be celebrating America 250 all year.

Chairman Brady introduced Skye Clark. Ms. Clark, who is 8 years old, sang "God Bless America".

Chairman Brady invited Ms. Clark, family, Mayor Manzione, and City Council to take a group photo. There was a brief pause in the meeting for a photo.

4. Tooele Technical College Student of the Year, Ty Dobmann

Presented by Interim President Thygerson

Kent Thygerson, Interim President of Tooele Technical College, provided an update on the college and its partnership with Tooele City. Mr. Thygerson assumed the interim role following the retirement of President Paul Hacking in November and brings over 10 years of experience as Vice President of Finance and Operations. A formal search for the next president will begin in the coming months under the Utah System of Higher Education.

Tooele Technical College is a state institution within the Utah System of Higher Education and has maintained a strong, long-standing partnership with Tooele City since 2009. The college's mission remains focused on training Tooele residents for employment with local employers.

Key highlights included the completion of a \$27.5 million state-funded expansion that doubled instructional space, now fully operational and serving students preparing for new careers. During Fiscal Year 2025, the college served 1,231 students, including approximately 40% high school students. A total of 488 students graduated with an 86% job placement rate, generating an estimated \$17 million annual wage impact in the local economy.

The college offers 22 training programs aligned with local workforce needs and supported by employer advisory committees. Additional business support includes the Custom Fit program, which served 60 companies and provided over 13,500 training hours, and the Small Business Development Center, which assisted 206 clients, supported 22 new business starts, created 50 jobs, and helped secure \$3.2 million in loans and grants.

Mr. Thygerson emphasized the college's role as a community and business resource and expressed gratitude for the continued support of Tooele City. Council members were invited to attend the college graduation on May 14, 2026.

Ty Dobmann, 2025–2026 Tooele Technical College Student of the Year and Police Academy graduate, shared his personal journey and the impact of Tooele Technical College on his life. Mr. Dobmann noted he is currently recovering from injuries sustained in a recent on-duty traffic accident, but expressed gratitude for the opportunity to speak.

Raised in Utah, Mr. Dobmann grew up active in sports, scouting, and music, becoming an Eagle Scout at age 14. He pursued a long-standing dream of playing professional football, competing at the college, semi-professional, and professional indoor arena levels, and earning an invitation to the XFL draft. Due to

cumulative injuries, his football career ended abruptly, marking a significant personal challenge. At a pivotal moment, Mr. Dobmann was encouraged to attend the Tooele Technical College Police Academy. He described the program as life-changing, helping him transition into a new career, rebuild confidence, and develop the physical, mental, and ethical skills required for law enforcement. During the program, he lost over 60 pounds and was challenged extensively both physically and academically.

Mr. Dobmann credited the academy's instructors for their dedication and mentorship and stated his belief that the Tooele Technical College Police Academy is among the best in the state. He emphasized that community support for the college directly helps residents change their lives and strengthens the county.

Mr. Dobmann is currently employed by the Tooele County Sheriff's Office, has completed field training, and is serving as a solo patrol officer. He concluded by encouraging others to pursue their goals despite setbacks and thanked the City Council and community for their continued support of Tooele Technical College.

5. Public Comment Period

Chairman Brady opened the public hearing at 7:23 p.m.

Seeing no members of the public coming forward, Chairman Brady closed the public hearing at 7:23 p.m.

6. Quarterly Economic Development Update

Presented by John Perez, Economic Development Director

Mr. Perez highlighted recent business openings, economic trends, and ongoing projects. He was excited to report that Tooele City received some media attention last year including KSL, Fox13, and KSL News Radio. This exposure is making a difference. Community leaders and partners have indicated they are actively sharing these stories, and that visibility is helping position Tooele City as a place of momentum and opportunity.

Mr. Perez advised several new businesses opened during the quarter, including Smith's Marketplace, Microtel & Suites by Wyndham, Bombay Kitchen, Salt Flat Psychiatry, Oquirrh Aesthetics, and a reopening of Premier Real Estate. The Smith's Marketplace opening was particularly significant, as it was the largest Smith's and Kroger grand opening in the nation, bringing an estimated 200 to 250 new jobs and drawing attention from other large retailers.

Mr. Perez advised that retail vacancy experienced a slight uptick, while office vacancy remains at zero, reinforcing the ongoing need for additional office space. Industrial vacancy decreased by 1.1 percent, with strong performance in flex industrial space. Hospitality occupancy declined slightly, which is typical for this time of year, but remains well above industry averages.

Mr. Perez reported that the lead generation activity included multiple contacts in the restaurant, retail, and hospitality sectors, though only one request for information (RFI) was submitted during the quarter. Statewide, RFI activity has slowed considerably, reflecting broader market conditions. Economic development partners have noted that Utah's competitive advantage has shifted away from cost competitiveness and toward workforce strength, requiring an adjustment in recruitment and marketing strategies.

Mr. Perez advised that progress continues at the Business Park, where the ALTA survey (detailed land survey) has been completed and shared with prospects. Meetings are underway with EDCUtah (Economic Development Corporation of Utah) and GOEO (Governor's Office of Economic Opportunity) to improve marketing efforts, emphasizing Tooele City's strong value in price per square foot. Industrial site selectors have recently toured the site, and additional planning and design work is in progress.

Mr. Perez reported that at the Broadway property, demolition has been completed and the site is fully cleared. While recent discussions with developers have slowed, the property remains under active consideration, and future steps may include Council and RDA direction on issuing a request for proposals.

Mr. Perez advised that community engagement efforts remain strong, with the City's LinkedIn presence seeing increased activity and engagement during the quarter. Overall, despite a slowdown in statewide inquiries, Tooele City continues to demonstrate strong economic momentum and remains well positioned for continued growth.

Chairman Brady asked if Mr. Perez knows the openings dates for the restaurants at The Peak. Mr. Perez replied that Tropical Smoothie is opening sometime in February and The Pizza Pie Café will also possibly be opening in February.

Councilwoman Gochis expressed her excitement and thanked Mr. Perez for a job well done.

7. **2025 Community Development Update**

Presented by Andrew Aagard, Community Development Director

Mr. Aagard reported that, pursuant to City ordinance, the Community Development Department is required to present an annual report to the City Council. Although this requirement had not been previously met, the department will begin providing an annual report each January, including statistical data from the prior year, along with an overview of departmental responsibilities for Council awareness.

The Community Development Department plays a vital, though often behind-the-scenes, role in city operations. The department consists of four divisions: Planning, Building, Business Licensing, and Code Enforcement. Each division is responsible for enforcing specific titles of the Tooele City Code, with additional coordination occurring with the Fire Department, particularly related to fire and weed abatement enforcement.

In 2025, the Planning Division processed 110 applications and administered 21 Planning Commission meetings. Application activity increased significantly compared to 2024, with overall planning applications rising by 54 percent. Conditional use permits, zoning and land use map amendments, and boundary line adjustments all saw notable increases. The Planning Division, along with Public Works, Engineering, and the Fire Department, conducted an estimated 400 plan reviews during the year, reflecting continued growth and workload demands.

The Building Division issued 1,054 building permits in 2025 from 1,168 applications received. While total permit activity declined compared to the previous year, commercial permits increased by 9%. Single-family dwelling permits declined significantly, which was attributed largely to water availability constraints affecting development decisions. The Building Division conducted over 6,100 inspections during the year, averaging approximately seven inspections per day.

The Business Licensing Division processed 291 new business licenses and renewed 2,486 licenses in 2025. While new commercial and home occupation licenses declined slightly, renewals for home occupation licenses increased, suggesting a possible shift toward more residents working from home.

The Code Enforcement Division, staffed by a single officer serving a city of approximately 40,000 residents, handled 268 new cases in 2025, in addition to cases carried over from the prior year. Although complaint volumes declined compared to 2024, the active caseload remains high. The reduction in complaints was attributed in part to prior ordinance amendments that provided greater discretion in enforcement, particularly related to weed abatement.

In addition to quantifiable statistics, the department continues to handle a significant volume of public inquiries, development consultations, inspections related to emergency incidents such as fires, and ongoing coordination with residents, property owners, and developers. Despite not producing highly visible infrastructure projects, the Community Development Department remains essential to maintaining safety, regulatory compliance, and orderly growth within the city.

Mr. Aagard concluded by expressing appreciation for staff efforts.

8. **Public Hearing and Motion on Ordinance 2026-01 An Ordinance of Tooele City Amending Tooele City Code 4-8-2.6; Table of Substandard Local Street Requirements, to Amend the Table, Adding Canyon Road to the List of Substandard Local Streets**

Presented by Andrew Aagard, Community Development Director

Mr. Aagard advised the proposed ordinance amendment addresses development requirements for Canyon Road. A recent subdivision application revealed that standard improvements—such as right-of-way dedication, curb, gutter, sidewalk installation, and a standard cul-de-sac—would create more problems than they solve due to the road’s unique conditions. Canyon Road currently has asphalt but lacks curb, gutter, or sidewalks, and the slope of the land could create drainage issues if improvements were installed. Additionally, the existing right-of-way is unclear, and there is insufficient space for a standard fire turnaround.

The amendment would add Canyon Road to the city’s table of non-standard or substandard local streets, similar to Garden Street, 50 West, and 150 West. For Canyon Road, the amendment proposes leaving the right-of-way and asphalt “as is,” removing requirements for curb, gutter, and sidewalk, and allowing the Fire Marshal to approve alternative emergency vehicle turnarounds, such as hammerheads. This approach is intended to reduce city liability and practical difficulties while still ensuring safe access.

Mr. Aagard advised that Planning Commission reviewed and recommended approval of the amendment. Staff and key stakeholders are confident this is the best approach for the unique conditions of Canyon Road.

Chairman Brady opened the public hearing at 7:54 p.m. Seeing no members of the public coming forward, Chairman Brady closed the public hearing at 7:54 p.m.

Motion: Councilwoman Gochis moved to approve Ordinance 2026-01 An Ordinance of Tooele City Amending Tooele City Code 4-8-2.6; Table of Substandard Local Street Requirements, to Amend the Table, Adding Canyon Road to the List of Substandard Local Streets. Councilman Hansen seconded the motion.

The vote was as follows: Councilwoman Gochis, “Aye”; Councilman Hansen, “Aye”; Councilman Gossett, “Aye”; and Chairman Brady. The motion passed 4-0.

9. Resolution 2025-92 A Resolution of the Tooele City Council Approving an Agreement with J-U-B Engineers Inc., for Professional Engineering Services for Phase 2 of the 2025 Tooele City Wells Project

Presented by Jamie Grandpre, Public Works Director

Mr. Grandpre advised the proposed resolution approves professional engineering services with J-U-B in the amount of \$190,450 for the design and bidding of the Rogers Road public water supply well house. This project follows the City’s test drilling at two sites, one of which showed favorable conditions. The new well house will be located near the County Trailhead off SR-112, and the property will also include a salt shed for the Streets Department. The design and construction process are expected to take approximately two years, including six to nine months for design, bidding, and construction. The project will include a generator at the well house, but a storage tank is not currently planned; final details will be determined during design.

Motion: Councilman Hansen moved to approve Resolution 2025-92 A Resolution of the Tooele City Council Approving and Agreement with J-U-B Engineers Inc., for Professional Engineering Services for Phase 2 of the 2025 Tooele City Wells Project. Councilwoman Gochis seconded the motion.

The vote was as follows: Councilman Hansen, “Aye”; Councilwoman Gochis, “Aye”; Councilman Gossett, “Aye”; and Chairman Brady, “Aye”. The motion passed 4-0.

10. Invoices & Purchase Orders

Presented by Shilo Baker, City Recorder

Ms. Baker informed the Council that there was one invoice, amounting to \$40,760, issued to LensLock Inc. for body-worn cameras equipment and service for the Police Department.

Motion: Councilwoman Gochis moved to approve the invoice. Councilman Hansen seconded the motion.

The vote was as follows: Councilwoman Gochis, “Aye”; Councilman Hansen, “Aye”; Councilman Gossett, “Aye”; and Chairman Brady, “Aye”. The motion passed 4-0.

11. Minutes

~January 7, 2026 Work Meeting
~January 7, 2026 Business Meeting

Motion: Councilman Hansen moved to approve the January 7, 2026 Work Meeting and January 7, 2026 Business Meeting Minutes. Councilwoman Gochis seconded the motion.

The vote was as follows: Councilman Hansen, “Aye”; Councilman Gossett, “Aye”; Councilwoman Gochis, “Aye”; and Chairman Brady. The motion passed 4-0.

12. Adjourn

Chairman Brady adjourned the meeting at 8:02 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this _____ day of February, 2026

Justin Brady, City Council Chair

DRAFT