

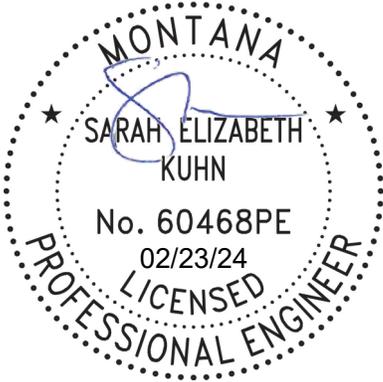


# PROJECT SPECIFICATIONS

## Revais Creek Tailings Removal and Floodplain Remediation Dixon, MT

**Prepared for:**  
*Confederated Salish and Kootenai Tribes  
Brownfields Program  
301 Main Street  
Polson, Montana 59860*

**Prepared by:**  
*NewFields Companies, LLC  
700 SW Higgins Avenue, Suite 15  
Missoula, Montana 59803*



February 2024  
Project No. 350.0072.01

**DIVISION 0 - PROCUREMENT & CONTRACTING  
REQUIREMENTS**

## SECTION 00 01 03 – PROJECT DIRECTORY

### 1.1 PROJECT IDENTIFICATION

Project Name: Revais Creek Tailings Removal and Floodplain Remediation

Address: 114°16'03" North, 114°24'26" West  
Revais Creek Rd  
Dixon, MT 59831

### 1.2 PROJECT OWNER

Project Owner: Confederated Salish and Kootenai Tribes (CSKT)  
301 Main Street  
Polson, Montana 59860

Owner's Project Manager: MaryRose Morigeau, Tribal Response Program Manager

### 1.3 PROJECT ENGINEER

Engineer: NewFields Environmental and Permitting, LLC (NewFields)  
700 SW Higgins Ave., Suite 15  
Missoula, MT 59803

Engineer of Record: Sarah Kuhn, PE  
[skuhn@newfields.com](mailto:skuhn@newfields.com)  
(208) 999-0193

Engineer's Project Manager: Heather Brighton  
[hbrighton@newfields.com](mailto:hbrighton@newfields.com)  
(406) 531-8657

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**LIST OF ATTACHMENTS**

Attachment A – Drawing Sheets

Attachment B – Site Photos

Attachment C – Pre-Bid Meeting Map

## SECTION 00 01 15 – LIST OF DRAWING SHEETS

<u>DWG #</u>	<u>Drawing Title</u>
001	Cover Sheet
002	Site Arrangement
003	Tailings Removal Plan and Profile
004	Final Grade Plan and Profile
005	Site Details

**END OF LIST OF DRAWING SHEETS**

## SECTION 00 11 13 – ADVERTISEMENT FOR BIDS

**NOTICE TO CONTRACTORS:** Contractors are invited to Bid on the Revais Creek Tailings Removal and Floodplain Remediation Project (Project). Sealed Bids will be received up to and including **5:00 p.m. on Friday, March 29, 2024**, at which time the Bids received will be opened and read in the Engineer’s Office listed in Section 00 01 03. The Project consists of removing approximately 3,000 cubic yards of historic mine tailings and restoring the disturbed impacted area, anticipated to include a 1.3-acre floodplain and overflow channel adjacent to Revais Creek, located at 114°16’03” North, 114°24’26” West, near Dixon, Montana (Site). The Project is generally anticipated to start **July 29, 2024**, and be completed by **October 4, 2024**.

**INDIAN PREFERENCE:** Preference for the award of contracts and subcontracts and for the procurement of services, materials, supplies, and equipment required for the Work to be performed, shall be given to Certified Indian-owned businesses which are responsible bidders and make responsive bids in the award of this subcontract, per the *Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation Indian Preference Ordinance Tribal Ordinance No. 101A*.

**MBE/WBE/DBE:** Minority-Owned and Women- Owned Business Enterprises (MBE/WBE) are encouraged to submit Bids. MBE and WBE are also considered a Disadvantaged Business Enterprise (DBE).

**ADA/EEO:** Alternative accessible formats of this notice are available upon request. Request accommodation or additional information from Ms. Heather Brighton, NewFields, 700 SW Higgins Avenue, Suite 15, Missoula, Montana 59803. Email contact at [hbrighton@newfields.com](mailto:hbrighton@newfields.com).

**BID SECURITY:** All Bids over \$25,000 shall be accompanied by Bid Security as defined in **Section 00 21 13** Paragraph 1.16.

**PERFORMANCE AND PAYMENT BONDS:** Performance and Payment Bonds will be required of the successful Bidder in the amount of ONE HUNDRED percent (100%) of the aggregate of the proposal for the faithful performance of the contract.

**WITHDRAWAL OF BIDS:** No Bidder may withdraw their Bid for at least FORTY-FIVE (45) days after the scheduled time for receipt of Bids, except as noted in the Instructions to Bidders.

**ENGINEER’S RIGHTS RESERVED:** The Engineer reserves the right to reject any or all Bids, or portions thereof, and, if all Bids are rejected, to re-advertise under the same or new specifications, to waive any informality in a Bid, or to accept the lowest, responsive, responsible Bid and Bidder, and to make awards in the interest of the Engineer.

**AWARD CONTINGENT:** Without limiting the foregoing, it is expressly Stated that final award of the Contract is contingent upon securing appropriate financing.

**END OF ADVERTISEMENT FOR BIDS**

## SECTION 00 21 13 – INSTRUCTIONS TO BIDDERS

### PART 1 – GENERAL

#### 1.1 BID SUBMISSION

- A. Sealed Bids shall be submitted electronically in PDF format via email to: [hbrighton@newfields.com](mailto:hbrighton@newfields.com), or hand-delivered, or sent via USPS, FedEx, UPS or courier service, to:

**NewFields Environmental and Permitting, LLC.**

**Attention: Heather Brighton**

700 SW Higgins Ave.

Suite 15

Missoula, MT 59803

**Project Name “Revais Creek Tailings Removal and Floodplain Remediation”**

**[Bidder's Name and Address]**

**DO NOT OPEN – SEALED BID ENCLOSED**

Sealed Bids will be accepted until **5:00 p.m. on Friday, March 29, 2024**, for the Revais Creek Tailings Removal and Floodplain Remediation Project. All Bids will be opened and read aloud once they have been received in the NewFields Conference Room, located at 700 SW Higgins Ave, Ste 15, Missoula, MT 59803.

#### 1.2 SPECIFICATIONS

- A. Specifications may be examined without charge at the following locations:
1. NewFields, 700 SW Higgins Avenue, Suite 15, Missoula, Montana;
  2. CSKT Natural Resources Department Website ([www.csktnrd.org](http://www.csktnrd.org));
  3. Montana Disadvantaged Business Enterprise & Small Business Enterprise Website ([www.mdt.mt.gov](http://www.mdt.mt.gov)); or,
  4. In person (or via online subscription) at each of the major Montana Plan Exchanges ([www.montanaBid.com](http://www.montanaBid.com)).
- B. Printed versions of these materials are also available upon written request to Heather Brighton at [hbrighton@newfields.com](mailto:hbrighton@newfields.com). A non-refundable fee of \$75 is required for each printed set of the Project Manual.
- C. Grouping of data in the specifications is solely for the convenience of the Bidders / Contractor and conforms roughly to customary trade practice. The Engineer is not bound to define the limits of any subcontract.

### 1.3 BID ADMINISTRATION

- A. All questions related to this Project shall be directed to Heather Brighton no later than **5:00 p.m. on Monday, March 25, 2024**. No interpretation of Bid specifications will be made verbally or by telephone, nor will any "or equal" products be considered for approval prior to award of contract. Questions shall be submitted in writing via email to Heather Brighton ([hbrighton@newfields.com](mailto:hbrighton@newfields.com)). Any questions received after this date will not be addressed, unless a Bid Addendum is prepared that extends the Bidding process.

### 1.4 STATUTE COMPLIANCE

- A. Each Bidder shall comply with all CSKT fair labor practices and State statutes. Please note that this Project is publicly funded, and therefore includes Federal contract and wage rate requirements.

### 1.5 BIDDER REGISTRATION

- A. Title 39, Chapter 9, Parts 1 and 2 Montana Code Annotated (MCA) stipulate contractor registration requirements for the State of Montana. Pursuant to 39-9-201 MCA, each construction contractor Bidding on a publicly-funded project must be registered with the Montana Department of Labor & Industry (DLI). No Bid will be considered that does not carry the Bidder's Montana Contractor's Registration Number on the Bid Form. Registration forms and additional information may be obtained by contacting the Montana DLI, 1805 Prospect Ave., P.O. Box 8011, Helena, MT 59604-8011, or by calling 406-444-7734.
- B. The Bidder must provide certification that workers' compensation insurance will be maintained as required by the Montana Workers' Compensation Act (39-71-101 MCA). In case any class of employees engaged in work under this contract is not protected or is exempt under the Workers' Compensation Statute, the Contractors shall provide and cause each Subcontractor to provide adequate employer's General Liability Insurance for the protection of such of its employees that are not otherwise protected.

### 1.6 PREVAILING WAGE

- A. The Bidder and its subcontractors must comply with Federal Davis-Bacon prevailing wage rates and reporting requirements. Wage rates are included in **Section 00 73 46**. Certified payroll reports are required by the Contractor to document compliance with prevailing wage rates and must be submitted to The Engineer on Form WH-347 when invoices are submitted for work. Form WH-347 is included in **Section 00 43 43**.

### 1.7 BIDDER'S REPRESENTATION

- A. Each Bidder, by making their Bid, represents that:
  1. The Bidder has read and understands the Bidding Documents and the Bid is made in accordance with the Bidding Documents;

2. The Bidder has familiarized himself or herself with the Project and all other conditions under which the Work (as defined in **Section 01 11 00**) as is to be performed; and,
3. The Bid is based upon the materials, systems and equipment described in the Bidding Documents without exceptions.

## **1.8 PROJECT SCHEDULE**

- A. It is anticipated that the Contract will be executed by **April 26, 2024**, and the Work will be complete by October 4, 2024.
- B. The Contractor shall not mobilize to the Site without an emailed Notice to Proceed from the Engineer. Notice to Proceed will be given following the Engineer's approval of:
  1. Contractor's Work Plan (**Section 01 11 00** Paragraph 1.9);
  2. Contractor's Health and Safety Plan (**Section 00 73 19** Paragraph 1.2); and
  3. Proof of all necessary permits in place (**Section 01 11 00** Paragraph 1.6 (F)).

## **1.9 INTERPRETATION OF CONTRACT DOCUMENTS**

- A. If any Bidder is in doubt about the true meaning of any part of the Contract Documents or finds errors, discrepancies, or omissions in them, they may request interpretation or correction by the Engineer in writing. Such requests must be made to the Engineer in accordance with Paragraph 1.3. The Engineer will issue corrections by written addenda no later than THREE (3) business days prior to the Bid Due Date. Bidders shall not rely upon corrections, nor are corrections valid if made in any other manner.

## **1.10 SUBSTITUTIONS**

- A. The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality that must be met by any proposed substitution. Substitutions will only be considered after award and at the discretion of the Engineer.

## **1.11 DISCREPANCIES AND OMISSIONS**

- A. Bidder shall verify that the Bid Documents are complete. If Bidder finds any omissions, discrepancies, or conflicts between different parts of the Bid Documents or is in doubt as to the meaning of any documents or clauses, Bidder shall immediately notify the Engineer in writing describing the discovered omission, discrepancy, or conflict, and any resulting schedule and cost impacts. Any discrepancies that are discovered by Bidder between the Bid Documents and Federal, State, or local laws, codes, or regulations, shall immediately be brought to the attention of the Engineer in writing.

- B. The Engineer will have the authority to interpret and clarify any discrepancies identified and provide information to resolve any discrepancies.

### **1.12 INQUIRIES/ADDENDA**

- A. Questions and notices of discrepancies or omission shall be e-mailed to the Engineer in accordance with Paragraph 1.3.
- B. Upon receipt of questions, or notice of any discrepancies or omissions, the Engineer will issue responses in writing in the form of addenda to all Bidders. Only addenda issued in writing will be binding.
- C. All Addenda become part of the Contract Documents. Bidders shall include resultant costs in their Bid amounts.
- D. The Engineer is not responsible for any oral responses given to or received by Bidders. Except for the pre-Bid meeting, all other questions must be submitted in writing via email. The Engineer will endeavor to answer all questions received during the procurement period.
- E. The Engineer reserves the right to issue scope revisions, additions, deletions and schedule changes as addenda to the Bid Documents prior to the Bid date.

### **1.13 BID CONTENTS**

- A. The Bid shall contain the following commercial information:
  - 1. Completed Bid Form;
  - 2. Signed Anti-Lobbying Certification;
  - 3. A valid insurance certificate showing proof of insurance outlined in the Agreement;
  - 4. List of Subcontractors/Vendors;
  - 5. Legal name, address, and telephone number of the business entity submitting the Bid;
  - 6. Current business license(s) to conduct work in the project State and locale as applicable;
  - 7. Certification of Indian Owned Business, as applicable;
  - 8. Letter from Surety verifying Bidder's current ability to bond the Project;
  - 9. Any proposed Alliances or Joint Ventures;
  - 10. Any proposed Alternative Bid;
  - 11. Any proposed alternative work hours or work days; and

12. Any exceptions to the Bid Documents.

B. The Bid shall contain the following technical information:

1. Bidder's and proposed subcontractors' safety performance records;
2. Qualifications, experience and references of Bidder and subcontractors;
3. Bidder's history of working with proposed subcontractors;
4. Names of specific managing personnel (superintendents and higher-level personnel) to be engaged in this Project, including personnel resumes and related experience;
5. A proposed schedule, including detailed sequencing of the work by segments; and
6. Preliminary Project Work Plan.

C. Qualifications, Experience, and References (Paragraph B.2 above):

1. Provide descriptions of THREE (3) recent company projects with similar scope and complexity;
2. Provide FIVE (5) client references, with phone numbers for each of the FIVE (5) references; and
3. Include information about Bidder's working history with proposed Subcontractors.

#### **1.14 TIME**

- A. Bids will be reviewed and evaluated by The Engineer after the Bid deadline. All Bids will remain subject to acceptance for FORTY-FIVE (45) days after the due date, but the Engineer may, in its sole discretion, release any Bid prior to that date.
- B. It is the intent of the Engineer to award the contract soon after opening Bids so the Contractor can coordinate work activities with the Engineer.

#### **1.15 MODIFICATION OF BID**

- A. Any Bidder may modify his Bid by paper submittal or electronic mail prior to the scheduled closing time for receipt of Bids. It is the Bidder's responsibility to ensure that the modification is received at the Bid opening location. The modification shall not reveal the Bid price but shall only provide the ADDITION or SUBTRACTION from the original proposal. Bid modifications are to be submitted as indicated in Paragraph 1.1.
- B. A Bid may not be modified, withdrawn, or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and Bidder so agrees to this requirement in submitting his Bid.

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

### **1.16 BID SECURITY**

- A. The Bid shall be accompanied by a Bid security in the amount of 10% of the total Bid Price, as evidence of good faith. (18-2-302, MCA).
- B. Bid security shall be in the form of lawful moneys of the United States, cashier's check, certified check, bank money order or bank draft, Bid bond or bonds payable to the Engineer (18-2-302 MCA).
  - a. Bid Bonds shall be accompanied by the Bid Bond form included in **Section 00 43 13**.
- C. If the Bidder, to whom a contract is awarded, fails to enter into and execute the proposed contract within fifteen (15) calendar days of award, the Bidder shall forfeit the Bid security (18-1-204, MCA).
- D. If the successful Bidder fails to enter into a contract within fifteen (15) calendar days of award, the Engineer may cancel the award and offer the contract to the next qualified Bidder. In this instance, the Engineer shall retain the Bid security. Entering into a contract includes providing all necessary insurance certificates, bonds, and current construction contractor registration certificate.
- E. The Bid security of unsuccessful Bidders will be returned when a contract has been awarded to the successful Bidder or when all Bids have been rejected (18-1-205, MCA).

### **1.17 LABOR, MATERIAL AND PERFORMANCE BONDS**

- A. The successful Bidder must furnish an approved Performance Bond, and a Labor and Material Payment Bond, issued by a Bonding Company licensed to transact business in the State of Montana and listed on the U.S. Department of Treasury's "Listing of Approved Sureties", each in the amount of 100% of the sum to be paid to the successful Bidder under the Contract ("Contract Sum"); evidence of which shall be furnished upon signature of the Contract (18-2-201) and (33-17-1111, MCA). The successful Bidder shall deliver the required bonds to the Engineer not later than the date of execution of the Contract, or if the Work is commenced prior thereto, in response to a letter of intent by the Engineer, the Bidder shall, prior to commencement of the Work, submit satisfactory evidence to the Engineer that such bonds will be delivered.

- B. The successful Bidder may, in lieu of surety bonds, provide the following securities in an amount equal to the Contract Sum: Lawful money of the U.S.; OR a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the State of Montana or by a national banking association located in Montana; OR certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.
- C. The Engineer will retain such security for a maximum time period of THREE (3) months after completion and acceptance of the Project by the Engineer.

#### **1.18 AGREEMENT BETWEEN ENGINEER AND CONTRACTOR**

- A. Unless otherwise provided in the Bidding Documents the Agreement for the Work will be written on the Agreement Between Owner and Contractor for Construction Contract (Stipulated Price). Copies of these documents are contained herein.
- B. All mentions of The Owner in this Agreement are to be replaced with The Engineer.
- C. Bidders must provide, with their Bid, any requested revisions or additions to the Agreement, *EJCDC Form C-520*. These requested revisions and additions should be listed in a separate document and submitted to the Engineer in writing. No additional changes to the Agreement will be considered after the project is awarded to the successful Bidder.

#### **1.19 AWARD OF BID**

- A. All Bids received by the Engineer by the Stated time will be opened and publicly read aloud, as described in Paragraph 1.1 of this Section.
- B. The Engineer reserves the right to reject any or all Bids, or portions thereof, to waive any informality, to evaluate the proposals submitted, and to accept the proposal which best serves the interest of the Engineer. The Engineer reserves the right to award the work or make no award. The Engineer's award decision will be based primarily on the lowest responsive and responsible Bid as determined below:
  - 1. The low Bid shall be determined on the basis of the lowest Base Bid.
  - 2. The low responsive Bid shall be determined on the basis of a complete Bid submittal package.
  - 3. The low responsible Bid shall be determined on the basis of cost, the firm's reputation and experience, and tribal preference.

- C. Preference for the award of contracts and subcontracts and for the procurement of services, materials, supplies, and equipment required for the work to be performed, shall be given to Certified Indian-owned businesses which are responsible Bidders and make responsive Bids. Preference for contracting and subcontracting shall be granted according to the following priority:
1. First preference is a CSKT member-owned business. If a CSKT member-owned business comes within TEN percent (10%) of the low Bid or price quote, the CSKT business shall have the opportunity to meet that figure.
  2. Second Preference is any other Indian-owned business. If no CSKT member owned business makes or meets the low Bid or price quote, any other Indian-owned business which comes within TEN percent (10%) of the low Bid or price quote shall have the opportunity to meet that figure.

**PART 2 – PRODUCTS (NOT USED)**

**PART 3 – EXECUTION (NOT USED)**

**END OF INSTRUCTIONS TO BIDDERS**

## SECTION 00 25 13 – PRE-BID MEETING

### PART 1 – GENERAL

#### PRE-BID MEETING

- A. A mandatory pre-Bid meeting will be conducted on **Tuesday, March 12, 2024, at 1:00 p.m.** at the Project Site. Bidders should arrive at **1:00 p.m.** at the corner of Highway 200 and Revais Creek Road, approximately 2.4 miles west of the town of Dixon in Sanders County, Montana (See Map, Attachment C). Bidders will follow Engineer to project site.
- B. Each Bidder must attend the mandatory pre-Bid meeting. Each Bidder is requested to respond by e-mail within THREE (3) business days of the pre-Bid meeting to confirm its intent to Bid.
- C. Each Bidder is to review the Bid documents prior to the pre-Bid meeting, be represented at the pre-Bid walk-thru meeting by appropriate personnel and be prepared to discuss the Project requirements in detail at the pre-Bid walk-thru meeting.
- D. The pre-Bid meeting will start with a mandatory safety orientation, followed by an administrative meeting and a Site tour.
- E. Bidder is to limit representation to THREE (3) people. Personnel on the Site tour must wear safety-toed work shoes, hi-viz safety vest, and safety glasses. Bidders may take photographs of the Project Area.
- F. Information relevant to the Bid documents discussed at the pre-Bid meeting will be recorded in an addendum and issued to Bidders.

### PART 2 – PRODUCTS (NOT USED)

### PART 3 – EXECUTION (NOT USED)

## SECTION 00 41 13 – BID FORM

### PART 1 – GENERAL

#### 1.1 PROJECT IDENTIFICATION

**Revais Creek**  
*Tailings Removal and Floodplain Remediation*  
*Dixon, Montana*

#### 1.2 THIS BID SUBMITTED TO:

**NewFields Environmental and Permitting, LLC.**  
**Attention: Heather Brighton**  
700 SW Higgins Ave.  
Suite 15  
Missoula, MT 59803

### PART 2 – PRODUCTS (NOT USED)

### PART 3 – EXECUTION

- A. The undersigned Bidder proposes and agrees if this Bid is accepted, to enter into an Agreement with the Engineer in the form included in the Bidding Documents, to perform and furnish all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.
- B. Bidder accepts all the terms and conditions of the Advertisement or Invitation to Bid, and Instructions to Bidders. This Bid will remain subject to acceptance for FORTY-FIVE (45) days after the Bid opens, or for such longer period of time that Bidder may agree to in writing upon request of Engineer.
- C. In submitting this Bid, Bidder represents, that:
  - 1. Bidder acknowledges that the award or awards will be based on the available public funds for this Project. The Engineer reserves the right to award the work or to make no award.
  - 2. Bidder acknowledges that Indian Preference applies to this solicitation.

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

Addendum No.	Addendum Date
_____	_____
_____	_____

- 4. Bidder has visited the Site, including any additional visits necessary at his discretion, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- 5. Bidder is familiar with and is satisfied as to all Tribal (including CSKT Indian Preference Ordinance), Federal, State, and local Laws and regulations that may affect cost, progress, and performance of the Work. On any contract over \$25,000, the contractor will be required to pay a THREE percent (3%) fee directly to the Indian Preference Office.
- 6. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) Bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- 7. Bidder is aware of the general nature of the Work, to be performed by Engineer and others at the Site, that relates to the Work as indicated in the Bidding Documents.
- 8. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and the written resolution thereof by Engineer is acceptable to Bidder.
- 9. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- 10. Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from Bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Engineer.
- 11. The Bidder certifies that no official of the Owner, Engineer, or any member of such official's immediate family, has direct or indirect interest in the pecuniary profits or Contracts of the Bidder.
- 12. The Bidder will complete the Work in accordance with the Contract Documents.

- 13. Bidder acknowledges that Unit Prices include removal, haulage, and disposal of Tailings at specified landfill, clearing and grubbing, site regrading, topsoil placement, temporary cattle fence, Prepare Seedbed, Create Micro Topography, and Place Woody Debris and Large Boulders, and Seed, Fertilize, and Mulch unless otherwise specified.
  - 14. Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid Items will be based on actual quantities, determined as provided in the Contract Documents.
  - 15. The undersigned agrees that the unit prices shall govern in checking the Bid, and should a discrepancy exist in the Total Estimated Price and Total Amount of Unit Prices Bid, the corrected Total Amount of Unit Prices Bid shall be used in awarding this Contract.
  - 16. Determination of lowest Bidder will be based on the sum total of the Total Amount of Unit Prices Bid. The Engineer may award the Work or make no award.
  - 17. The Engineer reserves the right to reject any or all Bids.
- D. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which both times and liquidated damages shall be Stated in the Agreement, if any.
- E. The undersigned agrees to perform the Work described in the Specifications for the sum shown in both words and figures on the attached Bid Form.

By: \_\_\_\_\_  
(Authorized Signature)

Submitted on: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Contractor's Address: \_\_\_\_\_

Contractor's Phone Number: \_\_\_\_\_

Montana Contractor's Registration # \_\_\_\_\_

Employer's Tax ID No. \_\_\_\_\_

Name, address and telephone number of surety company and agent who will provide the required bonds on this contract: \_\_\_\_\_

*Note: A financial Statement, or AIA Document A305 Contractor's Qualification Statement, references, and other information, sufficiently comprehensive to permit an appraisal of Contractor's current financial condition, may be requested by the Owner or Engineer, and must be provided by the Contractor upon request*

<b>BID FORM - Revais Creek Tailings Removal and Floodplain Remediation</b>						
<b>Line Item No.</b>	<b>Bid Item No.</b>	<b>Item Description</b>	<b>Qty</b>	<b>Unit</b>	<b>Rate</b>	<b>Bid</b>
1	01 57 13.01	Temporary Erosion and Sediment Control	1	LS		
2	01 71 13.01	Mobilization and Demobilization	1	LS		
3	02 61 31.01	Excavate, Haul, and Dispose Tailings	5,400	T		
4	31 10 13.01	Site Preparation	1	LS		
5	31 11 00.01	Clearing and Grubbing	1.3	AC		
6	31 22 00.01	Site Regrading	350	CY		
7	31 22 00.02	Maintain Overflow Channel	1	LS		
8	32 31 00.01	Temporary Cattle Fence	4000	LF		
9	32 31 00.02	Obstruct Access to Reclaimed Access Road	1	LS		
10	32 91 14.01	Topsoil Placement	770	CY		
11	32 91 14.02	Prepare Seedbed, Create Micro Topography, and Place Large Boulders and Woody Debris	1.3	AC		
12	32 91 14.03	Seed, Fertilize, and Mulch	1.3	AC		
<b>Total (\$</b>				<b>)</b>	<b>Total</b>	<b>\$</b>
(the amount above shall be in both words and figures)						
LS - Lump Sum						
T - Ton						
CY - Cubic Yard						
AC - Acres						

**END OF BID FORMS**

## **SECTION 00 43 13 – BID SECURITY FORM**

### **PART 1 – GENERAL**

#### **1.1 BID SECURITY SUBMITTALS**

- A. The Bidder must complete and submit the following Bid Bond (Penal Sum Form) with their Bid, in accordance with **Section 00 21 13** Paragraph 1.16.
- B. All mentions of The Owner in this Form are to be replaced with The Engineer.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*EJCDC C-430 Bid Bond (Penal Sum Form)  
(follows Section cover page)*

## BID BOND (PENAL SUM FORM)

<b>Bidder</b> Name: Address <i>(principal place of business)</i> :	<b>Surety</b> Name: Address <i>(principal place of business)</i> :
<b>Owner</b> Name: Address <i>(principal place of business)</i> :	<b>Bid</b> Project <i>(name and location)</i> :  Bid Due Date:
<b>Bond</b> Penal Sum: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	
Bidder	Surety
_____ <i>(Full formal name of Bidder)</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) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.</i>	

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
  - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2. All Bids are rejected by Owner, or
  - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

## **SECTION 00 43 43 – WAGE RATES FORM**

### **PART 1 – GENERAL**

#### **1.1 WAGE RATES AND REPORTING SUBMITTALS**

- A. Contractor and any of the Contractor’s subcontractors Bidding or doing work on this Project must comply with the Federal Davis-Bacon prevailing wage rates and reporting requirements shown in attached Form WH-347. Certified payroll reports are required by the Contractor to document compliance with prevailing wage rates and must be submitted to the Engineer on the following Form WH-347 when invoices are submitted for work.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*Form WH-347 (follows Section cover page)*





## **SECTION 00 43 93 – BID SUBMITTAL CHECKLIST**

### **PART 1 – GENERAL**

#### **1.1 BID SUBMITTAL CHECKLIST**

- A. Proposals must be sealed and marked with “**Revais Creek Tailings Removal and Floodplain Remediation, DO NOT OPEN – SEALED BID ENCLOSED**” by, **5:00 p.m. on Friday, March 29, 2024**, including the Bidder’s name, address, Montana Contractors Registration Number.
  
- B. The following information shall comprise a complete Bid:
  - 1. Completed Bid Form (including all Bid Schedule line items, and authorizing signature);
  - 2. Acknowledgement of Addenda (if any), the numbers of which must be specified on the Bid form;
  - 3. Bid Security in the amount of TEN percent (10%) of the Bid Total;
  - 4. Current Montana Contractor’s License Number;
  - 5. Signed Anti-Lobbying Certification (**Section 00 45 46**); and,
  - 6. Bidder’s address and telephone number for communications regarding the Bid.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION (NOT USED)**

**END OF BID SUBMITTAL CHECKLIST**

## **SECTION 00 45 46 – ANTI-LOBBYING CERTIFICATION FORM**

### **PART 1 – GENERAL**

#### **1.1 ANTI-LOBBYING SUBMITTALS**

- A. The Bidder must complete and submit the following Anti-Lobbying Certification Form with their Bid.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*Anti-Lobbying Certification Form (follows Section cover page)*

**ANTI-LOBBYING CERTIFICATION FORM**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No Federally appropriate funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, loan, or cooperative agreement.
- 2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Typed or printed name & Title of Authorized Representative

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Signature of Authorized Representative, Date

## **SECTION 00 52 00 – AGREEMENT FORM**

### **PART 1 – GENERAL**

#### **1.1 CONSTRUCTION SUBCONTRACT FORM**

- A. The Contractor and the Engineer shall enter into the following Construction Subcontract, which includes the applicable General Conditions (**Section 00 72 00**).
- B. Part 2 – Products (Not Used)

### **PART 3 – EXECUTION**

*Construction Subcontract  
(follows Section cover page)*

*EJCDC Document C-523 (2018)*

# CONSTRUCTION SUBCONTRACT

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## CONSTRUCTION SUBCONTRACT

This is a Construction Subcontract (Subcontract) between **NewFields Environmental & Permitting, LLC** (“NewFields” or “Engineer”) and **[Name of Subcontractor]** (Subcontractor). This Subcontract is effective as of **[Effective Date of Subcontract]**.

Prime Contract: Engineer has entered into a contract (Prime Contract) dated **September 28, 2022** with **Confederated Salish and Kootenai Tribes of the Flathead Nation** (Owner).

Engineer and Subcontractor further agree as follows:

### ARTICLE 1—PRELIMINARY MATTERS

#### 1.01 *Prime Contract*

- A. The Prime Contract requires Engineer to perform and furnish construction labor, materials, equipment, and services (“Prime Contract Work”) in connection with the Project described therein. The Prime Contract (excluding compensation and other confidential information) is incorporated in this Subcontract by reference. A copy of the Prime Contract (with confidential terms redacted) is attached as Exhibit 1 to this Subcontract. The Project described in the Prime Contract is summarized as follows:

See Paragraph 1.4 in **Section 01 11 00** of the Project Manual.

#### 1.02 *Scope of Subcontract Work*

- A. Engineer hereby retains Subcontractor to provide construction labor, materials, equipment, and services under this Subcontract described as follows:

See Paragraph 1.5 in **Section 01 11 00** of the Project Manual. (“Subcontract Work”).

- B. The Subcontract Work is a part of the Prime Contract Work. Except as otherwise stated in this Subcontract, the provisions of the Prime Contract that apply to the performance and quality of the Prime Contract Work apply to the Subcontract Work.
- C. The express terms of this Paragraph 1.02 govern in establishing the Subcontract scope of work. The divisions and sections of the Prime Contract’s Specifications and the identifications and organization of the Prime Contract’s drawings do not control or limit Engineer in dividing the Work among subcontractors or suppliers, or delineating the work to be performed by, or obligations of any specific trade, including Subcontractor.

#### 1.03 *Subcontract Documents*

- A. The Subcontract Documents are identified in Article 14 of this Subcontract.

#### 1.04 *Independent Contractor*

- A. Subcontractor is an independent contractor, and is not an employee or partner of, or a joint-venturer with Engineer, and has no contractual relationship or privity with Owner or Owner’s engineers or consultants.

## ARTICLE 2—OBLIGATIONS OF THE PRIME CONTRACT

### 2.01 *Incorporation of Prime Contract Obligations*

- A. The Subcontractor is bound to the Engineer under the Subcontract to the same extent that the Engineer is bound to the Owner under the Prime Contract, and Subcontractor shall comply with all requirements, terms, and conditions of the Prime Contract that relate in any way to the performance and completion of the Subcontract Work.
- B. The obligation of the Subcontractor to comply with the requirements, terms, and conditions of the Prime Contract does not provide any rights, benefits, or third-party beneficiary standing to the Subcontractor with respect to the Prime Contract.

### 2.02 *Precedence of Subcontract*

- A. If a provision of this Subcontract conflicts with a provision of the Prime Contract, the terms of this Subcontract govern, unless under controlling laws the conflicted provision of the Prime Contract cannot be waived.

## ARTICLE 3—SUBCONTRACT TIMES

### 3.01 *Subcontract Times*

- A. The Subcontract Work will be completed in full:
  - 1. Pursuant to **Section 00 21 13** Paragraph 1.8 of the Project Manual.
- B. Subcontractor shall provide all required submittals on a timely basis, and shall provide sufficient labor and materials to comply with the Engineer's progress schedule and avoid delaying the progress of Engineer's work under the Prime Contract. Subcontractor shall make modifications in the performance and completion of the Subcontract Work as necessary to comply with modifications, if any, in the Engineer's progress schedule.
- C. The time for completion of the Subcontract Work, as set forth in Paragraph 3.01.A, and compliance with the Engineer's progress schedule, as set forth in Paragraph 3.01.B, all as duly modified under this Subcontract, together will be referred to as "Subcontract Times."

### 3.02 *Time of the Essence*

- A. Subcontractor's obligation to comply with the Subcontract Times is of the essence of the Subcontract.

### 3.03 *Damages for Late Completion*

- A. Subcontractor and Engineer recognize that Engineer will suffer financial loss if the Subcontract Work is not completed within the Subcontract Times.
- B. The damages resulting to the Engineer may include liquidated damages, special damages, and other damages (if any) assessed by the Owner, actual damages claimed by the Owner as a result of the delay, and the Engineer's costs for extended general conditions, field overhead, and home office overhead.
- C. As a result of the losses, costs, and damages recognized in Paragraphs 3.03.A. and B., if Subcontractor fails to complete the Subcontract Work within the Subcontract Times, Subcontractor and its Surety shall be liable for and shall pay to the Engineer the sum of One Thousand One Hundred Twenty Dollars (\$1120) which is equal to Engineer's Rate for an 8-

hour day as liquidated damages for each calendar day of deal until the Work is Substantially Complete as determined by the Engineer. Engineer has the right to set off any such amounts against payments due Subcontractor under this Subcontract.

- D. Engineer shall extend completion time through change orders for delays in completion of the Work due to unforeseeable cause beyond the control and without the fault or negligence of the Subcontractor, such as fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather. Paragraph 3.03 (C) shall apply where delays are caused by these reasons but not accounted for through change orders. Further, Subcontractor shall within ten days from the beginning of such delay notify the Engineer in writing of the causes of the delay.

**ARTICLE 4—SUBCONTRACT PRICE**

**4.01 Payment Obligation**

- A. Engineer shall pay Subcontractor for completion of the Subcontract Work in accordance with the Subcontract Documents an amount equal to the sum of the amounts determined pursuant to the following paragraphs (Subcontract Price).
- B. For all Subcontract Work other than Unit Price Work, a lump sum of: **[\$[Lump sum amount]].**
  - 1. Cash Allowances: All specific cash allowances are included in the above price and include the cost to Subcontractor (less any applicable trade discounts) of materials and equipment required by the cash allowances to be delivered at the site, and all applicable taxes. Subcontractor’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 Subcontract Price, and no demand for additional payment on account of any of the foregoing will be valid.
- C. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work multiplied by the actual quantity of that item:

<b>Unit Price Subcontract Work</b>					
<b>Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Estimated Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
3	Excavate, Haul, and Dispose Contaminated Soils	T	5400		
5	Clearing and Grubbing	AC	1.3		
6	Site Regrading	CY	350		
7	Maintain Overflow Channel	LS	1		
8	Topsoil Placement	CY	660		
9	Prepare Seedbed, Create Micro Topography, and Place Woody Debris	AC	1.3		
10	Seed, Fertilize, and Mulch	AC	1.3		
<b>Total of all Extended Prices (Unit Price Subcontract Work)</b>					<b>\$</b>

The extended prices for Unit Price Work set forth as of the Subcontract Date are based on estimated quantities. Estimated quantities are not guaranteed, and determinations of actual quantities will be verified by the Engineer and will be subject to any applicable procedures for measurement and verification under the Prime Contract.

## ARTICLE 5—PAYMENT PROCEDURES

### 5.01 *Progress Payments*

#### A. *Applications for Payments*

1. Ten days prior to the date established in the Prime Contract for submission by the Engineer of the Engineer's application for each progress payment (but not more often than once a month), Subcontractor shall submit to Engineer for review a draft progress payment application covering the Subcontract Work completed as of the date of the progress payment application. The amount requested under each progress payment application will be calculated in accordance with Article 4, and: (a) for lump sum work by determining the percentage of the Subcontract Work completed as of the date of the progress payment application; (b) for unit price work by applying unit prices to units provided; (c) subject to subtraction to account for amounts previously paid. Subcontractor's progress payments will be subject to the retainage provisions of the Prime Contract, or to retainage of **[number]** percent, whichever is greater.
2. Each Subcontractor progress payment application must be accompanied by supporting documentation required by the Prime Contract to be attached to the Engineer's progress payment submission. The Subcontract progress payment application must also be accompanied by required lien waivers; a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all liens; and for stored material and equipment, evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein. All such supporting documentation must be satisfactory to Engineer and Owner.
3. Beginning with Subcontractor's second progress payment application, each Subcontractor progress payment application must include a Subcontractor's affidavit stating that all previous progress payments received on account of the Subcontract Work have been paid to persons and entities providing labor, equipment, materials and services on account of amounts received on behalf of said sub-subcontractors, suppliers, and vendors from prior progress payment applications. Each Subcontractor's affidavit must list all sub-subcontractors, suppliers, and vendors having contracts with Subcontractor to provide said labor, equipment, material, and services on the Project including the amount of each contract, the amount paid to date and the amount due or to become due to each sub-subcontractor, supplier, and vendor. Each progress payment application must also include lien waivers executed by each sub-subcontractor, supplier, and vendor listed on the Subcontractor's affidavit.

#### B. *Review of Applications*

1. Within five days after receipt of each draft progress payment application submitted by Subcontractor, Engineer will return the draft progress payment application with corrections (if any). Subcontractor will submit a final progress payment application, incorporating all resolved corrections, together with all supporting documentation, within three days thereafter.

2. Engineer may withhold amounts requested in one or more payment applications from the Subcontractor in whole or part if one or more of the following occurs:
  - a. The Subcontract Work is defective, or completed Subcontract Work has been damaged, requiring correction or replacement;
  - b. The Subcontract Price has been reduced by change orders;
  - c. The Engineer has been required to correct defective Subcontract Work or complete Subcontract Work;
  - d. Claims have been made against Engineer on account of Subcontractor's performance or furnishing of the Subcontract Work;
  - e. Liens have been filed in connection with the Subcontract Work, except where Subcontractor has delivered a specific bond satisfactory to Engineer and Owner to secure the satisfaction and discharge of such liens;
  - f. The Owner has exercised a set-off against payments to Engineer attributable to Subcontractor's activities or performance of the Subcontract Work; or
  - g. The Subcontractor has defaulted under the terms of the Subcontract.
- C. *Payment:* Engineer shall pay Subcontractor any amounts due to Subcontractor under a payment application for Subcontract Work within ten days after Engineer's receipt from the Owner of payment for such Subcontract Work.

## **ARTICLE 6—FINAL PAYMENT AND COMPLETION**

### **6.01 *Final Payment***

- A. Upon final completion of obligations under the Subcontract, including acceptance by Owner (or its representative) of the Subcontract Work as part of the Work under the Prime Contract, and submission and acceptance of all close-out documents required under the Subcontract, Subcontractor shall submit to Engineer an application for final payment and release of retainage, if any.
- B. Final payment becomes due 10 days after Engineer's receipt of payment from the Owner of amounts requested on behalf of Subcontractor. Engineer's receipt of payment of retainage withheld by Owner from amounts due to Engineer for the Subcontract Work is an express condition precedent to Engineer's obligation to pay such retainage to Subcontractor.

### **6.02 *Final Lien Waivers***

- A. Upon the request of Engineer, Subcontractor shall submit, as part of the application for final payment, a final waiver of lien and sworn statement indicating all sub-subcontractors, suppliers, and vendors, their contract amounts, and the final amounts paid to each sub-subcontractor, supplier, and vendor.

### **6.03 *Warranty of Title***

- A. Subcontractor warrants and guarantees that title to all Subcontract Work, materials, and equipment furnished under the Subcontract will pass to Owner free and clear of all liens and other title defects, and all patent, licensing, copyright, or royalty obligations.

#### 6.04 *Waiver of Claims*

- A. Final payment by Engineer to Subcontractor constitutes:
  - 1. A waiver of all claims by Engineer against Subcontractor, except claims arising from unsettled liens, from defective Subcontract Work appearing after final inspection, from failure to comply with the Subcontract Documents or the terms of any special guarantees specified therein, or from Subcontractor's continuing obligations under the Prime Contract; and
  - 2. A waiver of all claims by Subcontractor against Engineer other than those previously made in accordance with the requirements herein that remain unsettled.

### **ARTICLE 7—SUB-SUBCONTRACTORS**

#### 7.01 *Subcontractor's Responsibility*

- A. Subcontractor shall be fully responsible to Engineer for all acts and omissions of the sub-subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Subcontract Work, just as Subcontractor is responsible for Subcontractor's own acts and omissions.

#### 7.02 *No Third-Party Relationships*

- A. Nothing in the Subcontract Documents creates for the benefit of any such sub-subcontractor, supplier, or other individual or entity any contractual relationship between Engineer, Owner, or Owner's engineers or consultants and any such sub-subcontractor, supplier, or other individual or entity.
- B. Nothing in the Subcontract Documents creates any obligation on the part of Engineer, Owner, or Engineer to pay or to see to the payment of any money due any such sub-subcontractor, supplier, or other individual or entity, except as may otherwise be required by laws and regulations.

### **ARTICLE 8—PERFORMANCE OF THE SUBCONTRACT WORK**

#### 8.01 *Subcontractor's Obligations*

- A. Subcontractor shall provide all material, equipment, services, and labor necessary for the completion of the Subcontract Work.
- B. All materials and equipment must be as specified in the Subcontract Documents and be of good quality and new, except as otherwise provided in the Subcontract Documents. Subcontractor shall provide Engineer with such information and test results required under the Prime Contract to verify the quality of the materials and equipment furnished under the Subcontract Documents.

#### 8.02 *Verification of Existing Conditions*

- A. The dimensions, locations, and limits of the Subcontract Work are shown or indicated in the Subcontract Documents.
- B. The Engineer has used reasonable efforts to verify the accuracy of dimensions, locations, and limits in the Subcontract Documents, but takes no responsibility for the verification of information concerning actual conditions affecting the Subcontract Work. Subcontractor has

an independent obligation to verify actual conditions, including but not limited to dimensions, locations, and limits, prior to ordering equipment and materials and performing the Subcontract Work, and shall be responsible for all costs and expenses resulting from the failure to verify such information.

#### 8.03 *Supervision*

- A. At all times during the progress of the Subcontract Work, Subcontractor shall assign an authorized representative to provide competent, on-site supervision. Such representative must not be replaced without written notice to Engineer except under extraordinary circumstances.
- B. Subcontractor shall be solely responsible for scheduling and coordinating the work of sub-subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Subcontract Work under a direct or indirect contract with Subcontractor.
- C. Subcontractor shall supervise, inspect, and direct the Subcontract Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Subcontract Work in accordance with the Subcontract Documents.

#### 8.04 *Coordination with Other Subcontractors; Other Work at the Site*

- A. Subcontractor shall cooperate with other subcontractors and coordinate its Subcontract Work and schedule with other subcontractors on the Project. Subcontractor shall attend coordination meetings and endeavor to resolve all conflicts with other subcontractors without the intervention of Engineer. If a conflict cannot be resolved without the intervention of Engineer, the decision of Engineer regarding resolution of the conflict will be final.
- B. Subcontractor shall not damage, delay, or interfere with the work of other subcontractors or of Engineer, Owner, or others working at the site, shall be responsible for the cost of damage, delay, or interference caused by the operations of Subcontractor to the work of others.

#### 8.05 *Prosecution of the Subcontract Work*

- A. *Clean-up:* On not less than a daily basis, Subcontractor shall be responsible for cleaning up and removing all debris and waste resulting from the Subcontract Work, to avoid interference with the work and progress of others at the site. If Subcontractor fails to clean up and remove waste and debris in accordance with this provision, Engineer may provide for clean-up and removal of waste and debris at Subcontractor's expense.
- B. *Hoisting and Lifting:* Subcontractor shall provide all hoisting and lifting required for the Subcontract Work, unless Engineer has otherwise expressly agreed to provide hoisting, lifting, or both.
- C. *Temporary Utility Services and Temporary Facilities:* Subcontractor shall at its expense provide temporary utility services and temporary facilities needed for the performance of the Subcontract Work, except those temporary utility services and temporary facilities that Engineer has expressly agreed to provide at its expense.
- D. *Safety and Protection*
  - 1. Subcontractor shall perform the Subcontract Work in a safe manner, taking full responsibility for the prevention of harm or injury to its workforce, and taking all reasonable steps necessary to protect from harm, injury, or damage all persons, property, structures, materials, and equipment at or adjacent to the Subcontractor's work areas.

2. Subcontractor shall comply with the safety programs of the Owner and Engineer, when Subcontractor has been made aware of such requirements in writing.
  3. Subcontractor shall coordinate the safety of its employees, Subcontractor's lower-tier subcontractors, and Subcontractor's suppliers with Engineer's safety representative, and shall comply with all applicable OSHA and other laws and regulations related to safety and protection. Subcontractor shall ensure that its employees and the on-site employees of Subcontractor's lower-tier subcontractors and suppliers are properly trained and understand (a) Owner's, Engineer's, and Subcontractor's safety requirements, and (b) applicable safety laws and regulations. Subcontractor is responsible for furnishing to Engineer and others as applicable all required material safety data sheets.
  4. Subcontractor shall report promptly to Engineer all injuries, accidents, and damage that occurs during the performance of the Subcontract Work, and all failures or near-miss events that could have resulted in serious injury, even if no serious injury actually occurred.
- E. *Labor*: Subcontractor shall comply with applicable labor and jurisdictional requirements to prevent strikes and other work stoppages and slowdowns that would interfere with the Subcontract Work and the work of others. Subcontractor shall be responsible for delays resulting from Subcontractor's violation of this provision.
- F. *Communications with Owner and Engineer*: Subcontractor shall communicate with Owner, Owner's engineers, and Owner's other representatives solely through Engineer, with the following limited exceptions: (1) in the case of an emergency, Subcontractor may communicate directly with any entity or individual in the interests of safety and protection of property, (2) Subcontractor may directly request Owner to provide information about amounts paid to Engineer on account of Subcontract Work performed, and (3) Subcontractor may directly request Owner to provide Subcontractor with a copy of any payment bond furnished by Engineer.

#### 8.06 *Correction and Warranties*

- A. Subcontractor warrants and guarantees to Engineer that all Subcontract Work will be in accordance with the Subcontract Documents and will not be defective. Subcontractor's warranty and guarantee hereunder excludes defects or damage caused by abuse, modification, or improper maintenance or operation by persons other than Subcontractor and its sub-subcontractors, suppliers, or any other individual or entity for whom Subcontractor is responsible; or normal wear and tear under normal usage.
- B. Subcontractor's obligation to perform and complete the Subcontract Work in accordance with the Subcontract Documents will be absolute and Subcontractor shall be fully responsible for the Subcontract Work under the Subcontract to the same extent that Engineer is responsible for the Subcontract Work to the Owner under the Prime Contract.
- C. Subcontractor shall correct the Subcontract Work to the same extent that Engineer is required to correct the Prime Contract Work (including the Subcontract Work) under the Prime Contract. Subcontractor shall correct Subcontract Work whether or not installed or completed. If the Subcontract Work has been rejected, Subcontractor shall remove such rejected Subcontract Work from the Project at the direction of Engineer, and replace it with Subcontract Work that is not defective.

- D. For a period of one year after substantial completion of the Prime Contract Work, and for any additional period beyond one year as required under the Prime Contract for correction by the Engineer of the Prime Contract Work, and promptly after receipt of written notice, Subcontractor shall correct all defective Subcontract Work as directed by Engineer. Subcontractor shall indemnify Engineer, Owner, Owner's engineers and consultants, for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- E. All such correction obligations are in addition to the warranty, guarantee, and contractual duties established above and elsewhere in the Subcontract Documents.
- F. The obligations under this Paragraph 8.06 will survive completion of the Subcontract Work and, when the Prime Contract is complete and ready for final payment by Owner, Engineer may assign its rights under this Paragraph 8.06 to Owner upon agreement between Owner and Engineer and notice to Subcontractor.

## **ARTICLE 9—CHANGES TO THE SUBCONTRACT**

### **9.01 *Changes***

- A. Without invalidating the Subcontract, Engineer may, at any time or from time to time, order changes to the Subcontract Work including additions, deletions, or revisions in the Subcontract Work. Subcontractor shall promptly proceed with the Subcontract Work as changed. All changed Subcontract Work will be performed under the applicable conditions of the Subcontract Documents. Subcontractor shall not perform any changes to the Subcontract Work that would increase the Subcontract Price or Subcontract Times without express written authority from Engineer.
- B. Subcontractor shall deliver notice of each request for a change in compensation or time within 7 days of the associated directive to perform changed Subcontract Work, and not later than 2 days before Prime Contract requirements relative to submitting claims and change proposals.
- C. Changes in the Subcontract Price for changed Subcontract Work will be made on the basis of either a mutually acceptable lump sum price, or under unit prices consistent with the unit prices set forth in the Subcontract as of the Subcontract Date and on the Bid Table. To the extent the changed Subcontract Work has no predetermined costs or unit prices under the original Subcontract, and the parties do not agree to a lump sum for the changed Subcontract Work, the amount of the request for changed compensation will be based upon Subcontractor's cost of labor (consistent with any applicable rates negotiated under the original Subcontract), plus the direct costs of sub-subcontracts, materials and equipment to be consumed or incorporated in the changed Subcontract Work, plus overhead and profit consistent with the price negotiated for the original Subcontract Work and subject to approval by Engineer.
- D. To the extent that a change to the Subcontract Work resulted from a revision of the Prime Contract, the compensation to Subcontractor for such changed Subcontract Work will be limited to the amount collected by Engineer from Owner on behalf of Subcontractor for such change in the Subcontract Work. In the event that the revision results in a deduction of the

Subcontract Price, the deduction will be based upon the share of the deduction assessed against Engineer under the Prime Contract that is attributable to the change in Subcontract Work.

## **ARTICLE 10—BONDS, INSURANCE, AND INDEMNIFICATION**

### **10.01 *Performance Bond, Payment Bond, and Other Bonds***

- A. Subcontractor shall at its expense furnish a performance bond and a payment bond, each in an amount equal to or greater than the Subcontract Price, as security for the faithful performance and payment of all of Subcontractor's obligations under the Subcontract Documents. If the Subcontract Documents as of the Subcontract Date do not require performance and payment bonds, but Engineer subsequently instructs Subcontractor to furnish such bonds, Subcontractor shall do so at Engineer's expense.
- B. The performance and payment bonds must remain in effect until not less than the longer of: (1) one year after the date when final payment becomes due from Engineer; or (2) completion of the correction period specified in this Subcontract, except as provided otherwise by applicable laws or regulations. Subcontractor shall also furnish such other bonds as are required by the Subcontract Documents. The performance bond will be issued on EJCDC® C-610 Performance Bond (2018). The Payment Bond will be issued on the EJCDC® C-615 Payment Bond (2018). Terms of these bonds apply except as expressly provided otherwise by laws or regulations.
- C. If the Prime Contract requires that Engineer furnish a Warranty Bond, then Subcontractor shall furnish a Warranty Bond with respect to the Subcontract Work, under the same requirements. The bond will be issued using EJCDC® C-612, Warranty Bond (2018).
- D. All bonds must be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- E. Subcontractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- F. If the surety on a bond furnished by Subcontractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Subcontractor shall promptly notify Engineer and shall, within 20 days after the event giving rise to such notification, furnish another bond and surety, both of which must comply with the bond and surety requirements above.
- G. If the Subcontract requires Subcontractor to provide its own performance bond and payment bond, as described in Paragraphs 10.01.A. through D., the Engineer may, at its sole discretion, provide such bonds for the Subcontractor, either as individual instruments or as a part of Engineer's bonding. In such case Subcontractor shall be responsible to Engineer for a proportionate share of Engineer's bond costs, computed as the percentage of the total

Subcontract Price relative to the total bonded Contract Price, and the Subcontract Price will be adjusted accordingly.

- H. As an alternative to requiring Subcontractor to provide or contribute to the cost of performance bonds or payment bonds as described in this Paragraph 10.01, the Engineer may, at its sole discretion, waive such requirements for this Subcontract, and the Subcontract Price will be adjusted accordingly.
- I. If Subcontractor has failed to obtain a required bond, Engineer may exclude the Subcontractor from the site and exercise Engineer's termination rights under Article 11.
- J. Upon request, Engineer shall provide a copy of the payment bond to any sub-subcontractor, supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Subcontract Work.

#### 10.02 *Insurance—General Provisions*

- A. Subcontractor shall obtain and maintain insurance as required in this Article and in any Subcontract exhibit or supplementary Subcontract Document regarding insurance.
- B. All insurance required by the Subcontract to be purchased and maintained by Subcontractor must 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 elsewhere in the Subcontract Documents, all companies that provide insurance policies required under this Subcontract must have an A.M. Best rating of A-VII or better.
- C. Subcontractor shall deliver to Engineer, with copies to each named insured and additional insured (as identified here or elsewhere in the Subcontract Documents), certificates of insurance establishing that Subcontractor has obtained and is maintaining the policies, coverages, and endorsements required by the Subcontract. Upon request by Engineer or any other insured, Subcontractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Subcontractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Failure of Engineer to demand such certificates or other evidence of the Subcontractor's full compliance with these insurance requirements, or failure of Engineer to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Subcontractor's obligation to obtain and maintain such insurance.
- E. If Subcontractor does not purchase or maintain all of the insurance required of it by this Subcontract, the Subcontractor shall notify Engineer in writing of such failure to purchase prior to the start of the Subcontract Work, or of such failure to maintain prior to any change in the required coverage.
- F. If Subcontractor has failed to obtain and maintain required insurance, Engineer may exclude the Subcontractor from the site and exercise Engineer's termination rights under Article 11.
- G. Without prejudice to any other right or remedy, if Subcontractor has failed to obtain required insurance, Engineer may elect to obtain equivalent insurance to protect Engineer's interests at the expense of Subcontractor, and the Subcontract Price will be adjusted accordingly.

- H. Engineer does not represent that insurance coverage and limits established in this Subcontract necessarily will be adequate to protect Subcontractor or Subcontractor's interests.
- I. The insurance and insurance limits required herein will not be deemed as a limitation on Subcontractor's liability under the indemnities granted to Engineer and other individuals and entities in the Subcontract Documents.

10.03 *Subcontractor's Insurance*

- A. *Workers' Compensation:* Subcontractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  2. United States Longshoreman and Harbor Workers' Compensation Act (if applicable) and Jones Act coverage (if applicable).
  3. claims for damages because of bodily injury, occupational sickness or disease, or death of Subcontractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  4. Foreign voluntary worker compensation (if applicable).

<b>Workers' Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers' Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
<b>Jones Act (if applicable)</b>	
Bodily injury by accident—each accident	\$
Bodily injury by disease—aggregate	\$
<b>Employer's Liability</b>	
Each accident	\$100,000
Each employee	\$100,000
Policy limit	\$500,000
<b>Stop-gap Liability Coverage</b>	
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:	\$

- B. *Commercial General Liability—Claims Covered:* Subcontractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Subcontractor, on an occurrence basis, against:
  1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Subcontractor's employees;

2. Claims for 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.
- C. *Commercial General Liability—Form and Content:* Subcontractor’s commercial liability policy must be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance must remain in effect for three years after final payment.
    - b. Subcontractor shall furnish Engineer and each other additional insured (as identified in this Article or elsewhere in the Subcontract Documents) 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 Subcontractor’s contractual indemnity obligations under the Subcontract Documents.
  3. Severability of interest.
  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); or their equivalent if Subcontractor demonstrates that the specified endorsements are not commercially available.
  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.
  8. If governing law invalidates or restricts the use of a specified additional insurance endorsement, then Subcontractor will furnish an endorsement that is compliant with governing law while providing reasonable protection of the interests of the additional insureds.
- D. *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 Subcontractor 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 Subcontractor’s work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

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

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Bodily Injury</b>	
Each Person	\$1,000,000
Each Accident	\$1,000,000
<b>Property Damage</b>	
Each Accident	\$1,000,000
<b>General Aggregate</b>	
General Aggregate	\$2,000,000

- F. *Umbrella or Excess Liability:* Subcontractor 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.

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$2,500,000
General Aggregate	\$2,500,000

- G. *Subcontractor’s Pollution Liability Insurance:* Subcontractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Subcontractor’s operations and completed operations. The completed operations coverage must remain in effect for no less than three years after final completion.

<b>Contractor’s Pollution Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence/Claim	\$1,000,000
General Aggregate	\$1,000,000

- H. *Additional Insureds*: The Subcontractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, and pollution liability policies must include and list as additional insureds Engineer, Owner, and Owner's engineers, architects, and consultants, and any individuals or entities identified as additional insureds elsewhere in the Subcontract Documents; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds must provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Subcontractor shall obtain all necessary endorsements to support these requirements.
- I. *Subcontractor's Professional Liability Insurance*: If Subcontractor will provide or furnish professional services under this Subcontract, through a delegation of professional design services or otherwise, then Subcontractor 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 Subcontract and for a minimum of two years after Substantial Completion of the Project. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.
- J. *General provisions*: The policies of insurance required by this Paragraph 10.03 must:
1. include at least the specific coverages provided in this Subcontract.
  2. be written for not less than the limits of liability expressly provided in this Subcontract, including any Subcontract exhibit or supplementary Subcontract Document specifying insurance policy limits, or if no such express insurance limits are set forth in the Subcontract, then for not less than the limits required of Engineer by Owner in the Prime Contract, for the corresponding types of insurance. If laws or regulations require a higher limit, then Subcontractor shall meet such legal requirement.
  3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 10 days prior written notice has been given to Subcontractor. Within three days of receipt of any such written notice, Subcontractor shall provide a copy of the notice to Engineer and each other insured under the policy.
  4. remain in effect at least until final payment (and longer if expressly required herein) and at all times thereafter when Subcontractor may be correcting, removing, or replacing defective Subcontract Work as a warranty or correction obligation, or otherwise, or returning to the site to conduct other tasks arising from the Subcontract Documents.
  5. be appropriate for the Subcontract Work being performed and provide protection from claims that may arise out of or result from Subcontractor's performance of the Subcontract Work and Subcontractor's other obligations under the Subcontract Documents, whether it is to be performed by Subcontractor, any lower-tier subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the Subcontract Work, or by anyone for whose acts any of them may be liable.
- K. Subcontractor waives all rights against Owner, Engineer, and all individuals or entities identified in the Prime Contract's Supplementary Conditions to be listed as insureds or

additional insureds under the builder's risk, installation floater, or other forms of property insurance, and against the Owner's engineers and consultants, and their consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such builder's risk, installation floater, or other form of property insurance applicable to the work under the Prime Contract; and Engineer waives all rights against Subcontractor for all such losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such builder's risk, installation floater, or other form of property insurance applicable to the work under the Prime Contract.

- L. If Engineer is responsible under the Prime Contract and any builder's risk or other property insurance policy for the payment of a deductible, or an amount within a deductible, and the need to pay such deductible or amount within a deductible is attributable in whole or part to the actions or inactions of Subcontractor, its sub-subcontractors, employees, agents, or others for which Subcontractor is responsible, then Subcontractor shall pay its attributable share of such deductible.
- M. Upon request the Engineer shall provide to Subcontractor a copy of any builder's risk, installation floater, or other property insurance policy applicable to the work under the Prime Contract. Engineer may block out (redact) any confidential premium or pricing information contained in any such policy. Subcontractor may elect to obtain other insurance at its expense, if it concludes that its interests are not insured under such policy.
- N. *Other Required Insurance:* **[Identify any other policies that Subcontractor must obtain and maintain, such as railroad protective liability insurance].**

#### 10.04 *Indemnification*

- A. To the fullest extent permitted by laws and regulations, Subcontractor shall indemnify and hold harmless Engineer, Owner, and Owner's engineers and consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Subcontract Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontract Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Subcontractor, any lower tier subcontractor, supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Subcontract Work or anyone for whose acts any of them may be liable.
- B. In addition to the indemnification obligations in the preceding paragraph, Subcontractor shall indemnify Engineer for all economic costs and expenses, including attorney's fees, for any claim against Engineer as a result of and to the extent caused by Subcontractor's breach of any obligation under the Subcontract.
- C. In any and all claims against Engineer, Owner, or Owner's engineers or consultants, 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 Subcontractor, any lower tier subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Subcontract Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 10.04.A. must not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor, lower-tier subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- D. With respect to the Subcontract Work, the breach of obligations under the Subcontract, and any negligent act or omission of Subcontractor, any lower tier subcontractor, supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Subcontract Work, or anyone for whose acts any of them may be liable, and to the fullest extent permitted by law, Subcontractor assumes the same or corresponding responsibilities as Engineer for indemnity obligations set forth in the Prime Contract.

## **ARTICLE 11—SUSPENSION AND TERMINATION**

### **11.01 *Engineer May Suspend Work***

- A. In the event that Owner suspends the work of Engineer under the Prime Contract, Engineer may suspend the performance of the Subcontract or any portion thereof for a period of not more than 90 consecutive days, by giving notice in writing to Subcontractor of such suspension. Subcontractor shall resume the Subcontract Work when instructed by Engineer to do so. Subcontractor shall be granted an adjustment in the Subcontract Price or an extension of the Subcontract Times, or both, directly attributable to any such suspension only to the extent that Engineer receives an adjustment of the Prime Contract price or the Prime Contract time for the Subcontractor's proportionate share of work under the Prime Contract.
- B. Engineer may suspend the Subcontract Work for a period of not more than 90 days, or to the extent permitted by the progress schedule or any express provision of the Subcontract Documents, for Engineer's own purposes.
- C. Engineer may suspend the work of Subcontractor with all costs and liability for any delay in the Subcontract Work and others to be assessed against the Subcontractor for the following Subcontract violations until the Subcontractor demonstrates it has cured the violations as follows:
  - 1. Subcontractor fails to comply with the Owner's or Engineer's safety program;
  - 2. Subcontractor or its employees are in violation of OSHA or state or local safety laws or regulations;
  - 3. Subcontractor has installed defective Subcontract Work that is not in compliance with the Subcontract Documents and has failed to cure the defective Subcontract Work;
  - 4. Subcontractor has violated any laws or regulations applicable to the performance of the Subcontract Work; and
  - 5. Subcontractor has failed to pay a supplier or lower-tier subcontractor pursuant to Subcontractor's legal or contractual obligations.
- D. If Subcontractor fails to comply with the progress schedule, causing delay to the Subcontract Work or the Prime Contract work, after three days' notice by Engineer and failure of

Subcontractor to demonstrate that it has implemented procedures to comply with the schedule through measures such as providing supplemental labor, materials, and tools, then Engineer may implement its own procedures to meet the schedule, by providing supplemental labor, materials, tools, or taking other measures, through its own or other forces, and Engineer may assess the cost of such supplemental procedures against the Subcontract.

#### 11.02 *Engineer May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
  - 1. Subcontractor's persistent failure to perform the Subcontract Work in accordance with the Subcontract Documents (including, but not limited to, failure to supply sufficient skilled workers, suitable materials, or equipment, or failure to adhere to the Subcontract progress schedule);
  - 2. Subcontractor's disregard of laws or regulations of any public body having jurisdiction;
  - 3. Subcontractor's repeated disregard of the authority of Engineer; or
  - 4. Subcontractor's failure to perform or otherwise to comply with a material term of the Subcontract.
- B. If one or more of the events identified in the preceding paragraph occur, Engineer may, after giving Subcontractor 7 days written notice of its intent to terminate the services of Subcontractor, or in the event the Subcontractor provided a performance bond covering the Subcontract the Engineer may provide notice to the Subcontractor and surety in accordance with the requirements of the applicable performance bond of its intent to terminate the services of Subcontractor to preserve Engineer's rights under the performance bond. Upon termination of the Subcontract, Engineer may:
  - 1. exclude Subcontractor from the site, and take possession of the Subcontract Work;
  - 2. incorporate in the Subcontract Work all materials and equipment stored at the site, or for which Engineer has paid Subcontractor but which are stored elsewhere; and
  - 3. complete the Subcontract Work as Engineer may deem expedient.
- C. If Engineer proceeds as provided in Paragraph 11.02.B., Subcontractor shall not be entitled to receive any further payment until the Subcontract Work is completed. If the unpaid balance of the Subcontract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Engineer arising out of or relating to completing the Subcontract Work, such excess will be paid to Subcontractor. If such claims, costs, losses, and damages exceed such unpaid balance, Subcontractor shall pay the difference to Engineer. When exercising any rights or remedies under this paragraph, Engineer shall not be required to obtain the lowest price for the Subcontract Work performed.
- D. Notwithstanding Paragraphs 11.02.A. and 11.02.B., Subcontractor's services will not be terminated if Subcontractor begins within four days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 14 days of receipt of said notice. If the Subcontractor fails to cure within 14 days of receipt of said notice, the Subcontract will be deemed terminated in accordance with

provisions 11.02.A through 11.02.C upon two days' notice by the Engineer following the 14-day period.

- E. Where Subcontractor's services have been so terminated by Engineer, the termination will not affect any rights or remedies of Engineer against Subcontractor then existing or which may thereafter accrue. Any retention or payment of money due Subcontractor by Engineer will not release Subcontractor from liability.
- F. If and to the extent that Subcontractor has provided a performance bond, the termination procedures of that bond will supersede the procedures in this Paragraph 11.02.

#### 11.03 *Termination of Engineer or Rejection of Subcontract by Owner*

- A. The Engineer may terminate the Subcontract at any time, if the Prime Contract is terminated by the Owner, or if Owner rejects the Subcontract in accordance with the terms of the Prime Contract, the Engineer may terminate the Subcontract without penalty.
- B. In the event of a termination pursuant to Paragraph 11.03, the costs and expenses to be paid to Subcontractor resulting from a termination under this provision must be limited to the costs and expenses recovered by Engineer from Owner on Subcontractor's behalf.

#### 11.04 *Engineer May Terminate for Convenience*

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

#### 11.05 *Subcontractor May Stop Work or Terminate*

- A. If, through no act or fault of Subcontractor, Engineer after receipt of payment from Owner fails to make payment due Subcontractor, for more than 30 days after payment is due, then Subcontractor may, upon 7 days written notice to Engineer, and provided Engineer does not remedy such failure within 7 days thereafter, terminate the Subcontract and recover payment from Engineer subject to the terms of this Subcontract.
- B. As an alternative to terminating the Subcontract and without prejudice to any other right or remedy, if a payment owed to Subcontractor is more than 30 days past due, then Subcontractor may, 7 days after written notice to Engineer, stop the Subcontract Work until payment is made of all such amounts due Subcontractor, including interest thereon at an annual rate of five percent per annum, or if applicable at the rate prescribed by law, without penalty.

- C. If the Engineer suspends the Subcontractor's work for more than 120 days, the Subcontractor may upon 7 days' written notice terminate the Subcontract and recover the amounts due the Subcontractor for Subcontract Work completed as of the date of termination, including retainage withheld from the Subcontractor to date and interest thereon at an annual rate of five percent per annum, or if applicable at the rate prescribed by law, without penalty.

## **ARTICLE 12—CLAIMS AND DISPUTE RESOLUTION**

### **12.01 *Claims***

- A. As a condition precedent to any consideration, pursuit, or recovery by Subcontractor of any change proposal, request, demand, or claim (collectively referred to as "Claim") seeking an increase in Subcontract Price, Subcontract Time, or both, Subcontractor shall provide notice of any such Claim to Engineer no less than 30 days after the event giving rise to the Claim, and for Claims related in any way to the Owner or Prime Contract, within five days.
- B. Subcontractor's recovery of additional cost, time, or both cost and time for any Claim attributable to the Owner will be limited to the proportionate recovery by Engineer against Owner for such Claim. Subcontractor will cooperate and assist Engineer in pursuing any Claim by Engineer against Owner on behalf of Subcontractor, including the timely preparation and delivery of supporting documentation.
- C. If the pursuit of any Claim by Engineer against Owner on Subcontractor's behalf requires the expenditure by Engineer of legal or consulting fees, or results in litigation, arbitration, or any dispute resolution procedures, Subcontractor agrees to pay for a proportionate share of attorneys' fees, consultant fees, and litigation, arbitration, and other resolution costs incurred by Engineer in pursuing the claim on behalf of Subcontractor, based upon the amount claimed by Subcontractor as compared to the total value of the claim pursued by the Engineer.
- D. Except as provided by applicable lien, bond, or prompt payment laws, Subcontractor shall not make any direct claims against Owner for compensation or additional compensation for performance of the Subcontract Work.

### **12.02 *Dispute Resolution***

- A. Either Engineer or Subcontractor may request mediation of any dispute between Engineer and Subcontractor in connection with this Subcontract that has not been settled to their mutual satisfaction within the applicable notice or cure periods provided in this Subcontract, or that Engineer has not pursued against Owner as described above. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Subcontract Date. The request for mediation must be submitted in writing to the American Arbitration Association and the other party to this Subcontract.
- B. Engineer and Subcontractor shall participate in the mediation process in good faith. The process must be concluded within 60 days of filing of the request. The date of termination of the mediation must be determined by application of the mediation rules referenced above.
- C. If the dispute is not resolved by mediation, each party to this Subcontract shall be barred from further action to assert its claim after 30 days after termination of the mediation unless, within that time period, Engineer or Subcontractor:
  - 1. elects in writing to invoke any dispute resolution procedure expressly provided for in a Subcontract exhibit or elsewhere in the Subcontract Documents; or

2. agrees with the other party to submit the dispute to another dispute resolution process;  
or
  3. gives written notice to the other party of the intent to submit the claim to a court of competent jurisdiction.
- D. If Engineer is engaged in an arbitration with Owner that relates, in whole or in part, to a dispute between Engineer and Subcontractor, then Engineer shall have the sole and exclusive discretion to join Subcontractor as a party to the Engineer-Owner arbitration. Subcontractor consents to the jurisdiction of any such arbitration proceeding to which it is joined pursuant to this provision.

## **ARTICLE 13—SUBCONTRACT DOCUMENTS**

### **13.01 *Subcontract Contents***

- A. The Subcontract Documents consist of the following:
1. This Subcontract.
  2. Prime Contract, with the exception of confidential terms. The following portions of the Prime Contract are attached as Exhibit A:
    - a. General Conditions.
    - b. Supplementary Conditions.
    - c. Project Manual
    - d. Drawings (Attachment A of the Project Manual)
  3. Scope of Work as described in Paragraph 1.5 **Section 01 11 00** of the Project Manual.
  4. Requirements for Subcontractor's insurance—limits, deductibles, special endorsements, etc.
  5. Subcontract performance bond.
  6. Subcontract payment bond.
  7. Subcontractor's bid or proposal.
  8. Subcontract dispute resolution procedures, if any.
  9. The following which may be delivered or issued on or after the Subcontract Date 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 documents listed in the paragraph above are attached to this Subcontract (except as expressly noted otherwise above).

- C. There are no Subcontract Documents other than those listed above in this Article 14. The Subcontract supersedes prior negotiations, representations, and agreements regarding the Subcontract Work, whether written or oral.
- D. The Subcontract Documents may only be amended, modified, or supplemented by written agreement of Engineer and Subcontractor.

#### **ARTICLE 14—MISCELLANEOUS**

##### **14.01 *Terms***

Terms used in this Subcontract will have the meanings stated here, or in the Prime Contract's General Conditions and Supplementary Conditions.

##### **14.02 *Assignment of Subcontract***

No assignment by Subcontractor of any rights under or interests in the Subcontract will be binding on Engineer without Engineer's written consent; and, specifically but without limitation, payments that may become due and money that is due may not be assigned by Subcontractor 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 Subcontract Documents.

##### **14.03 *Successors and Assigns***

Engineer and Subcontractor 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 Subcontract Documents.

##### **14.04 *Severability***

Any provision or part of the Subcontract Documents held to be void or unenforceable under any law or regulation will be deemed stricken, and all remaining provisions must continue to be valid and binding upon Engineer and Subcontractor, which agree that the Subcontract 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.

#### **ARTICLE 15—SUBCONTRACTOR'S REPRESENTATIONS AND CERTIFICATIONS**

##### **15.01 *Subcontractor's Representations***

- A. In order to induce Engineer to enter into this Subcontract, Subcontractor makes the following representations:
  - 1. Subcontractor has examined and carefully studied the Subcontract Documents, and any data and reference items identified in the Subcontract Documents, including but not limited to initial schedules identified by Engineer.
  - 2. Subcontractor 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 Subcontract Work.
  - 3. Subcontractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Subcontract Work.

4. Subcontractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the site and drawings of physical conditions relating to existing surface or subsurface structures at the site that have been identified by the Prime Contract or Subcontract, especially with respect to technical data in such reports and drawings.
5. Subcontractor has carefully studied reports and drawings of hazardous environmental conditions, if any, at or adjacent to the site that have been identified in the Prime Contract or Subcontract, especially with respect to technical data in such reports and drawings.
6. Subcontractor has considered the information known to Subcontractor itself; information commonly known to contractors and subcontractors doing business in the locality of the site; information and observations obtained from visits to the site; the Subcontract Documents; and the site-related reports and drawings, if any, identified in the Prime Contract or Subcontract, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Subcontract Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Subcontractor; and (c) Subcontractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraphs, Subcontractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Subcontract Work at the Subcontract Price, within the Subcontract Times, and in accordance with the other terms and conditions of the Subcontract.
8. Subcontractor is aware of the general nature of work to be performed by Owner, Engineer, other subcontractors, and others at the site that relates to the Subcontract Work as indicated in the Subcontract Documents.
9. Subcontractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Subcontractor has discovered in the Subcontract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Subcontractor.
10. The Subcontract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Subcontract Work.
11. Subcontractor's entry into this Subcontract constitutes an incontrovertible representation by Subcontractor that without exception all prices in the Subcontract are premised upon performing and furnishing the Subcontract Work required by the Subcontract Documents.

#### 15.02 *Subcontractor's Certifications*

- A. Subcontractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Subcontract. For the purposes of this paragraph:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Subcontract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Subcontract to the detriment of

- Owner or Engineer, (b) to establish bid or Subcontract prices at artificial non-competitive levels, or (c) to deprive Owner or Engineer 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 or Engineer, 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 Subcontract.

#### **ARTICLE 16—CSKT INDIAN PREFERENCE POLICY ORDINANCE**

The Subcontractor and all his sub-contractors agree unequivocally to comply with all CSKT Indian Preference Policy Ordinance requirements including, but not limited to the following:

- A. **Indian Preference Compliance Plan:** A signed Indian Preference Plan for each contract must be submitted and approved 10 days prior to start up. The plan is the working application of the Indian Preference Policy Ordinance and is an agreement that defines for Indian Preference for all hiring and subcontracting. All Subcontractors will also be required to submit this plan. All vendors must be approved. The Subcontractor is responsible for monitoring all relevant subcontractors for compliance. Failure to submit an acceptable compliance plan will result in non-compliance and the employer will be denied the right to commence business within the exterior boundaries of the CSKT Indian Reservation.
- B. **Reports:** The Subcontractor is responsible for submitting the following reports to the Indian Preference Office:
  1. Project Payroll Reports (submitted within one week following payroll disbursement);
  2. Disciplinary Action Reports (submitted within two (2) working days);
  3. Promotion Reports (submitted within two (2) working days);
  4. Termination Reports (submitted within 24 hours);
  5. Explanation of Termination (submitted within one week of Termination Report); and
  6. Layoff Reports (submitted 24 hours in advance of layoffs).
- C. **Contracting Fees:** A prime contractor shall be assessed a one time fee of 3% of the bid for any contract over \$ 25,000.00. The Subcontractor shall pay one half of the fee prior to starting work on the Flathead Indian Reservation, and the remaining half upon completion of the contract.

#### **ARTICLE 17—MONTANA STATE LAWS**

The Subcontractor and all his sub-subcontractors agree unequivocally to comply with all Montana State Laws including, but not limited to the following:

- A. **Workman's Compensation Coverage:** A public works Subcontractor must elect to be bound by Workman's Compensation plan number II or III, and shall supply to the Engineer a certificate confirming current coverage. (Section 39-71-403 M.C.A., 1979)

- B. Preference Montana Products: Products, materials, supplies and equipment manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects, if such products, materials, supplies and equipment are comparable in price and quality. (Section 18-1-112 M.C.A., 1979).

Withholding: **At least ten thousand dollars (\$10,000)** of the contract price shall be withheld at all times until the termination of the contract.

Registration: The Subcontractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA prior to the Contract being executed by the Engineer. A bidder must demonstrate that it has registered or promises that it will register immediately upon Notice of Award. If the prevailing bidder cannot or does not register in time for the Engineer to execute the Contract within fifteen (15) day time period of the Notice of Award, the Engineer may award to next lowest responsible bidder who meets this requirement. The Engineer cannot execute a contract for construction nor issue a Notice to Proceed to a Subcontractor who is not registered according to (39-9-401 (a) MCA).

Prevailing Wages & Preference of Montana Labor: The Subcontractor and sub-subcontractors shall not pay less than the latest **Federal Labor Standard Provisions (Davis-Bacon) wage** as determined by the U.S. Secretary of Labor.

Submission of Payroll Records: All subcontractors, whether independent contractors or employees shall maintain certified payroll records available within 5 days of a request for documentation by the Engineer. Federal payroll form WH-347 is an acceptable form of reporting and the records are to be kept a minimum of three years.

Discrimination: Per 49-3-207 MCA The Subcontractor and sub-subcontractors agree that all hiring will be on the basis of merit and qualifications and that they will not discriminate on the basis of race, color, religion, creed, political ideas, sex age, marital status, physical or mental disability, or national origin.

## **ARTICLE 18— DAVIS-BACON (PREVAILING WAGE) REQUIREMENTS**

Prevailing Wages: The Subcontractor and sub-subcontractors shall not pay less than the latest Federal Labor Standard Provisions (Davis-Bacon) wage as determined by the U.S. Secretary of Labor. A copy of said wage rate is attached as part of the specifications in **Section 00 73 46**.

Submittal of Payroll Records: All subcontractors, whether independent contractors or employees shall maintain certified payroll records available within 5 days of a request for documentation by the Engineer. Federal payroll form WH-347 is an acceptable form of reporting and records are to be kept a minimum of three years. Instructions for completing WH-347, and form WH-347, are included in **Section 00 43 43**.

Recordkeeping: Under the Davis Bacon Act, covered contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work and for a period of three years thereafter. Records to be maintained include:

- Name, address, and Social Security number of each employee;
- Each employee's work classifications;
- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents;
- Daily and weekly numbers of hours worked;

- Deductions made;
- Actual wages paid;
- If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected; and,
- If applicable, detailed information regarding approved apprenticeship or trainee programs.

Reporting: The Subcontractor and any sub-subcontractors must, on a weekly basis, provide the Engineer a copy of all payrolls providing the information listed above under “Recordkeeping” for the preceding weekly payroll period. Each payroll submitted must be accompanied by a “Statement of Compliance.” The Subcontractor, sub-subcontractor or the authorized officer or employee of the Subcontractor or sub-subcontractor who supervises the payment of wages must sign the weekly statement. Statements of Compliance are to be made on the form WH-347 "Payroll (For Contractors Optional Use)", provided in **Section 00 43 43**, or on any form with identical wording. This must be completed within seven days after the regular pay date for the pay period.

Interviews: The Subcontractor must allow and make its employees available for interviews in confidence by the Engineer, or its representative, to verify payment of Davis Bacon wages.

Additional Information: Additional information regarding compliance with the Davis-Bacon Act may be obtained from the Department of Labor website at: <http://www.dol.gov/dol/compliance/comp-dbra.htm>.

**ARTICLE 19—SMALL, MINORITY AND WOMEN’S BUSINESSES:**

If Subcontractor intends to let any subcontracts for a portion of the work, Subcontractor shall take affirmative steps to assure that small, minority and women’s businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of: (1) including qualified small, minority and women’s businesses on solicitation lists; (2) assuring that small, minority and women’s businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women’s businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women’s businesses; (5) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) Subcontractor is encouraged to procure goods and services from labor surplus area firms.

A list of selected DBEs within Montana can be obtained from the Montana Department of Transportation website at: [http://www3.mdt.mt.gov:7782/mttplc/mttplc.tplk0002.contractor\\_init](http://www3.mdt.mt.gov:7782/mttplc/mttplc.tplk0002.contractor_init)



Notice: The Montana Department of Transportation maintains an online directory of DBE firms at. Bidders are encouraged to utilize this service to identify potential DBE firms. Bidders can choose to view the DBE Directory by Type of Work, Name of Business, or Complete Directory.

Disadvantaged firms appearing in the State’s online directory have been certified in accordance with the U.S. DOT (U.S. Department of Transportation) regulation 49 CFR, Parts 23 and 26. The directory is updated daily. For more information or assistance, call 406-444-6337 or 406-444-7287. INCLUSION IN THIS DIRECTORY DOES NOT CONSTITUTE AN ENDORSEMENT OF THE FIRMS LISTED.

Subcontractor agrees that it will cooperate with and assist Engineer in fulfilling the DBE Good Faith Effort Requirement achieving Fair Share Objectives shown below:

	Minority Business Enterprise (MBE)	Women’s Business Enterprise (WBE)
<b>CONSTRUCTION</b>	2%	3%
<b>SUPPLIES</b>	2%	3%
<b>SERVICES</b>	2%	3%
<b>EQUIPMENT</b>	2%	3%

Quarterly DBE Utilization Reporting. In order to fulfill federal reporting requirements, the Subcontractor must report to Engineer on a quarterly basis, their utilization of Minority Business Enterprise (MBE) and Women’s Business Enterprise (WBE) subcontractor/supplier/vendors.

**ARTICLE 21 – FEDERAL REQUIREMENTS**

This contract is funded by the USEPA. Neither USEPA, nor any of its departments, entities, or employees is a party to the contract. As a recipient of a USEPA grant, Federal procurement standards and guidance (40 CFR 30.48 and 31.36(i)) must be followed when purchasing supplies, equipment, and services.

**19.01 Equal Employment Opportunity**

As required for projects in excess of \$100,000, the Subcontractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Additional information on Equal Employment Opportunity may be obtained at the Department of Labor web-site at: <http://library.dol.gov/dol/compliance/comp-eeo.htm>.

**19.02 Copeland "Anti-Kickback" Act**

As required for projects in excess of \$100,000, the Subcontractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874, 18 U.S.C. 874 and 40 U.S.C. 276c), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act prohibits contractors from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they is otherwise entitled.

Additional information on the Copeland "Anti-Kickback" Act may be obtained at the Department of Labor web-site at: <http://www.dol.gov/dol/compliance/comp-copeland.htm>.

### 19.03 *Davis-Bacon Act*

As amended (40 U.S.C. 276a to a-7) – Some EPA grant programs (i.e. Brownfields) require construction contracts which exceed \$2,000 to require compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7), as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors must pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor.

Specific Davis-Bacon Act requirements pertaining to this project are specified in Article 19 – Davis-Bacon (Prevailing Wage) Requirements.

Additional information related to the Davis-Bacon Act, including prevailing wage rates, on the Department of Labor web-site at: <http://www.dol.gov/dol/compliance/comp-dbra.htm>.

### 19.04 *Contract Work Hours and Safety Standards Act*

(40 U.S.C. 327-333) – (a) As required for projects in excess of \$100,000, or other contracts that involve the employment of mechanics or laborers in excess of \$2,500, the Subcontractor shall comply with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor must compute the wages of every mechanic and laborer on the basis of a standard 40 hour work week. If a mechanic or laborer works more than 40 hours in a week, the contractor must pay the worker at a rate of not less than one and ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(b) As required for projects in excess of \$100,000, the Subcontractor shall provide that no laborer or mechanic may be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. (This requirement does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence).

Additional information on the Contract Work Hours and Safety Standards Act may be obtained at the Department of Labor web-site at: <http://library.dol.gov/dol/compliance/comp-cwhssa.htm>.

### 19.05 *Rights to Inventions*

For experimental, developmental, or research work contracts, the Subcontractor shall comply with EPA's rights in any resulting invention (see 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements").

### 19.06 *Access to Records*

As required for negotiated contracts in excess of \$100,000, the Subcontractor must allow the Engineer, the EPA, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the contractor directly pertinent to your contract for the purpose of making audits, examinations, excerpts and transcriptions (40 CFR 30.48(d)).

### 19.07 *Debarment and Suspension*

As required for projects in excess of \$100,000, Subcontractor is hereby prohibited from awarding subcontracts to persons (individuals or organizations) listed on the Excluded Parties Listing System (EPLS) which is found at: <http://www.epls.gov/>.

The list contains the names of persons debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

#### 19.08 *Energy and Environmental Conservation*

The Subcontractor shall give preference, to the extent practicable and economically feasible, to products and services that conserve natural resources and protect the environment and are energy efficient (30.44(a)(3)(vi)).

#### 19.09 *Byrd Anti-Lobbying Amendment*

(31 U.S.C. 1352) – Bidders who apply or bid for a contract of more than \$100,000 must file a certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining your grant. The contract must also require that any subcontractor who applies or bids for subcontract in excess of \$100,000 must provide a similar certification to the next higher tier contractor or subcontractor. Subcontractor and sub-subcontractors must also disclose any lobbying with non-Federal funds in connection with obtaining the grant. Each contractor or subcontractor must forward any disclosures from tier to tier up to the recipient.

IN WITNESS WHEREOF, Engineer and Subcontractor have signed this Subcontract.

The Effective Date of the Subcontract is **[date to be inserted at the time of execution]**.

Engineer:

Subcontractor:

\_\_\_\_\_  
*(typed or printed name of organization)*

\_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

By: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(date signed)*

Date: \_\_\_\_\_  
*(date signed)*

*(If Subcontractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

Address for giving notices:

Designated Representative:

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

Address:

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

*(If Engineer or Subcontractor is a corporation, attach evidence of authority to sign.)*

License No.: \_\_\_\_\_  
*(where applicable)*

State: \_\_\_\_\_

## **SECTION 00 61 13 – PERFORMANCE AND PAYMENT BOND FORMS**

### **PART 1 – GENERAL**

#### **1.1 PERFORMANCE AND PAYMENT BOND SUBMITTALS**

- A. The Contractor must complete and submit the following Performance and Payment Bond Forms with the contract agreement.
- B. All mentions of The Owner in these Forms are to be replaced with The Engineer.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*Construction Performance Bond– EJCDC Document C-610 (2018)*

*Construction Payment Bond– EJCDC Document C-615 (2018)*

*(follows Section cover page)*

## PERFORMANCE BOND

<p><b>Contractor</b></p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>	<p><b>Surety</b></p> <p>Name: _____</p> <p>Address <i>(principal place of business)</i>: _____</p>
<p><b>Owner</b></p> <p>Name: _____</p> <p>Mailing address <i>(principal place of business)</i>: _____</p>	<p><b>Contract</b></p> <p>Description <i>(name and location)</i>: _____</p> <p>Contract Price: _____</p> <p>Effective Date of Contract: _____</p>
<p><b>Bond</b></p> <p>Bond Amount: _____</p> <p>Date of Bond: _____</p> <p><i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:</p> <p><input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16</p>	
<p>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.</p>	
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: _____
<p><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></p>	

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:

## PAYMENT BOND

<b>Contractor</b> Name: Address <i>(principal place of business)</i> :	<b>Surety</b> Name: Address <i>(principal place of business)</i> :
<b>Owner</b> Name: Mailing address <i>(principal place of business)</i> :	<b>Contract</b> Description <i>(name and location)</i> :  Contract Price: Effective Date of Contract:
<b>Bond</b> Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> 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:

## **SECTION 00 62 40 – INDIAN PREFERENCE FORM**

### **PART 1 – GENERAL**

#### **1.1 INDIAN PREFERENCE OFFICE COMPLIANCE PLAN AGREEMENT SUBMITTAL**

- A. The Contractor, and all subcontractors, must submit a written compliance plan agreement to the Indian Preference Office for approval at least TEN (10) days before commencing work. The Compliance Plan must be submitted and approved TEN (10) days before Work begins.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*Indian Preference Office Compliance Plan Agreement*

*(follows Section cover page)*





Sanctions for Non-compliance: The Indian Preference Coordinator shall notify the contractor and relevant subcontractor, in writing, concerning non-compliance of Reporting Protocol items listed above.

On issue of a notification of non-compliance concerning the reporting Protocol items listed above, to any contractor or subcontractor, the Indian Preference Coordinator will initiate appropriate action to:

- a) Ensure that contractor procedures and policies will be modified to ensure compliance.
- b) Suspend contractor operations until violation is cured.
- c) Ensure other appropriate action reasonable and necessary for the purpose of enforcing the Compliance Plan.

**Signatures**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor Authorized Representative

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Indian Preference Coordinator

## **SECTION 00 62 76 – APPLICATION FOR PAYMENT FORM**

### **PART 1 – GENERAL**

#### **1.1 APPLICATION FOR PAYMENT SUBMITTALS**

- A. The Contractor shall submit the Contractor’s Application For Payment Form as outlined in **Section 01 29 00**.
- B. All mentions of The Owner in these Forms are to be replaced with The Engineer.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

Contractor’s Application For Payment – *EJCDC Document C-620 (2018)*

*(follows Section cover page)*

**Contractor's Application for Payment**

<b>Owner:</b> _____	<b>Owner's Project No.:</b> _____
<b>Engineer:</b> _____	<b>Engineer's Project No.:</b> _____
<b>Contractor:</b> _____	<b>Contractor's Project No.:</b> _____
<b>Project:</b> _____	
<b>Contract:</b> _____	
<b>Application No.:</b> _____	<b>Application Date:</b> _____
<b>Application Period:</b> 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:** \_\_\_\_\_

<b>Recommended by Engineer</b>	<b>Approved by Owner</b>
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____
<b>Approved by Funding Agency</b>	
<b>By:</b> _____	<b>By:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____



**Progress Estimate - Lump Sum Work**

**Contractor's Application for Payment**

Owner: \_\_\_\_\_  
 Engineer: \_\_\_\_\_  
 Contractor: \_\_\_\_\_  
 Project: \_\_\_\_\_  
 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
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 (C - G) (\$)
			(D + E) From Previous Application (\$)	This Period (\$)				
<b>Change Orders</b>								
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
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						-		-
						-		-
						-		-
						-		-
						-		-
						-		-
<b>Change Order Totals</b>		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -
<b>Original Contract and Change Orders</b>								
<b>Project Totals</b>		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -

**Progress Estimate - Unit Price Work**

**Contractor's Application for Payment**

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

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											
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
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					-		-		-		-
					-		-		-		-
					-		-		-		-
					-		-		-		-
<b>Original Contract Totals</b>					\$	-		\$	-	\$	-





## **SECTION 00 63 57 – CHANGE ORDER REQUEST FORM**

### **PART 1 – GENERAL**

#### **1.1 CHANGE ORDER REQUEST SUBMITTALS**

- A. The Contractor shall submit Change Order forms directly to the Engineer for all contract changes that it requests and/or that occur during the Work.
- B. All mentions of The Owner in these Forms are to be replaced with The Engineer.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

Change Order – *EJCDC C-941 (2018)*

*(follows Section cover page)*

**CHANGE ORDER NO.:**

Owner: \_\_\_\_\_ Owner's Project No.: \_\_\_\_\_  
 Engineer: \_\_\_\_\_ Engineer's Project No.: \_\_\_\_\_  
 Contractor: \_\_\_\_\_ Contractor's Project No.: \_\_\_\_\_  
 Project: \_\_\_\_\_  
 Contract Name: \_\_\_\_\_  
 Date Issued: \_\_\_\_\_ Effective Date of Change Order: \_\_\_\_\_

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

Description:

Attachments:

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

Accepted by Contractor

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized by Owner \_\_\_\_\_ Approved by Funding Agency (if applicable) \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **SECTION 00 65 20 – AFFIDAVIT OF RELEASE OF LIENS FORM**

### **PART 1 – GENERAL**

#### **1.1 RELEASE OF LIENS SUBMITTALS**

- A. The Contractor shall submit Contractor’s Affidavit of Completion, Payment of Debts and Claims, and Release of Liens form directly to the Engineer following the completion of the Work.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*Contractor’s Affidavit of Completion, Payment of Debts and Claims, and Release of Liens (follows Section cover page)*

*State of Montana Department of Administration Architecture and Engineering Division Form 106*



**STATE OF MONTANA**  
**DEPARTMENT OF ADMINISTRATION**  
**ARCHITECTURE AND ENGINEERING DIVISION**  
 1520 East Sixth Avenue • P.O. Box 200103 • Helena MT  
 59620-0103 Phone: 406 444-3104 • Fax: 406 444-3399

**CONTRACTOR'S AFFIDAVIT OF COMPLETION,  
 PAYMENT OF DEBTS AND CLAIMS, AND RELEASE OF LIENS**

Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

A/E #: \_\_\_\_\_

I CERTIFY to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the corresponding contract documents between the STATE OF MONTANA, acting by and through its DIRECTOR, DEPARTMENT OF ADMINISTRATION, hereinafter called the Owner, and

\_\_\_\_\_ hereinafter called the CONTRACTOR, for the above referenced project.

I further certify and declare that all bills for materials, supplies, utilities and for all other things furnished or caused to be furnished by the CONTRACTOR and used in the execution of the contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities and/or demands of State Agencies, subcontractors, materialmen, mechanics, laborers or any others resulting from or arising out of any work done, caused to be done or ordered to be done by the CONTRACTOR under the contract.

In consideration of the prior and final payments made and all payments made for authorized changes, the CONTRACTOR releases and forever discharges the OWNER from any and all obligations, liens, claims, security interests, encumbrances and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the OWNER, arising out of or in any way relating to the contract and authorized changes.

I further certify and agree that the warranty period is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Substantial Completion or Final Acceptance.

This statement is made for the purpose of inducing the OWNER to make FINAL PAYMENT under the terms of the contract, relying on the truth and statements contained herein.

(Seal)

CONTRACTOR

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Title)

Subscribed and sworn to me this \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_

(Seal)

NOTARY

Notary Public for the State of Montana  
 My Commission Expires:

## **SECTION 00 72 00 – GENERAL CONDITIONS**

### **PART 1 – GENERAL**

#### **1.1 GENERAL CONDITIONS**

- A. The following General Conditions apply to the Construction Subcontract (**Section 00 52 00**).

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*General Conditions  
(follows Section cover page)*

*EJCDC Document C-700 (2018)*

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# 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.

## SECTION 00 73 19 – HEALTH AND SAFETY REQUIREMENTS

### PART 1 – GENERAL

#### 1.1 GENERAL DESCRIPTION

- A. Contractor shall prepare and submit a Project-specific Health and Safety Plan (HASP) that complies with 29 CFR 1910.120 and presents safe work practices and procedures for the work to be performed. The HASP shall include clear provisions for protection from the primary physical, chemical, and biological hazards that will be encountered during the work.
- B. A copy of Engineer's HASP will be provided to the Contractor for information purposes.
- C. The HASP shall contain a COVID-19 plan if necessary to comply with current regulatory requirements.
- D. All Contractor and subcontractor personnel shall have OSHA HAZWOPER certifications and documentation to work on site (e.g., initial 40-hour, supervisor, 8-hour refresher, proof/clearance from a medical surveillance program).
- E. All Contractor and subcontractor personnel shall have sufficient training to perform assigned tasks safely and efficiently.
- F. All Contractor and subcontractor personnel shall have the requisite personal protective equipment, as described in Paragraph 1.5.
- G. Engineer will have the authority to stop work and/or to remove workers from the Project if Contractor and/or its workers fail to comply with the regulatory or safety requirements of this section.
- H. Engineer bears no responsibility for the contents of the Contractor's HASP and is not responsible for the health and safety of the Contractor or Subcontractor workers.

#### 1.2 SUBMITTALS

- A. Project-specific HASP, including:
  - 1. Content described in Paragraph 1.1
  - 2. Health, Accident, and Injuries Management. The primary intent of this section is to identify and describe how workers will be evacuated and cared for if injuries or illness occur within the job site, including in difficult-to-access areas of the site. The Plan shall also discuss emergency response procedures and sequence.
  - 3. Contingency Plan (Paragraph 1.4)

- B. Personnel training and medical clearance records. Workers with insufficient training or expired training will not be allowed in the work zone.
- C. Copies of any necessary daily work permits (Paragraph 1.6)

### 1.3 GENERAL REQUIREMENTS

- A. Specific personnel may require additional training and certifications as applicable to their tasks and trades (e.g., trained technician, equipment operators, and so on).
- B. Comply with OSHA requirements and site safety requirements.
- C. During the time in which areas are regulated/ barricaded, all personnel entering the area to perform any type of work shall adhere to the safety procedures governing the entry.
- D. Protection of Site Personnel: Take all necessary precautions to protect the health and safety of the site personnel from the Work, whether these individuals are employees of the Contractor.
- E. Restrictions to Site Access: The Work Area (defined as areas where any part of the Work is occurring) shall be restricted to authorized personnel and visitors.
- F. Site Safety Officer:
  - 1. Designate a Site Safety Officer who is experienced in administration and supervision of health and safety compliance on remediation projects, including auditing of the health and safety performance of Contractor's workers.
  - 2. Designate ONE (1) Site Safety Officer for every twenty workers on the Project.
  - 3. Each Site Safety Officer(s) shall be an individual employed at the staff level and shall have the authority to stop work as necessary to correct any unsafe work activity.
  - 4. Each Site Safety Officer is the Contractor's representative and is accountable for all Contractor safety compliance.
- G. Engineer reserves the right to require Contractor to suspend all work while undertaking corrective measures to eliminate unsafe practices or conditions and incident investigations, if in Engineer's sole judgment such suspension is required to prevent injury or preserve property. The Engineer may immediately stop or suspend any or all work hereunder and Contractor shall make no claim for damage or expenses caused by such work stoppage or suspension.
- H. Notify necessary agencies and Engineer immediately of any accidents. Prepare a detailed report of accidents to the applicable agencies and concurrently to Engineer within TWENTY-FOUR (24) hours after any accident.
- I. Any and all unusual events (which may include but are not limited to, unsafe conditions, near misses, injuries, incidents, first aid treatments, release of regulated materials to the

environment), shall be verbally brought to the attention of Engineer immediately. Such events require the preparation of a written report to the Engineer within TWENTY-FOUR (24) hours of occurrence.

#### **1.4 CONTINGENCY PLAN:**

- A. As part of the HASP, include a contingency planning section that addresses the following at a minimum:
  - 1. A list of Contractor representatives and emergency contact phone numbers after regular working hours and during weekends.
  - 2. Emergency action plan for dealing with:
    - a. A medical emergency, including evacuation of the injured person from containment areas or areas with restricted ingress/egress;
    - b. Control of a water leak or discharge within and/or from the Equipment Laydown/Loading Area;
    - c. Severe weather including tornadoes and thunderstorms, including provisions for securing the Work Area; and
    - d. A fire inside or nearby the Work Area.

#### **1.5 PERSONAL PROTECTIVE EQUIPMENT:**

- A. Provide Personal Protective Equipment (PPE) to Contractor personnel. Minimum PPE for the Project shall be:
  - 1. Long-sleeve shirt and long pants;
  - 2. Safety-toe work boots with non-skid soles;
  - 3. Hard hat conforming to ANSI Z89.1 or OSHA1910.135, Type II. Hard hats shall be Class E if work will occur around live electricity. Furnish hard hats with plastic strap-type suspension;
  - 4. Safety hi-visibility vest or shirt;
  - 5. Safety glasses or goggles; Protective eyewear shall meet ANSI Z87.1;
  - 6. Protective leather work gloves and/or rubber or other chemical-resistant gloves as appropriate; and
  - 7. Hearing protection (when necessary, based on work task).

- B. Details of the required PPE, including additional PPE for Tailings handling, shall be provided in Contractor's HASP.
- C. Non-compliance with the site requirements regarding the use of personal protective equipment will warrant removal of personnel from the premises.

**1.6 WORK PERMITS:**

- A. Contractor is not authorized to complete site work without Engineer present onsite.

**1.7 SEVERE WEATHER:**

- A. If/when lightning or thunder occurs within a SIX (6)-mile radius of the site, outdoor work (work in unprotected areas) shall stop, and workers take cover. Work may not resume until half an hour has passed without additional lightning or thunder. Each lightning or thunder occurrence restarts the THIRTY (30) minute clock.

**PART 2 – PRODUCTS (NOT USED)**

**PART 3 – EXECUTION (NOT USED)**

## **SECTION 00 73 46 – WAGE RATE DETERMINATION SCHEDULES**

### **PART 1 – GENERAL**

#### **1.1 WAGE RATE DETERMINATION**

- A. The Contractor shall follow the Federal Davis-Bacon Prevailing Wage Rate Schedule. The applicable Wage Rate Schedule is included for reference.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION**

*Federal Davis-Bacon Prevailing Wage Rate Schedules  
(follows Section cover page)*

"General Decision Number: MT20230078 06/16/2023

Superseded General Decision Number: MT20220078

State: Montana

Construction Type: Heavy

Counties: Lake, Lincoln, Mineral, Ravalli and Sanders  
Counties in Montana.

#### HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
0                              01/06/2023

1 04/28/2023  
 2 06/16/2023

\* ELEC0768-010 06/01/2023

	Rates	Fringes
ELECTRICIAN.....	\$ 35.26	15.54

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 ENGI0400-009 05/01/2013

	Rates	Fringes
POWER EQUIPMENT OPERATOR: (Zone 1)		
(1) A-frame truck Crane, oiler (except crane).....	\$ 23.47	10.40
(2) Crane Oiler,Bulldozer, Roller (Dirt and Grade Compaction).....	\$ 23.94	10.40
(3) Mechanic, Scraper.....	\$ 24.34	10.40
(4) Cranes, 25 tons - 44 tons.....	\$ 27.00	11.40
(5) Cranes, 45 tons to and incl. 74 tons.....	\$ 28.00	11.40
(6) Cranes, 75 tons to and incl. 149 tons; Cranes, Whirley (All).....	\$ 29.00	11.40
(7) Cranes, 150 tons to including 250 tons (add \$1.00  for every 100 tons over 250 tons); Crane, Stiff- Leg or  Derrick; Helicopter Hoist; Crane, Tower (all)...	\$ 30.00	11.40

ZONE DEFINITIONS FOR POWER EQUIPMENT OPERATORS:

The zone hourly rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job:

BILLINGS, BOZEMAN, BUTTE, GREAT FALLS, HELENA, KALISPELL, MISSOULA

- Zone 1: 0 to 30 miles - Base Pay
- Zone 2: 30 to 60 miles - Base Pay + \$3.50
- Zone 3: Over 60 miles - Base Pay + \$5.50

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 IRON0014-016 01/02/2023

	Rates	Fringes
IRONWORKER: Reinforcing and Structural.....	\$ 31.18	29.02

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 \* SUMT2011-054 02/08/2011

	Rates	Fringes
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CARPENTER (Form Work Only).....	\$ 24.30	7.80
CARPENTER, Excludes Form Work....	\$ 21.13	7.00
LABORER: Common or General.....	\$ 17.99	5.90
LABORER: Pipelayer.....	\$ 21.81	4.83
LABORER: Landscape and Irrigation.....	\$ 15.14 **	1.30
OPERATOR: Backhoe.....	\$ 21.44	8.05
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 21.99	8.55
OPERATOR: Excavator.....	\$ 22.94	9.05
OPERATOR: Grader/Blade.....	\$ 24.69	8.40
OPERATOR: Loader (Front End)....	\$ 24.20	7.84
TRUCK DRIVER: Dump Truck.....	\$ 18.84	5.92

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the

cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

**MONTANA  
PREVAILING WAGE RATES FOR HEAVY CONSTRUCTION SERVICES 2023**

**Effective: January 14, 2023**

*Greg Gianforte, Governor  
State of Montana*

*Laurie Esau, Commissioner  
Department of Labor & Industry*

To obtain copies of prevailing wage rate schedules, or for information relating to public works projects and payment of prevailing wage rates, visit ERD at [erd.dli.mt.gov/labor-standards](http://erd.dli.mt.gov/labor-standards) or contact:

Employment Standards Division  
Montana Department of Labor and Industry  
P. O. Box 8011  
Helena, MT 59601  
Phone 406-444-6543

**The department welcomes questions, comments, and suggestions from the public. In addition, we'll do our best to provide information in an accessible format, upon request, in compliance with the Americans with Disabilities Act.**

**MONTANA PREVAILING WAGE REQUIREMENTS**

The Commissioner of the Department of Labor and Industry, in accordance with Sections 18-2-401 and 18-2-402 of the Montana Code Annotated (MCA), has determined the standard prevailing rate of wages for the occupations listed in this publication.

The wages specified herein control the prevailing rate of wages for the purposes of Section 18-2-401, et seq., MCA. It is required each employer pay (as a minimum) the rate of wages, including fringe benefits, travel allowance, zone pay and per diem applicable to the district in which the work is being performed as provided in the attached wage determinations.

All Montana Prevailing Wage Rates are available on the internet at [erd.dli.mt.gov/labor-standards](http://erd.dli.mt.gov/labor-standards) or by contacting the department at (406) 444-6543.

In addition, this publication provides general information concerning compliance with Montana's Prevailing Wage Law and the payment of prevailing wages. For detailed compliance information relating to public works contracts and payment of prevailing wage rates, please consult the regulations on the internet at [erd.dli.mt.gov/labor-standards](http://erd.dli.mt.gov/labor-standards) or contact the department at (406) 444-6543.

Laurie Esau  
Commissioner  
Department of Labor and Industry  
State of Montana

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## **A. Date of January 14, 2023**

## **B. Definition of Heavy Construction**

The Administrative Rules of Montana (ARM), 24.17.501(4) – (4)(a), states “Heavy construction projects include, but are not limited to, those projects that are not properly classified as either ‘building construction’, or ‘highway construction.’”

*Heavy construction projects include, but are not limited to, antenna towers, bridges (major bridges designed for commercial navigation), breakwaters, caissons (other than building or highway), canals, channels, channel cut-offs, chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), fish hatcheries, flood control projects, industrial incinerators (other than building), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land leveling (not incidental to other construction), land reclamation, levees, locks and waterways, oil refineries (other than buildings), pipe lines, ponds, pumping stations (prefabricated drop-in units – not buildings), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers (sanitary, storm, etc.), shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterway construction, water supply lines (not incidental to building), water and sewage treatment plants (other than buildings) and wells.”*

## **C. Definition of Public Works Contract**

Section 18-2-401(11)(a), MCA defines “public works contract” as “...a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000...”.

## **D. Prevailing Wage Schedule**

This publication covers only Heavy Construction occupations and rates in the specific localities mentioned herein. These rates will remain in effect until superseded by a more current publication. Current prevailing wage rate schedules for Building Construction, Highway Construction and Nonconstruction Services occupations can be found on the internet at [www.mtwagehourbopa.com](http://www.mtwagehourbopa.com) or by contacting the department at (406) 444-6543.

## **E. Rates to Use for Projects**

ARM, 24.17.127(1)(c), states “The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.”

## **F. Wage Rate Adjustments for Multiyear Contracts**

Section 18-2-417, MCA states:

*“(1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.*

*(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.*

*(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.”*

## **G. Fringe Benefits**

Section 18-2-412, MCA states:

*“(1) To fulfill the obligation...a contractor or subcontractor may:*

*(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;*

*(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the U. S. department of labor; or*

*(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits and travel allowances, applicable to the district for the particular type of work being performed.*

*(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the U. S. department of labor.”*

Fringe benefits are paid for all hours worked (straight time and overtime hours). However, fringe benefits are not to be considered a part of the hourly rate of pay for calculating overtime, unless there is a collectively bargained agreement in effect that specifies otherwise.

## **H. Dispatch City**

ARM, 24.17.103(11), defines dispatch city as *“...the courthouse in the city from the following list which is closest to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Miles City, Missoula and Sidney.”*

## **I. Zone Pay**

Zone pay is not travel pay. ARM, 24.17.103(25), defines zone pay as *“...an amount added to the base pay; the combined sum then becomes the new base wage rate to be paid for all hours worked on the project. Zone pay must be determined by measuring the road miles one way over the shortest practical maintained route from the dispatch city to the center of the job.”* See section H above for a list of dispatch cities.

## **J. Computing Travel Benefits**

ARM, 24.17.103(23), states *“ ‘Travel pay,’ also referred to as ‘travel allowance,’ is and must be paid for travel both to and from the job site, except those with special provisions listed under the classification. The rate is determined by measuring the road miles one direction over the shortest practical maintained route from the dispatch city or the employee's home, whichever is closer, to the center of the job.”* See section H above for a list of dispatch cities.

## **K. Per Diem**

ARM, 24.17.103(19), states *“ ‘Per diem’ typically covers costs associated with board and lodging expenses. Per diem is paid when an employee is required to work at a location outside the daily commuting distance and is required to stay at that location overnight or longer.”*

## **L. Apprentices**

Wage rates for apprentices registered in approved federal or state apprenticeship programs are contained in those programs. Additionally, Section 18-2-416(2), MCA states, *“...The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract.”* Apprentices not registered in approved federal or state apprenticeship programs will be paid the appropriate journey level prevailing wage rate when working on a public works contract.

### **M. Posting Notice of Prevailing Wages**

Section 18-2-406, MCA, provides that contractors, subcontractors, and employers who are “...performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.”

### **N. Employment Preference**

Sections 18-2-403 and 18-2-409, MCA require contractors to give preference to the employment of bona fide Montana residents in the performance of work on public works contracts.

### **O. Projects of a Mixed Nature**

Section 18-2-408, MCA states:

*“(1) The contracting agency shall determine, based on the preponderance of labor hours to be worked, whether the public works construction services project is classified as a highway construction project, a heavy construction project, or a building construction project.*

*“(2) Once the project has been classified, employees in each trade classification who are working on that project must be paid at the rate for that project classification”*

### **P. Occupations Definitions**

You can find definitions for these occupations on the following Bureau of Labor Statistics website:

[http://www.bls.gov/oes/current/oes\\_stru.htm](http://www.bls.gov/oes/current/oes_stru.htm)

### **Q. Welder Rates**

Welders receive the rate prescribed for the craft performing an operation to which welding is incidental.

### **R. Foreman Rates**

Rates are no longer set for foremen. However, if a foreman performs journey level work, the foreman must be paid at least the journey level rate.

**S. Proper Classification for Pipefitter and Laborer/Pipelayer Work on Water and Waste Water Treatment Plants** The proper classification for the following work is Pipefitter, when it is performed inside a building structure or performed at a location which will later be inside of a building: Joining steel pipe larger than 12 inches in diameter with bolted flange connections that has been pre-fabricated off site and does not require any modification such as cutting, grinding, welding, or other fabrication in order to be installed. All other work previously classified as pipefitter remains in that classification. The proper classification for that work when it is at a location that will always be outside a building is Pipelayer, which is under the Laborer Group 3 classification.

# WAGE RATES

## BOILERMAKERS

<b>Wage</b>	<b>Benefit</b>
\$34.12	\$31.68

### Duties Include:

Construct, assemble, maintain, and repair stationary steam boilers, boiler house auxiliaries, process vessels, pressure vessels and penstocks. Bulk storage tanks and bolted steel tanks.

### Travel:

#### All Districts

0-120 mi. free zone  
>120 mi. federal mileage rate/mi.

### Special Provision:

Travel is paid only at the beginning and end of the job.

### Per Diem:

#### All Districts

0-70 mi. free zone  
>70-120 mi. \$65.00/day  
>120 mi. \$80.00/day

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## BRICK, BLOCK, AND STONE MASONS

<b>Wage</b>	<b>Benefit</b>
\$32.32	\$16.78

### Travel:

0-70 mi. free zone  
>70-90 mi. \$60.00/day  
>90 mi. \$80.00/day

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## CARPENTERS

<b>Wage</b>	<b>Benefit</b>
\$33.50	\$14.07

### Zone Pay:

0-30 mi. free zone  
>30-60 mi. base pay + \$4.00/hr.  
>60 mi. base pay + \$6.00/hr.

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## CEMENT MASONS AND CONCRETE FINISHERS

### No Rate Established

### Duties Include:

Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs. Align forms for sidewalks, curbs, or gutters.

### Zone Pay:

No zone pay established.

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## CONSTRUCTION EQUIPMENT OPERATORS GROUP 1

<b>Wage</b>	<b>Benefit</b>
\$29.11	\$13.80

### **This group includes but is not limited to:**

Air Compressor; Auto Fine Grader; Belt Finishing; Boring Machine (Small); Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front-End Loader, under 1 cu. yd; Oiler, Herman Nelson Heater; Mucking Machine; Oiler, All Except Cranes/Shovels; Pumpman.

### **Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.50/hr.  
>60 mi. base pay + \$5.50/hr.

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## CONSTRUCTION EQUIPMENT OPERATORS GROUP 2

<b>Wage</b>	<b>Benefit</b>
\$29.70	\$13.80

### **This group includes but is not limited to:**

Air Doctor; Backhoe\Excavator\Shovel, up to and incl. 3 cu. yds; Bit Grinder; Bituminous Paving Travel Plant; Boring Machine, Large; Broom, Self-Propelled; Concrete Travel Batchers; Concrete Float & Spreader; Concrete Bucket Dispatcher; Concrete Finish Machine; Concrete Conveyor; Distributor; Dozer, Rubber-Tired, Push, & Side Boom; Elevating Grader\Gradall; Field Equipment Serviceman; Front-End Loader, 1 cu. yd up to and incl. 5 cu. yds; Grade Setter; Heavy Duty Drills, All Types; Hoist\Tugger, All; Hydralift Forklifts & Similar; Industrial Locomotive; Motor Patrol (except finish); Mountain Skidder; Oiler, Cranes\Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete\Grout Machine; Punch Truck; Roller, other than Asphalt; Roller, Sheepsfoot (Self-Propelled); Roller, 25 tons and over; Ross Carrier; Rotomill, under 6 ft; Trenching Machine; Washing /Screening Plant

### **Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.50/hr.  
>60 mi. base pay + \$5.50/hr.

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### CONSTRUCTION EQUIPMENT OPERATORS GROUP 3

<b>Wage</b>	<b>Benefit</b>
\$30.65	\$13.80

**This group includes but is not limited to:**

Asphalt Paving Machine; Asphalt Screed; Backhoe\Excavator\Shovel, over 3 cu. yds; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes, Creter; Cranes, Electric Overhead; Cranes, 24 tons and under; Curb Machine\Slip Form Paver; Finish Dozer; Front-End Loader, over 5 cu. yds; Mechanic\Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill, over 6 ft; Scraper, Single, Twin, or Pulling Belly-Dump; YO-YO Cat.

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**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.50/hr.  
>60 mi. base pay + \$5.50/hr.

### CONSTRUCTION EQUIPMENT OPERATORS GROUP 4

<b>Wage</b>	<b>Benefit</b>
\$31.65	\$13.80

**This group includes but is not limited to:**

Asphalt\Hot Plant Operator; Cranes, 25 tons up to and incl. 44 tons; Crusher Operator; Finish Motor Patrol; Finish Scraper.

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**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.50/hr.  
>60 mi. base pay + \$5.50/hr.

### CONSTRUCTION EQUIPMENT OPERATORS GROUP 5

<b>Wage</b>	<b>Benefit</b>
\$31.75	\$13.80

**This group includes but is not limited to:**

Cranes, 45 tons up to and incl. 74 tons.

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**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.50/hr.  
>60 mi. base pay + \$5.50/hr.

### CONSTRUCTION EQUIPMENT OPERATORS GROUP 6

<b>Wage</b>	<b>Benefit</b>
\$32.75	\$13.80

**This group includes but is not limited to:**

Cranes, 75 tons up to and incl. 149 tons; Cranes, Whirley (All).

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**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.50/hr.  
>60 mi. base pay + \$5.50/hr.

## CONSTRUCTION EQUIPMENT OPERATORS GROUP 7

<b>Wage</b>	<b>Benefit</b>
\$33.75	\$13.80

**This group includes but is not limited to:**

Cranes, 150 tons up to and incl. 250 tons; Cranes, over 250 tons—add \$1.00 for every 100 tons over 250 tons; Crane, Tower (All); Crane Stiff-Leg or Derrick; Helicopter Hoist.

**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.50/hr.  
>60 mi. base pay + \$5.50/hr.

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## CONSTRUCTION LABORERS GROUP 1/FLAG PERSON FOR TRAFFIC CONTROL

<b>Wage</b>	<b>Benefit</b>
\$23.08	\$11.82

**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.05/hr.  
>60 mi. base pay + \$4.85/hr.

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## CONSTRUCTION LABORERS GROUP 2

<b>Wage</b>	<b>Benefit</b>
\$26.40	\$11.82

**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.05/hr.  
>60 mi. base pay + \$4.85/hr.

**This group includes but is not limited to:**

General Labor; Asbestos Removal; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-lay Down; Crusher and Batch Worker; Heater Tender; Fence Erector; Landscape Laborer; Landscaper; Lawn Sprinkler Installer; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprapper; Sign Erection; Guardrail and Jersey Rail; Spike Driver; Stake Jumper; Signalman; Tail Hoseman; Tool Checker and Houseman and Traffic Control Worker.

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### CONSTRUCTION LABORERS GROUP 3

<b>Wage</b>	<b>Benefit</b>
\$26.07	\$12.44

**This group includes but is not limited to:**

Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker) Non-Riding Rollers; Pipelayer; Posthole Digger (Power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod Cutter-Power and Tamper.

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**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.05/hr.  
>60 mi. base pay + \$4.85/hr.

### CONSTRUCTION LABORERS GROUP 4

<b>Wage</b>	<b>Benefit</b>
\$26.76	\$11.82

**This group includes but is not limited to:**

Hod Carrier\*\*\*; Water Well Laborer; Blaster; Wagon Driller; Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman; Rock & Core Drill; Track or Truck Mounted Wagon Drill and Welder incl. Air Arc

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**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$3.05/hr.  
>60 mi. base pay + \$4.85/hr.

\*\*\*Hod Carriers will receive the same amount of travel and/or subsistence pay as bricklayers when requested to travel.

### DIVER TENDERS

<b>Wage</b>	<b>Benefit</b>
\$43.98	\$17.84

The tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing a Diver when work is done under hyperbaric conditions.

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**Zone Pay:**

0-30 mi. free zone  
>30-60 mi. base pay + \$4.00/hr.  
>60 mi. base pay + \$6.00/hr.

## DIVERS

	<b>Wage</b>	<b>Benefit</b>
Stand-By	\$44.98	\$17.84
Diving	\$89.96	\$17.84

Depth Pay (Surface Diving)

0-20 ft.	free zone
>20-100 ft.	\$2.00 per ft.
>100-150 ft.	\$3.00 per ft.
>150-220 ft.	\$4.00 per ft.
>220 ft.	\$5.00 per ft.

Diving In Enclosures

0-25 ft.	free zone
>25-300 ft.	\$1.00 per ft.

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**Zone Pay:**  
0-30 mi. free zone  
>30-60 mi. base pay + \$4.00/hr.  
>60 mi. base pay + \$6.00/hr.

## ELECTRICIANS

	<b>Wage</b>	<b>Benefit</b>
	\$36.69	\$16.93

**Travel:**  
No mileage due when traveling in employer's vehicle.

The following travel allowance is applicable when traveling in employee's vehicle:

- 0-18 mi. free zone
- >18-60 mi. federal mileage rate/mi.
- >60 mi. \$75.00/day

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## INSULATION WORKERS - MECHANICAL (HEAT AND FROST)

	<b>Wage</b>	<b>Benefit</b>
	\$41.07	\$19.87

**Duties Include:**  
Insulate pipes, ductwork or other mechanical systems.

**Travel:**  
**All Districts**  
0-30 mi. free zone  
>30-40 mi. \$25.00/day  
>40-50 mi. \$35.00/day  
>50-60 mi. \$50.00/day  
>60 mi. \$60.00/day plus

- \$0.56/mi. if transportation is not provided.
- \$0.20/mi. if in company vehicle.

>60 mi. \$105.00/day on jobs requiring an overnight stay plus

- \$0.56/mi. if transportation is not provided.
- \$0.20/mi. if in company vehicle.

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## IRONWORKERS – REINFORCING IRON AND REBAR WORKERS

<b>Wage</b>	<b>Benefit</b>
\$30.53	\$27.91

**Duties Include:**

Cut, bend, tie, and place rebar.

**Travel:**

0-45 mi. free zone  
>45-60 mi. \$50.00/day  
>60-100 mi. \$75.00/day  
>100 mi. \$95.00/day

**Special Provision:**

When the employer provides transportation, travel will not be paid. However, when an employee is required to travel over 70 miles one way, the employee may elect to receive the travel pay in lieu of the transportation.

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## IRONWORKERS – STRUCTURAL IRON AND STEEL WORKERS

<b>Wage</b>	<b>Benefit</b>
\$30.53	\$27.91

**Duties Include:**

Structural steel erection; assemble prefabricated metal buildings; energy producing windmill type towers; metal bleacher seating; handrail fabrication and ornamental steel.

**Travel:**

0-45 mi. free zone  
>45-60 mi. \$50.00/day  
>60-100 mi. \$75.00/day  
>100 mi. \$95.00/day

**Special Provision:**

When the employer provides transportation, travel will not be paid. However, when an employee is required to travel over 70 miles one way, the employee may elect to receive the travel pay in lieu of the transportation.

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## LINE CONSTRUCTION – EQUIPMENT OPERATORS

<b>Wage</b>	<b>Benefit</b>
\$37.26	\$17.93

**Duties Include:**

All work on substations

**Travel:**

No Free Zone  
\$60.00/day

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## LINE CONSTRUCTION – GROUNDMAN

<b>Wage</b>	<b>Benefit</b>
\$29.09	\$17.24

**Duties Include:**

All work on substations

**Travel:**

No Free Zone  
\$60.00/day

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## LINE CONSTRUCTION – LINEMAN

<b>Wage</b>	<b>Benefit</b>
\$48.65	\$19.06

**Travel:**  
No Free Zone  
\$60.00/day

### Duties Include:

All work on substations

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## MILLWRIGHTS

<b>Wage</b>	<b>Benefit</b>
\$42.58	\$14.57

**Zone Pay:**  
0-30 mi. free zone  
>30-60 mi. base pay + \$4.00/hr.  
>60 mi. base pay + \$6.00/hr.

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## PAINTERS

<b>Wage</b>	<b>Benefit</b>
\$25.00	\$0.00

**Travel:**  
No travel or per diem established.

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## PILE BUCKS

<b>Wage</b>	<b>Benefit</b>
\$33.50	\$14.07

**Zone Pay:**  
0-30 mi. free zone  
>30-60 mi. base pay + \$4.00/hr.  
>60 mi. base pay + \$6.00/hr.

### Duties Include:

Set up crane; set up hammer; weld tips on piles; set leads; insure piles are driven straight with the use of level or plum bob. Give direction to crane operator as to speed, and direction of swing. Cut piles to grade.

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## PILOT CAR DRIVERS

No Rate Established

**Zone Pay:**  
No zone pay established.

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## PLUMBERS, PIPEFITTERS, AND STEAMFITTERS

<b>Wage</b>	<b>Benefit</b>
\$38.56	\$20.61

### Duties Include:

Assemble, install, alter, and repair pipe-lines or pipe systems that carry water, steam, air, other liquids or gases. Testing of piping systems, commissioning and retro-commissioning. Workers in this occupation may also install heating and cooling equipment and mechanical control systems.

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### Travel:

0-70 free zone  
>70 mi.

- On jobs when employees do not work consecutive days: \$0.55/mi. if employer doesn't provide transportation. Not to exceed two trips.
- On jobs when employees work any number of consecutive days: \$110.00/day.
- 

## SPRINKLER FITTERS

<b>Wage</b>	<b>Benefit</b>
\$35.66	\$24.29

### Duties Include:

Duties Include but not limited to any and all fire protection systems: Installation, dismantling, inspection, testing, maintenance, repairs, adjustments, and corrections of all fire protection and fire control systems, including both overhead and underground water mains, all piping, fire hydrants, standpipes, air lines, tanks, and pumps used in connection with sprinkler and alarm systems.

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### Travel

#### All Districts

The following travel allowance is applicable when traveling in employee's vehicle.

- 0-60 mi. free zone
- >60-80 mi. \$21.00/day
- >80-100 mi. \$31.00/day
- >100 mi. \$115.00/day + the IRS rate per mile and \$8.92 for every 15 miles traveled for one trip out and one trip back

No travel allowance required when in employer's vehicle.

#### Per Diem

No per diem is applicable when traveling in employer's vehicle

The following per diem is applicable when traveling in employee's vehicle.

- 0-100 mi. free zone
- >100 mi. \$105.00/day + the IRS rate per mile and \$8.92 for every 15 miles traveled for one trip out and one trip back.
- >100 mi. \$115.00/day

## TRUCK DRIVERS

	<b>Wage</b>	<b>Benefit</b>
Truck Driver	\$31.28	\$11.96

**Truck drivers include but are not limited to:**

Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and similar equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/Tireperson; Truck Mechanic; Trucks with Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks.

**Zone Pay:**

**All Districts**

0-30 mi. free zone

>30-60 mi. base pay + \$3.05/hr.

>60 mi. base pay + \$.485/hr.

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**DIVISION 1 - GENERAL REQUIREMENTS**

## SECTION 01 11 00 – SUMMARY OF WORK

### PART 1 - GENERAL

#### 1.1 RELATED DOCUMENTS

- A. The general provisions of the Contract Documents, including the general requirements of the Drawings and Specifications, apply to the Work specified in this Section.

#### 1.2 PROJECT IDENTIFICATION

- A. Project Name

Revais Creek Tailings Removal and Floodplain Remediation  
114°16'03" North, 114°24'26" West  
Revais Creek Rd  
Dixon, Montana 59831

- B. Owner:

Confederated Salish and Kootenai Tribes  
301 Main Street  
Polson, Montana 59860  
Email: [maryrose.morigeau@cskt.org](mailto:maryrose.morigeau@cskt.org)

- C. Engineer:

NewFields  
700 SW Higgins Avenue, Suite 15  
Missoula, MT 59803  
Email: [skuhn@newfields.com](mailto:skuhn@newfields.com)

#### 1.3 TYPE OF CONTRACT

- A. The Project will be constructed under a single subcontract between the Engineer and the Contractor.

#### 1.4 PROJECT DESCRIPTION

- A. The Project Site (Site) is located adjacent to Revais Creek on the Flathead Indian Reservation, near Dixon, MT. The overall goal of the Project is to improve soil health and reclaim the floodplain at the Site thereby reducing the risks to water quality, and human health. To meet these objectives, the Contractor shall excavate and remove approximately 3,000 cubic yards (CY) of Tailings (i.e., mine tailings) on the 1.3-acre Site; haul and dispose of excavated materials at a specified landfill; recontour the site to engineered specifications; and revegetate the site with soil amendments and seeding. Engineering drawings are included in **Attachment A** and photos of the current Site conditions are included in **Attachment B**.

## 1.5 SCOPE OF WORK

- A. The Work will consist of all work indicated in these Specifications and on the Drawings.
- B. The Scope of Work includes but is not limited to:
  - 1. Re-establish a historic 2-track Access Road for Site Access. Widen as necessary and re-grade to maximum TEN percent (10%) grades;
  - 2. Prepare areas for Equipment Laydown/Loading and Stockpiling. Select areas generally free from mature trees and clear and grub as needed;
  - 3. Install and maintain necessary soil erosion and sediment controls;
  - 4. Excavate, haul, and dispose of approximately 3,000 CY of mine tailings. Engineer will guide removal activities. Material shall be placed directly into the haul trucks from in place. No stockpiling shall occur;
  - 5. Regrade disturbed areas, to match natural grades and reclaim native floodplain;
  - 6. Reclaim Revais Creek Overflow Channel to pre-existing conditions;
  - 7. Place Topsoil over disturbed areas and install micro-topography, large boulders, and woody-debris to aid in the revegetation and reclamation of the floodplain; and
  - 8. Seed, mulch, and fertilize with approved materials.

## 1.6 GENERAL REQUIREMENTS

- A. As minimum requirements, the Contractor shall observe and follow all relevant procedures identified in applicable Federal, State, and local rules and regulations for conducting the work. Other applicable regulations not explicitly included in the Contract Documents shall be adhered to in conducting the work. The Contractor shall be responsible for informing the Engineer and proper Federal, State, and local agencies of the nature and timing of work on-site and for securing all necessary and applicable permits required to conduct the Work, excluding those listed as Paragraph 1.12. The Contractor shall follow all Health and Safety procedures specified in Health and Safety Requirements (**Section 00 73 19**) and the Engineer's HASP.
- B. The Contractor shall furnish all labor, materials, equipment, and related items required to complete the work indicated on the Drawings and as specified in these Specifications.
- C. The Contractor must have equipment to efficiently excavate soils to a max depth of TEN (10) feet below ground surface (bgs). Groundwater is not expected in the excavation at TEN (10) feet bgs. Soils with free liquids shall not be hauled off-site. If groundwater is encountered during the Work, the excavation will not continue deeper.
- D. The Contractor shall restore objects or site features outside the work limits that are damaged by the work, to a condition equal to pre-construction conditions. This may include, but is not limited to, replanting salvaged vegetation, replacing damaged vegetation with similar new plantings, and replacing or restoring other miscellaneous salvaged or damaged objects or Site features, such as signs, planters, lighting, etc. that were disturbed because of the Work.

- E. At a minimum the project shall require the Contractor to obtain coverage under the following permits:
  - 1. National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) for Stormwater Discharges from Construction Activities.

### **1.7 CONTRACTOR USE OF PREMISES**

- A. Contractor shall limit its use of the Site to the designated Work Areas and identify any access needs outside the limits shown on the Drawings.
- B. Contractor is responsible for damage caused by project-related activities and/or personnel assigned to the Project.
- C. Debris shall be kept from Work Areas, passageways, and drivable areas during the Project. Contractor shall remove debris that accumulates from operations daily.

### **1.8 WORK RESTRICTIONS**

- A. Implement noise control measures during active construction periods to the permissible levels in local, State, and OSHA standards, whichever is most stringent.
- B. On-site working hours shall be the lesser of daylight hours and between 7 a.m. to 7 p.m. Contractor shall submit a Work schedule to the Engineer for review and approval prior to starting the Work.
- C. Excavation activities to occur when Revais Creek and associated ground water table is at its lowest from July ? through September ?

### **1.9 WORK PLAN**

- A. The Contractor shall develop a Work Plan that presents a proposed schedule for conducting the Work in accordance with the work sequence described below. The schedule may propose minor alterations to the sequence presented below; however, approval of the Work sequence will be at the discretion of the Engineer. Present the schedule to the Engineer for discussion, refinement, and approval at the pre-construction meeting. The Work Plan must include considerations to assure the safety of Contractor employees, Engineer, and the Public. The Engineer must approve the Work Plan prior to commencement of work.
- B. The Work Plan shall describe how the Contractor shall conduct the Work as outlined in the Scope of Work in Paragraph 1.5 of this Section.
- C. The Work Plan shall also identify Stockpile and Equipment Laydown/Loading Area locations, haul routes and improvements necessary, and locations and installment plans for all temporary facilities covered in **Section 01 52 00** and **Section 01 55 00**.

### **1.10 WORK SEQUENCE**

- A. Conduct the Work in accordance with the following sequence.
  - 1. Mobilize to the Site in accordance with **Section 01 71 31**.

2. Install temporary facilities in accordance with **Section 01 52 00**, **Section 01 55 00**, and **Section 01 57 13**.
3. Conduct clearing and grubbing in accordance with **Section 31 11 00**.
4. Prepare the Site in accordance with **Section 31 10 13**.
5. Excavate, haul, and dispose of Tailings in accordance with **Section 02 61 31**.
6. Grade the Site in accordance with **Section 31 22 00**.
7. Import and place Topsoil in accordance with **Section 32 91 13**.
8. Conduct seeding and associated activities in accordance with **Section 32 92 19**.
9. Demobilize in accordance with **Section 01 71 31**.

### **1.11 WORK SCHEDULE**

- A. The Work schedule shall follow **Section 00 21 13** Paragraph 1.8.

### **1.12 WORK DONE BY OTHERS**

- A. The Engineer will conduct surveys as required by the Work.
- B. The Engineer will secure necessary permits outside of what is listed in Paragraph 1.5 of this Section.
- C. The Engineer will conduct additional work as outlined in these Specifications.

### **1.13 SUBMITTALS**

- A. Contractor shall submit a draft Work Plan to the Engineer TWO (2) business days prior to the pre-construction meeting. The final Work Plan shall be submitted to the Engineer a minimum of TWO (2) business days after the pre-construction meeting.
- B. Contractor shall submit proof of coverage under the CGP to the Engineer prior to starting any onsite activities associated with the Work.

### **1.14 FINAL INSPECTION AND APPROVAL**

- A. When the Contractor considers that work is substantially complete, the Contractor shall make a written request for an inspection and forward it to the Engineer SEVEN (7) days prior to the inspection date. Following the inspection, the Engineer shall prepare a typewritten list of items to be completed or corrected, commonly called a "Punch List". The failure to include any items on such list does not alter the responsibility of the Contractor to complete all work in accordance with these Specifications. Within TWENTY-ONE (21) days after the Substantial Completion inspection, the Engineer and Owner's representative will conduct a final inspection, at which time all items on the Punch List are to be completed. Only ONE (1) Substantial Completion inspection and ONE (1) Final Completion inspection will be conducted by the Engineer. If other inspections are necessary to check Punch List items, they will be conducted at the Contractor's expense. Costs

for such inspections will be calculated on an hourly basis at the Engineer's rates in force at the time of inspection.

- B. Upon completion of items listed for completion and correction, Contractor will submit in writing:
1. Application for Final Payment (**Section 00 62 76**).
  2. Lien waivers (**Section 00 65 20**).

**PART 2 – PRODUCTS (NOT USED)**

**PART 3 – EXECUTION (NOT USED)**

**END OF SUMMARY OF WORK**

## SECTION 01 29 00 – PAYMENT PROCEDURES

### PART 1 - GENERAL

#### 1.1 SUMMARY

- A. This Measurement and Payment Section separates the Work into measurable units for payment purposes, in identical units to the Bid Form.
- B. The Contractor shall perform all work described in the Specifications and Drawings, whether or not specifically or fully described in this Measurement and Payment Section. The total Bid Price shall include all required work under these Specifications.
- C. Measurement shall be performed as indicated in the following subsections of this section. Payment shall be based on unit or lump sum prices as indicated on the Bid Form. The numbering of paragraphs in subsections 1.2 and 1.3 correspond to the numbering on the Bid Form.

#### 1.2 MEASUREMENT AND PAYMENT PROCEDURES

- A. ITEM 1 – 01 57 13.01 – TEMPORARY EROSION AND SEDIMENT CONTROL (LUMP SUM)
  - 1. This item will be measured as a complete unit (Lump Sum).
  - 2. The cost for this Item shall include all materials, supplies, equipment, tools, labor, and profit necessary to apply for coverage under, receive, and adhere to all requirements of the CGP and **Section 01 57 13** - Temporary Erosion and Sediment Control for the life of the Project. Twenty percent (20%) of the Stated price for this Payment Item will be paid following the receipt of coverage under the CGP. The remaining EIGHTY percent (80%) will be paid upon completion of the Work.
- B. ITEM 2 – 01 71 13.01 – MOBILIZATION AND DEMOBILIZATION (LUMP SUM)
  - 1. This item will be measured as a complete unit (Lump Sum).
  - 2. The cost for this Item shall include but is not necessarily limited to the mobilization to the Project Site and demobilization from the Project site of all equipment, materials, temporary facilities, and personnel that are necessary to perform the Project, so as to provide a complete mobilization and demobilization of the Contractor to and from the Site. SIXTY percent (60%) of the Stated price for this Payment Item will be paid following completion of mobilization. The remaining forty percent (40%) will be paid upon completion of demobilization.
- C. ITEM 3 – 02 61 31.01 – EXCAVATE, HAUL, & DISPOSE OF TAILINGS (TON)
  - 1. This item will be measured by the ton (T) using load tickets from the Landfill. Certified tickets from the Landfill that report weights will be accepted. Load tickets shall be submitted directly to the Engineer.

2. The cost for this item shall include all equipment, materials, supplies, tools, labor, and profit necessary to excavate, load, and haul tailings from the Site to the specified disposal facility.
  3. The cost for this item shall not include fees associated with disposal at the Landfill.
  4. Payment for this item shall be made once the work noted above and described in **Section 02 61 31** has been completed, as determined by the Engineer.
- D. ITEM 4 – 31 10 13.01 – SITE PREPARATION (LUMP SUM)
1. This item will be measured as a complete unit (Lump Sum).
  2. The cost for this Item shall include, but is not limited to, utility locates, preparation of the Site Access Road, Equipment Laydown/Loading Area, and Stockpile Area, Site security, dust control, housekeeping, and traffic control.
  3. ONE HUNDRED percent (100%) of the Stated price for this Payment Item will be paid once the work noted above and described in **Section 31 10 13** has been completed, as determined by the Engineer.
- E. ITEM 5 – 31 11 00.01 – CLEARING AND GRUBBING (ACRE)
1. Measurement of this item will be completed using a topographic survey of the cleared area to determine the total area, in acres, of clearing and grubbing that has taken place.
  2. The cost for this item shall include, but is not limited to, all equipment, materials, supplies, tools, labor, and profit necessary to clear and grub, stockpile, and / or dispose of all generated waste material as shown in the plans and described in **Section 31 11 00**.
  3. Payment for this item shall be made once the work noted above and described in **Section 02 61 31** has been completed, as determined by the Engineer.
- F. ITEM 6 – 31 22 00.01 – SITE REGRADING (CUBIC YARD)
1. This item will be measured by the CY. The Site will be surveyed following Site Regrading and Stream Maintenance activities. A surface-to-surface comparison will then be conducted in AutoCAD Civil 3D using the post-tailings-removal survey and the post-site-regrading survey. The cut and fill volume measured by the TWO (2) surveys and calculated by AutoCAD Civil 3D will be averaged to determine the payment quantity. No adjustments will be made for potential shrinkage or swell of excavated material.
  2. The cost for this item shall include all equipment, materials, supplies, tools, labor, and profit necessary to perform Site Regrading as shown in the Drawings and as described in **Section 31 22 00**.
  3. Payment for this item shall be made once the work noted above and described in **Section 31 22 00** has been completed, as determined by the Engineer.
- G. ITEM 7 – 31 22 00.02 – MAINTAIN OVERFLOW CHANNEL (LUMP SUM)
1. This item will be measured as a complete unit (Lump Sum).

2. The cost for this Item shall include all equipment, materials, supplies, tools, labor, and profit necessary to Maintain the Overflow Channel as shown in the Drawings and as described in **Section 31 22 00**.
  3. ONE HUNDRED percent (100%) of the Stated price for this Payment Item will be paid once the work noted above and described in **Section 31 22 00** has been completed, as determined by the Engineer.
- H. ITEM 8 – 32 31 00.01 – TEMPORARY FENCE (LINEAR FEET)
1. This item will be measured by the LF.
  2. The cost for this Item shall include all equipment, materials, supplies, tools, labor, and profit necessary to enclose the site with fence as described in **Section 32 31 00**.
  3. Payment for this item shall be made once the work noted above and described in **Section 32 31 00** has been completed, as determined by the Engineer.
- I. ITEM 9 – 32 31 00.02 – BLOCK RECLAIMED ACCESS ROAD (LUMP SUM)
1. This item will be measured as a complete unit (lump sum).
  2. The cost for this Item shall include all equipment, materials, supplies, tools, labor, and profit necessary to prevent access to site after project completion as described in **Section 32 31 00**.
  3. ONE HUNDRED percent (100%) of the Stated price for this Payment Item will be paid once the work noted above and described in **Section 32 31 00** has been completed, as determined by the Engineer.
- J. ITEM 10 – 32 91 14.01 – TOPSOIL PLACEMENT (CUBIC YARD)
1. This item will be measured by the cubic yard (CY) using load tickets from the Topsoil provider for all Topsoil delivered to the Site and incorporated into the Work in accordance with the Drawings. Certified tickets from the Topsoil provider that report volumes will be accepted. If applicable, certified tickets from the Topsoil provider that report tonnages will be converted to a volume using certified unit weights from the Topsoil provider.
  2. The cost for this item shall include all equipment, materials, supplies, tools, labor, and profit necessary to deliver Topsoil to the site and spread Topsoil across all disturbed areas in accordance with the Drawings and in accordance with requirements of **Section 32 91 14**.
  3. Payment for this item shall be made once the work noted above and described in **Section 32 91 14** has been completed, as determined by the Engineer.
- K. ITEM 11 – 32 91 14.02 – PREPARE SEEDBED, CREATE MICRO TOPOGRAPHY, AND PLACE LARGE BOULDERS AND WOODY DEBRIS (ACRES)
1. Measurement of this item will be completed using a final survey of all disturbed and seeded areas, including the Tailings Removal Area, Site Access Road, and Equipment Laydown Area(s), following Site Regrading and Topsoil Placement to determine the total

area, in acres and measured to the nearest tenth of an acre, where seedbed preparation has taken place.

2. The cost for this item shall include, but is not limited to, all equipment, materials, supplies, tools, labor, and profit necessary to prepare the seedbed, create micro topography, and place woody debris and large boulders as shown in the Drawings and in accordance with the requirements of **Section 32 91 14**.
  3. Payment for this item shall be made once the work noted above and described in **Section 32 91 14** has been completed, as determined by the Engineer.
- L. ITEM 12 – 32 91 14.03 – SEED, FERTILIZE, AND MULCH (ACRES)
1. Measurement of this item will be completed using a final survey of all disturbed and seeded areas, including the Tailings Removal Area, Site Access Road and Equipment Laydown Area(s), following Site Regrading and Topsoil Placement to determine the total area, in acres and measured to the nearest tenth of an acre, where seeding has taken place.
  2. The cost for this item shall include, but is not limited to, all equipment, materials, supplies, tools, labor, and profit necessary to seed, fertilize, and mulch the regraded, Topsoiled, and prepared disturbed and seeded areas as shown in the Drawings and in accordance with the requirements of **Section 32 91 14**.
  3. Payment for this item shall be made once the work noted above and described in **Section 32 91 14** has been completed, as determined by the Engineer.

## **PART 2 – PRODUCTS (NOT USED)**

## **PART 3 – EXECUTION (NOT USED)**

### **END OF PAYMENT PROCEDURES**

## SECTION 01 31 19 – PROJECT MEETINGS

### PART 1 – GENERAL

#### 1.1 SUMMARY

- A. This Section includes:
  - 1. Pre-construction meeting;
  - 2. Construction Progress Meetings; and
  - 3. Daily Tailgate Safety Meetings.

### PART 2 – PRODUCTS (NOT USED)

### PART 3 – EXECUTION

#### 3.1 PRE-CONSTRUCTION MEETING:

- A. Contractor shall attend a pre-construction meeting at the site. Attendance will include:
  - 1. The Engineer, Site Safety Officer, and other project staff the Engineer deems necessary.
  - 2. Contractor's project manager, on-site superintendent(s), and on-site safety officer(s).
  - 3. The on-site superintendent of each of the Contractor's subcontractor(s), and any on-site safety officer(s).
  - 4. Others as appropriate.
- B. The meeting shall occur prior to any earth moving activities. The Engineer shall schedule the pre-construction meeting and provide advance notice to the Contractor.

#### 3.2 PROGRESS MEETINGS:

- A. Contractor shall attend weekly progress meetings at the site.
- B. Attendees at these meetings shall be the same as the pre-construction meeting, except that some personnel may attend via video conference call if necessary.
- C. Contractor's on-site superintendent and Engineer's Construction Manager (and Contractor's Site Engineer, if one is assigned) shall review prior meeting minutes and be prepared to address prior action items, results of assignments, current agenda items and other current safety, schedule, and scope issues related to the project.
- D. Meeting topics shall include:
  - 1. A review of safety performance and any safety concerns;
  - 2. Work progress since the previous progress meeting;
  - 3. Coordination with third parties;

4. Observations, issues, and compliance with regulatory requirements;
5. Field observations, problems, conflicts and attempted resolution;
6. Problems which impede the progress schedule, and options for resolution and/or recovery;
7. Review of changes for effect on the progress schedule and cost;
8. Action item review and assignment of new action items;
9. Applications for payment;
10. Work control and housekeeping procedures; and
11. Look-ahead to potential upcoming issues.

### **3.3 DAILY TAILGATE SAFETY MEETINGS:**

- A. Prior to the beginning of daily work all Contractor and subcontractor employees working on the site shall attend a brief safety meeting, led by Contractor. At a minimum, the Contractor shall address:
  1. Safety/health issues from the previous day or shift, including any incidents or near misses;
  2. Planned tasks for the current day and shift, any observed changes in conditions, and associated hazards;
  3. Personal protective measures;
  4. Necessary coordination to safely perform the task; and
  5. Other safety issues suggested by any of the participants.
- B. Contractor shall prepare and maintain for the morning meeting an attendance list for each meeting that includes the name, signature, and company employing each worker attending the meeting.
- C. Contractor shall submit a copy of each attendance list to the Engineer within ONE (1) day of the meeting.
- D. No worker will be allowed to work at the site unless that worker has attended and acknowledged, by signature of the attendance list, his or her participation and understanding of each of the topics discussed at the morning pre-construction safety meeting. Exceptions for new workers arriving during the day will be considered by the Engineer on a case-by-case basis.
- E. No tasks shall be initiated if the task is not discussed at the safety meeting. Engineer will consider exceptions on a case-by-case basis and may hold unscheduled safety briefings if it is necessary to start an unplanned task.

### **END OF PROJECT MEETINGS**

## SECTION 01 52 00 – CONSTRUCTION FACILITIES

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section consists of Construction Facilities, including:
  - 1. Temporary sanitary facilities.
  - 2. Security.
  - 3. Temporary water supply.

### PART 2 – PRODUCTS

#### 2.1 MATERIALS

- A. All temporary facilities shall be in compliance with applicable Federal, State, county, municipal, and local utility laws, rules, and regulations.

### PART 3 – EXECUTION

#### 3.1 TEMPORARY SANITARY FACILITIES

- A. Provide adequate temporary toilet facilities for the use of all employees and personnel engaged in the Work, including Subcontractors and their employees.
- B. Locate sanitary facilities where appropriate and approved by the Engineer and maintain in a clean and sanitary condition during the course of the Work. Keep such facilities adequately supplied with toilet paper, hand sanitizer, and related supplies as required.
- C. At the completion of the Work, sanitary facilities shall be properly disinfected and all evidence of same removed from the site.

#### 3.2 SECURITY

- A. The Contractor shall provide for security of the Work and the jobsite until final inspection and Acceptance of the Work.
- B. The Engineer assumes no responsibility for protection of finished work or for loss of materials and equipment from the time that Contract operations have commenced until Acceptance of the Work.
- C. Damaged, lost, or stolen materials and equipment, whether or not stored or already installed shall be replaced by the Contractor with new specified material and equipment, including reinstalment where applicable, at no additional cost to the Engineer.

### **3.3 TEMPORARY WATER SUPPLY**

- A. The Contractor shall supply all water necessary to complete the Work. There is no source of water at the Site.
- B. Locate all temporary water supply facilities where appropriate and approved by the Engineer and maintain in a clean and sanitary condition during the course of the Work.

### **3.4 CLOSEOUT**

- A. Upon completion of the Work, or prior thereto when required by the Engineer, remove temporary facilities' structures and installations from the Project Area.
- B. Return exterior areas utilized for temporary facilities to their original, natural state, or as directed by the Project Manual.

### **END OF CONSTRUCTION FACILITIES**

## SECTION 01 55 00 – VEHICULAR ACCESS AND PARKING

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section consists of vehicular access and parking. Access to the Project shall be from Revais Creek Road to Dixon 6000 to an existing historic 2-track road. Parking for the Project shall be limited to the Equipment Laydown/Loading Area.

### PART 2 – PRODUCTS (NOT USED)

### PART 3 – EXECUTION

#### 3.1 SCOPE OF VEHICULAR ACCESS AND PARKING

- A. Contractor shall re-establish the historic 2-track road to allow vehicular access to the Project Area.
  - 1. Re-established road shall have no grades exceeding TEN percent (10%).
  - 2. Clear and grub for re-establishment of the historic 2-track road shall follow **Section 31 11 00** and shall not exceed a width of FIFTENN (15) feet unless approved by the Engineer.
  - 3. Improve and maintain the historic Site Access Road as needed to perform the Work.
  - 4. The Site Access Road shall be wide enough for ONE (1) haul truck to travel the road at a time. Turnouts may be constructed, if needed, in coordination with the Engineer.
  - 5. The contractor shall install road signs at the start of Revais Creek Road to caution local traffic of large transport vehicles on road.
  - 6. The need for minor grading and compaction should be anticipated. Importing and placement of a gravel wearing course is not anticipated. The Contractor shall inspect the historic Site Access Road during the Preconstruction Meeting and notify the Engineer of any concerns related to the Site Access Road so that it can be addressed in the Contractor's Work Plan.
  - 7. Regrade the Site Access Road after completing the Work to remove all ruts and provide a smooth surface that can be Topsoiled and seeded for establishment of vegetation.
- B. The Contractor shall select an appropriate area that is generally free from mature trees with minimal needs for clean and grub for the Equipment Laydown/Loading Area to allow vehicular parking.
  - 1. Contractor shall clear and grub (**Section 31 11 00**) as needed to develop an area suitable for equipment parking and loading.
  - 2. The Area shall be sized to allow for hauling vehicles to pull out of the re-established 2-track access road and allow other hauling vehicles to pass by.
- C. The Contractor shall maintain public access to Revais Creek Road and Dixon 6000 Road at all times.
- D. All modifications must be approved by the Engineer.

## SECTION 01 57 13 – TEMPORARY EROSION AND SEDIMENT CONTROL

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section consists of temporary erosion and sediment control of disturbed areas and soil stockpiles associated with the Revais Creek Tailings Removal and Floodplain Remediation Project.

#### 1.2 REFERENCES

- A. United States Army Corps of Engineers (USACE) 404 Nationwide Permit.
- B. National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) for Stormwater Discharges from Construction Activities.
- C. Montana Department of Transportation Standard and Supplemental Specifications for Road and Bridge Construction, 2020 Edition V3.1.
- D. Montana Department of Transportation Erosion and Sediment Control Best Management Practices Manual, December 2016.

#### 1.3 SUBMITTALS

- A. Prior to any ground disturbance activities including but not limited to clearing and grubbing, stripping, excavation, filling, and soil stockpiling, submit to the Engineer a copy of the CGP including a Stormwater Pollution Prevention Plan (SWPPP) that includes:
  - 1. Product information sheets for all products proposed for use as temporary erosion and sediment control.
  - 2. A plan showing areas where temporary erosion and sediment control measures will be implemented along with the type of erosion and sediment control measures proposed
  - 3. A written plan that includes proposed temporary erosion and sediment control measures, installation techniques, maintenance and monitoring, and temporary erosion and sediment control installation and removal scheduling as it relates to ground disturbance and permanent remediation activities.

### PART 2 – PRODUCTS

#### 3.1 MATERIALS

- A. Silt Fence – Provide silt fence, supported by either wood or metal fence posts and meeting the requirements for Unstabilized Silt Fence as described in Montana Department of Transportation Standard Specifications for Road and Bridge Construction, Section 716, Table 716-6.
- B. Fiber Rolls – Provide weed-free straw, flax, coconut, or other similar fiber materials bound into tight tubular rolls encased in natural fiber or UV-degradable polypropylene netting.

## **PART 3 – EXECUTION**

### **3.2 SCOPE OF TEMPORARY EROSION AND SEDIMENT CONTROL**

- A. Provide perimeter sediment control around disturbed areas using Silt Fence, Fiber Rolls, or other Engineer-approved measure.
- B. Provide sediment control around soil stockpiles using Silt Fence, Fiber Rolls, or other Engineer-approved measure.
- C. Comply with all conditions of the NPDES CGP. Revise and/or update the SWPPP to reflect current conditions, pollution prevention measures, and installed temporary erosion and sediment control measures in accordance with permit requirements. All revisions/updates must be submitted to the Engineer for approval.

### **3.3 INSTALLATION**

- A. Install erosion and sediment control measures in accordance with Montana Department of Transportation Erosion and Sediment Control Best Management Practices Manual. Refer to SC-1 for Silt Fence and SC-6 for Fiber Rolls.

### **3.4 MAINTENANCE**

- A. Inspect temporary erosion and sediment control measures in accordance with the provisions and requirements of the CGP. All defects should be repaired immediately. Remove captured sediment as needed to maintain performance of sediment control products. Blend sediment from stockpile sediment control measures back into soil stockpile. Dispose of sediment from tailings storage area perimeter sediment control measures in accordance with **Section 02 61 31**.
- B. Soil erosion and sediment controls shall control erosion and prevent conveyance of sediment beyond the project limits and/or into adjacent sensitive wetlands, streams, and similar protected areas.
- C. Maintain all temporary erosion and sediment control measures until it is no longer needed or conflicts the Work. If devices that conflict the Work are removed, replace these devices no later than the end of each shift.

### **3.5 REMOVAL**

- A. Remove temporary erosion and sediment control measures after permanent reclamation measures have been implemented and approved by Engineer.
- B. Dispose of captured sediment at time of temporary erosion and sediment control removal in accordance with **Section 02 61 31**.
- C. Grade areas where temporary erosion and sediment control measures were installed to match adjacent ground surfaces.
- D. Do not transfer or terminate the CGP coverage until the temporary erosion and sediment control measures have been removed, all Work requiring coverage of the CGP has been completed, and all

records required under the CGP, including inspection and monitoring reports, are submitted to the Engineer for approval.

**END OF TEMPORARY EROSION AND SEDIMENT CONTROL**

## **SECTION 01 71 13 – MOBILIZATION**

### **PART 1 – GENERAL**

#### **1.1 DESCRIPTION OF WORK**

- A. The work covered by this section includes the following:
1. All work associated with meeting the requirements of the **Division 00** (Procurement and Contracting Requirements) and **Division 01** (General Requirements) specification sections.
  2. All work associated with securing a performance bond, payment bond, and proof of insurance.
  3. All preparatory work including but not limited to transportation and movement of personnel, equipment, and incidentals to the project site.
  4. All work associated with removal of personnel, equipment, unused materials not incorporated into the Work, and incidentals from the site following completion of the project.

### **PART 2 – PRODUCTS (NOT USED)**

### **PART 3 – EXECUTION (NOT USED)**

**END OF MOBILIZATION**

## **DIVISION 2 - EXISTING CONDITIONS**

## SECTION 02 61 31 – EXCAVATION, HANDLING, AND DISPOSAL OF TAILINGS

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section consists of excavation, loading, transporting, and disposal of Tailings at the Landfill.

#### 1.2 DEFINITIONS

- A. Tailings shall consist of historic mine tailings with characteristics that include fine grained material with a blue/orange hue.
- B. Native Material shall consist of all native soils within the Project Area that are to remain in place during the Work. Native soils are generally cobble and floodplain soils.

#### 1.3 SOIL TESTING

- A. The Engineer will be responsible for observing and evaluating the in-situ soil and determining when excavation activities are complete. Do not begin backfilling or regrading activities until approved by the Engineer.

#### 1.4 DISPOSAL OF TAILINGS

- A. Dispose of Tailings at the Republic Services Missoula Landfill at 3737 Coal Mine Road, Missoula MT (Landfill).
- B. The Engineer has pre-arranged disposal payments with the Landfill. The Contractor is not required to pay any Landfill disposal fees.

#### 1.5 DISPOSAL OF DEBRIS AND OTHER UNWANTED MATERIALS

- A. The Contractor shall dispose of trash, debris, and other miscellaneous materials unearthed during the excavation process. Disposal of these items will be considered part of the Excavate, Haul, and Dispose Tailings Bid item and additional compensation will not be provided.

#### 1.6 TRAFFIC AND ACCESS

- A. Haul truck traffic on Site shall be limited to the Access Road and Staging Areas identified in the Contractor's Work Plan and the Tailings Removal Area shown on the Drawings.
- B. The Contractor shall maintain the Site Access Road throughout the excavation and hauling work in accordance with the requirements described in **Section 31 10 13** – Site Preparation.
- C. The Contractor shall provide traffic control signage as necessary to protect the safety of site workers, the Engineer, and the general public.

## 1.7 SAFETY PROCEDURES AND WORKER PROTECTION

- A. Provide and maintain safeguards, including warning signs, barricades, temporary fences, and other similar items that are required for protection of all personnel during the excavation and soil removal operations.

## PART 2 – PRODUCTS (NOT USED)

## PART 3 – EXECUTION

### 3.1 SEQUENCE OF WORK

- A. The sequence of removal of existing facilities and disposal of materials shall be in accordance with **Section 01 11 00** and the Contractor's Work Plan submittal, as described **Section 01 11 00**.

### 3.2 GENERAL

- A. The Contractor shall perform necessary site preparation and clearing and grubbing in accordance with **Section 31 10 13** – Site Preparation and **Section 31 11 00** – Clearing and Grubbing prior to any excavation or other earthwork operations.
- B. Horizontal excavation limits are generally shown on the Drawings; however, the Engineer will delineate the exact horizontal excavation limits at the Site after Clearing and Grubbing activities have been completed by the Contractor and as excavation progresses.
- C. The Engineer will designate in situ soil as either Tailings or Native Material during the course of the Work.

### 3.3 EXCAVATION

- A. Excavate Tailings to the horizontal and vertical limits delineated by the Engineer on Site and place the soil directly into haul trucks for transportation to the Landfill.
- B. Leave all Native Material in place.

### 3.4 TRANSPORTATION AND HAULING

- A. Transport Tailings to the Landfill for disposal. Tailings shall be covered during transport to minimize the release of dust and debris.
- B. Tailings shall be transported in accordance with Montana Department of Transportation (MDT) requirements.

### 3.5 DISPOSAL

- A. Dispose of Tailings at the Landfill in accordance with the Landfill's protocols, procedures, and policies.
- B. Retain and submit all load tickets directly to the Engineer.

## END OF EXCAVATION, HANDLING, AND DISPOSAL OF TAILINGS

**DIVISION 31 - EARTHWORK**

## SECTION 31 10 13 – SITE PREPARATION

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section consists of site preparation activities, including but not limited to utility locates, preparation of construction staging area(s), site security, dust control, housekeeping, traffic control, and other site preparation and site services as described in this section.

#### 1.2 UTILITIES

- A. The Contractor shall verify location of all utilities before commencement of the Work. Remove no utilities, unless shown on the Drawings or as specified in the Specifications or directed by the Engineer. If unexpected conditions arise, stop work and immediately notify the Engineer. Damage caused by Contractor to any existing utilities shall be repaired by the Contractor at no additional cost to the Engineer.

#### 1.3 SITE SECURITY

- A. The Contractor shall be responsible for security of his equipment and material at all times. No security will be provided by the Owner or Engineer.

#### 1.4 HOUSEKEEPING

- A. All solid or liquid wastes generated by the construction activities shall be contained and kept in a neat and orderly manner. Liquid wastes, which may include but are not limited to grease, used motor oil, and sanitary wastes, shall not be disposed at the Site. All wastes shall be stored and handled in accordance with Montana Department of Environmental Quality regulations. Solid wastes shall be contained in a single location and protected from disturbance by wind. All solid wastes shall be removed from the site upon completion of the Project and either salvaged, recycled, or disposed at a properly licensed landfill. Fuel may be stored on-site if properly containerized and approved by the Engineer.
- B. Contractor shall continuously, during the course of the Work, remove and dispose of all surplus construction materials and debris and keep the Project Area and public rights-of-way reasonably clean. Upon completion of the Work, Contractor shall remove all temporary construction facilities, debris, and unused materials provided for the Project, leaving the Project Site in a neat and clean condition.
- C. Contractor shall comply with IGB online food storage regulations while working in grizzly bear habitat. Regulations for working on the Flathead are found here: <https://igbconline.org/wp-content/uploads/2023/06/Flathead-Indian-Reservation.pdf>

### PART 2 – PRODUCTS

## **2.1 EQUIPMENT**

- A. The Contractor shall provide all equipment and machinery sufficient for proper execution of the Work.

## **PART 3 – EXECUTION**

### **3.1 PROTECTION**

- A. The Contractor shall protect and maintain benchmarks and survey control points from disturbance during construction. Replacement of damaged benchmarks and survey control points will be at the expense of the Contractor.

### **3.2 CONSTRUCTION STAGING AREA(S)**

- A. Prepare the construction staging area(s) for storage of equipment, and construction materials.

**END OF SITE PREPARATION**

## SECTION 31 11 00 – CLEARING AND GRUBBING

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section consists of clearing, grubbing, stockpiling, and disposing of vegetation and debris within the limits of the Project Site as shown on the Drawings and as required by the Work.

#### 1.2 REFERENCES

- A. Specification **Section 31 10 13** – Site Preparation
- B. Specification **Section 32 91 14** – Topsoil and Seeding

### PART 2 – PRODUCTS (NOT USED)

### PART 3 – EXECUTION

#### 3.1 CLEARING AND GRUBBING

- A. Clearing consists of cutting and removal of all trees, bushes, shrubs, and other vegetation as close as practical to the ground surface without disturbing the ground surface.
- B. Grubbing consists of the removal and disposal of stumps, root balls, and perishable subgrade materials remaining after clearing.
- C. Perform clearing and grubbing along the historic Site Access Road as needed to facilitate one-way haul truck traffic as described in **Section 31 10 13**, Site Preparation. Clearing and grubbing may also be required to establish Site Access Road turnouts, contractor staging areas, and material stockpile locations.
- D. Verify clearing and grubbing limits with Engineer prior to any clearing and grubbing activities. Limit clearing to the extents verified by the Engineer. Do not remove or disturb standing conifers with a diameter breast height greater than 3 inches unless approved by the engineer. Contractor is responsible for any damage to the trees, bushes, shrubs, and other vegetation that are located outside the verified limits.

#### 3.2 STOCKPILING

- A. Stockpile cleared trees, branches, other woody debris, and large boulders for use in reclamation of the designated tailings removal area. Refer to **Section 32 91 14**, Topsoil and Seeding, for reclamation requirements detailing incorporation of cleared woody material and boulders.

### **3.3 REMOVAL AND DISPOSAL**

- A. All non-woody cleared and grubbed materials shall become the property of the Contractor and shall be removed from the Project Site and disposed of in accordance with all applicable laws and regulations.
- B. Burying or burning non-woody cleared and grubbed materials will not be permitted.

**END OF CLEARING AND GRUBBING**

## SECTION 31 22 00 – GRADING

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section includes regrading activities associated with restoring the Tailings Removal Area to its natural State within the Revais Creek Floodplain following tailings excavation and removal from the Site. Specific objectives include:
  - a. Re-establishment of natural grades within the floodplain.
  - b. Providing positive drainage through the tailings removal area and Revais Creek overflow channel.
  - c. Re-grading of the excavated tailings removal area, Site Access Road, and Equipment Laydown Area(s) to provide a finished surface that is similar in nature to the surrounding area and blended into the undisturbed, native topography with smooth transitions and grades not exceeding SIX (6) percent.
- B. Re-grading to maintain integrity of Revais Creek Overflow Channel that passes along and across the Tailings Removal Area.
- C. Engineer will perform survey of the Tailings Removal Area following Site Regrading and Overflow Channel Maintenance with a sufficient point density to quantify the volume of soil moved throughout the Tailings Removal Area during regrading activities.

#### 1.2 REFERENCES

- A. **Section 01 57 13** – Temporary Erosion and Sediment Control
- B. **Section 02 61 31** – Excavation, Handling, and Disposal of Tailings
- C. **Section 32 91 14** – Topsoil and Seeding

### PART 2 – PRODUCTS

#### 2.1 CLEAN FILL

- A. Clean Fill shall consist of tailings-free soils generated from the Site and within the grading limits following excavation and removal of Tailings.

### PART 3 - EXECUTION

#### 3.1 GENERAL

- A. Perform work in accordance with provisions of all applicable laws and regulations, permits, and requirements of **Section 01 57 13**, Temporary Erosion and Sediment Control.

### **3.2 SITE REGRADING**

- A. Following removal of Tailings, re-grade the Tailings Removal Area, Site Access Road and Equipment Laydown Area(s), to establish pre-tailings disposal grades. Excavate, fill, push, shape, and blend soils as needed to provide a uniformly graded area with a smooth transition between adjacent existing grades and new grades. Maintain positive drainage through the re-graded area within the floodplain and utilize gentle slopes not exceeding SIX percent (6%). Track walk, tamp, or back-drag regraded surface soils to provide similar compaction to undisturbed areas.

### **3.3 MAINTAIN OVERFLOW CHANNEL**

- A. Maintain existing overflow channel along the east side of the Tailings Removal Area following removal of Tailings from the Site.
  1. Locations Where Overflow Channel Crosses Tailings Removal Area:
    - a. Re-construct overflow channel where Tailings have been removed by backfilling excavations, matching upstream and downstream channel dimensions, and providing a smooth transition and consistent slope between existing and new grades. Use Clean Fill generated from within the Tailings Removal Area as needed. Track walk, tamp, or back-drag re-constructed portions of the overflow channel to provide similar compaction to undisturbed areas.
  2. Locations Where Overflow Channel Travels Adjacent to Tailings Removal Area:
    - a. Maintain or re-establish original geometry of overflow channel prior to removal of Tailings. This may include minor filling, channel regrading, shaping, and blending as needed to provide a channel with properties consistent with natural, undisturbed portions of the existing overflow channel. Track walk, tamp, or back drag areas where fill material was placed to provide similar compaction to undisturbed areas. Ensure positive drainage is maintained alongside the entirety of the Tailings Removal Area and within the grading limits. Ensure re-established channel has a smooth and natural finish.

### **END OF GRADING**

**DIVISION 32 - EXTERIOR IMPROVEMENTS**

## SECTION 32 31 00 – FENCES AND SITE ACCESS RESTRICTIONS

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section includes preventing access to the Site following completion of remediation efforts. Specific objectives include:
  - 1. Installation of temporary cattle exclusion fence around all disturbed areas.
  - 2. Obstructing access to reclaimed areas including the Site Access Road, Tailings Removal Area, and Equipment Laydown Area(s).

#### 1.2 REFERENCES

- A. **Section 01 57 13** – Temporary Erosion and Sediment Control
- B. **Section 31 22 00** - Grading
- C. **Section 32 91 14** – Topsoil and Seeding

#### 1.3 SUBMITTALS

- A. Prior to importing any Fencing material to the Site, submit to the Engineer vendor certifications and/or Statements of guarantee for all posts, wire, and bracing materials. Certification shall include a Statement that the materials meet or exceed the requirements in Part 2 of this section.
- B. Submit fencing alignment plan to Engineer for approval prior to fence installation.
- C. Cooperate with the Engineer in obtaining Boulders as required by this section.

#### 1.4 DELIVERY, STORAGE, AND HANDLING

- A. All fence and access restriction materials shall be furnished in original manufacturer's shipping bags or containers and remain unopened until they are used.
- B. All fence and access restriction materials shall be stored in a way that protects them from damage from the elements.
- C. All fence and access restriction material waste generated by work shall be disposed of by the Contractor off site.

### PART 2 – PRODUCTS

#### 2.1 FENCE

- A. Provide fence that shall remain viable for at least FIVE (5) years and comply with specifications as outlined in Montana Law – Title 81, Chapter 4, Part 101.
- B. Provide fence posts that comply with the following:

1. Fence posts shall be FIVE (5) inches round SEVEN (7) feet long wooden posts installed at a minimum depth of TWENTY-FOUR (24) inches. Posts installed at corners or braces shall be FIVE (5) inches round EIGHT (8) feet long wooden posts.
- C. Provide fence wire that complies with the following:
1. Constructed with FOUR (4) strands of well-stretched wire of equitable strength. The top and bottom wires shall consist of a 12.5-gauge barb-less wire and the remainder shall consist of TWO (2) 12.5-gauge barbed wire with barbs spaced at FIVE (5) inches.
- D. Provide and install fence braces at a maximum unbraced distance of 660 feet. If a double brace is installed the maximum allowable unbraced distance shall be 990 feet. Fence braces shall comply with the following:
1. TWO (2) FIVE (5) inch round EIGHT (8) feet long wooden posts installed at a minimum depth of THREE (3) feet – SIX (6) inches below ground surface (bgs) and a maximum at distance of EIGHT (8) feet – THREE (3) inches from one another.
  2. ONE (1) wooden FOUR (4) inch brace rail of sufficient length to span the distance between the brace posts.
  3. TWO (2) cross brace wires consisting of a minimum 12.5-gauge smooth wire doubled to form a FOUR (4) wire brace. Brace wires shall be attached to posts at the top of ONE (1) post and the bottom of the opposite post by wrapping around the posts at least TWO (2) times and then wrapping around itself FIVE (5) times. The brace wires shall be secured to the exterior of the post by at least NINE (9) gauge staples. Cross brace wires shall be tensioned using levers of a minimum size of 1.5 inch by TWO (2) inch by TWELVE (12) inch and remain in place after tensioning is complete.

## 2.2 LARGE BOULDERS

- A. Provide large boulders with diameters greater than THREE (3) feet, if unable to source from the Site.
- B. Boulders shall be of similar composition and color to those residing at the Site.

## PART 3 – EXECUTION

### 3.1 GENERAL

- A. Perform work in accordance with provisions of all applicable laws and regulations, permits, and requirements of **Section 01 57 13**, Temporary Erosion and Sediment Control, **Section 31 22 00**, Grading, and **Section 32 91 14**, Topsoil and Seeding.

### 3.2 FENCING

- A. The Contractor shall erect temporary livestock exclusion fencing that encloses all disturbed, regraded and seeded areas following completion of reclamation efforts.

- B. The Contractor shall minimize environmental degradation during fence installation by complying with the following requirements:
1. Protection of Site:
    - a. Minimize surface soil disturbance during post installation by pounding all posts into place whenever possible.
  2. Protection of Vegetation:
    - a. Avoid removal of any woody vegetation without express approval from Site Engineer.
    - b. Avoid securing fencing materials to existing trees.
  3. Protection of Streambed:
    - a. Avoid entering or crossing saturated locations with vehicles or large equipment.
    - b. Avoid use of pressure treated wooden posts in streambed, wetland areas of areas immediately adjacent. Untreated wooden posts shall be sufficient in these areas.

### **3.3 OBSTRUCT ACCESS TO RECLAIMED SITE ACCESS ROAD**

- A. Following final regrading and seeding of the Site Access Road and completion of project, the Contractor shall prevent access to the former Site Access Road and all other reclaimed areas at the intersection of Dixon 6000 by one of the following methods:
1. Installation of multiple large boulders, at a minimum distance of FOUR (4) feet between each boulder and of a sufficient quantity that prevents vehicular travel on reclaimed area, as approved by the Engineer.
  2. Installation of a graded Kelly Hump barrier that consists of the following:
    - a. A ditch line or berm across the closed road entrance at least ONE (1) foot wide and SIX (6) inches high.
    - b. An excavation to a depth of TWO (2) feet following the closed road entrance for a minimum of FIFTEEN (15) feet, but no more than THIRTY (30) feet.
    - c. A berm to a minimum height of FIVE (5) feet from the base of the excavation at a minimum width of TEN (10) feet.

### **END OF FENCES AND SITE ACCESS RESTRICTIONS**

## SECTION 32 91 14 – TOPSOIL AND SEEDING

### PART 1 – GENERAL

#### 1.1 DESCRIPTION OF WORK

- A. The work covered by this section consists of placing Topsoil over all disturbed areas after grading activities are complete, seeding Topsoiled areas, and related reclamation activities of all disturbed areas.

#### 1.2 REFERENCES

- A. **Section 31 11 00** – Clearing and Grubbing
- B. **Section 31 22 00** – Grading

#### 1.3 SUBMITTALS

- A. Prior to importing any Topsoil material to the Site, submit to the Engineer for review and approval the Topsoil supplier name and location along with certified Topsoil analysis reports containing:
  - 1. Import Quantities
  - 2. Certification of Particle Size Distribution compliance with specification requirements
  - 3. Certification of Chemical Attribute compliance with specification requirements
- B. Prior to procurement of seed, submit to the Engineer vendor certifications and/or Statements of guarantee for all seed, mulch, fertilizer, and tackifier. Certification shall include a Statement that the seed furnished is from a lot that has been tested by a recognized laboratory for seed testing within SIX (6) months prior to the date of delivery.
- C. Prior to seeding, submit to the Engineer for review and approval seeding method and corresponding soil supplements, mulch, binders, product mixtures, and application rates.
- D. Following project completion, submit to the Engineer seed container labels.

#### 1.4 DELIVERY, STORAGE, AND HANDLING

- A. All seed, fertilizer, and related materials and chemicals shall be furnished in original manufacturer's shipping bags or containers and remain unopened until they are used.

### PART 2 – PRODUCTS

#### 2.1 GENERAL

- A. Import Topsoil that meets the following gradation, chemical, and nutrient requirements:

**Topsoil Gradation Requirements**

Particle Size	Particle Size (mm)	Max Percent of Soil Fraction
Sand	0.05 - 2.0	85
Silt	0.005 - 0.05	80
Clay	< 0.005	50

Notes:*mm = millimeters***Topsoil Chemical and Nutrient Requirements**

Requirement	Acceptable Range
pH	5.5 - 8.0
Soil Electrical Conductivity	< 4.0 dS/m
Organic Content	5% – 10%

Notes:*dS/m = deciSiemens per meter*

- B. Provide Seed Mix for reclamation of all disturbed areas that is free of noxious weeds containing the following mix:

**Seed Mix**

Species	PLS Pound Per Acre
Annual Ryegrass (I) Lolium Multiflorum	4
Mountain Brome (N) Bromus Marginatis	5
Blue Wildrye (N) Elymus Glaucus	4
Tufted Hairgrass (N) Deschampsia Caespitosa	2
Big Bluegrass (N) Poa Ampla (Sherman)	5
Slender Wheatgrass (N) Elymus Trachycaulus (Pryor)	5
Total	25

Notes:*PLS = pure live seed*

- C. Provide a wood fiber mulch free of growth or germination inhibiting materials. If hydraulic seeding methods are used, wood fiber mulch should form a homogeneous slurry when combined with water, tackifiers, seed, fertilizer, and other additives that remains uniformly suspended under agitation. Limit time seed is in hydroseeder to no more than ONE (1) hour.
- D. Fertilizer shall consist of a Nitrogen (N) - Phosphorous (P) - Potassium (K) blend in accordance with applicable laws, rules, and regulations.
- E. Woody Debris shall consist of the woody portion of cleared material generated in accordance with the Drawings including tree trunks, branches, and other woody products.
- F. Large boulders shall consist of EIGHTEEN (18) inches or larger in diameter.

## **PART 3 - EXECUTION**

### **3.1 FINAL SURFACE SOIL PREPARATION**

- A. Perform grading of the Tailings Removal Area and other disturbed areas in accordance with **Section 31 22 00** following tailings removal and prior to Topsoil placement.

### **3.2 TOPSOIL PLACEMENT AND MICRO-TOPOGRAPHY**

- A. Place Topsoil directly on re-graded surfaces to a minimum depth of FOUR (4) inches, as approved by the Engineer. Decompact Topsoil in areas that have been compacted by heavy equipment as needed to ensure a maximum EIGHTY-FIVE percent (85%) Standard Proctor is maintained across the Site.
- B. Do not place frozen, excessively wet, or otherwise damaged Topsoil above the re-graded surfaces, and do not place Topsoil on frozen, excessively wet, or otherwise damaged subsoil.
- C. Leave Topsoil in a roughened State that provides a microtopographic finished surface consisting of localized mounds and depressions with variations up to SIX (6) inches in height compared to the surrounding grades within all disturbed areas.
- D. On sloped areas, provide Topsoil grooving perpendicular to the fall of the slope by manual raking, mechanical raking, or track walking.

### **3.3 DISBURSEMENT OF WOODY DEBRIS AND BOULDERS**

- A. Disburse stockpiled woody debris to achieve TWENTY-FIVE percent (25%) coverage throughout the topsoiled areas to replicate natural conditions of the floodplain and surrounding areas.
- B. Place tree trunks, larger woody debris, and large boulders along contours to decrease slope length and interrupt preferential runoff flow paths.
- C. Prevent sediment migration to Revais Creek by constructing appropriate drainage features and placing brush filter windrows on downslopes of drainage outlets.
- D. Place tree trunks, larger woody debris, and large boulders sporadically throughout the reclaimed (regraded and topsoiled) Site Access Road to prevent vehicular access to the site following completion of the Project.
- E. Review Site with Engineer following disbursement of woody debris and boulders prior to Seeding.

### **3.4 SEEDING**

- A. Seed disturbed areas during one of the following seeding seasons or an alternate date approved by the Engineer:
  - 1. April 1 – June 30
  - 2. September 1 – October 15
- B. Perform seeding, fertilizing, and mulching immediately following Topsoil Placement, Micro-Topography, and Disbursement of Woody Debris and Boulders.

- C. Seed, fertilize, and mulch using hydraulic seeding methods unless otherwise approved by Engineer.
- D. Do not perform seeding during high winds, when the ground surface is too wet for working, or immediately prior to a storm event.
- E. Apply hydroseed in accordance with manufacturers' guidelines.

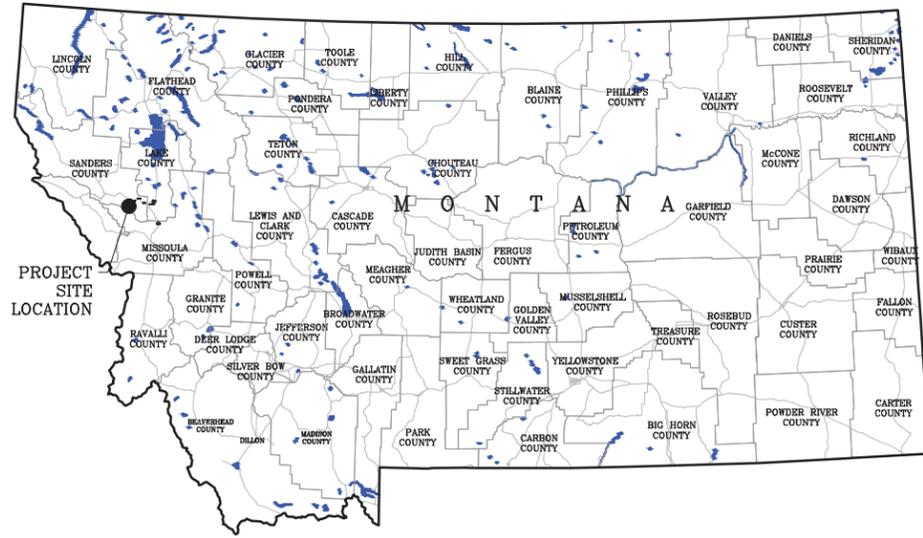
### **3.5 MAINTENANCE**

- A. Water and maintain seeded areas for a period of FOUR (4) weeks following seed, fertilizer, and mulch placement, as approved by the Engineer.
- B. Areas eroded prior to vegetation establishment shall be filled and repaired to provide a finished surface in accordance with Paragraph 3.2.
- C. Areas where evidence of growth is not present THREE (3) weeks after seeding shall be reseeded. Any reseeded areas shall be watered and maintained for a period of FOUR (4) weeks.
- D. All State-listed noxious weeds shall be controlled either mechanically or chemically.

#### **END OF TOPSOIL AND SEEDING**

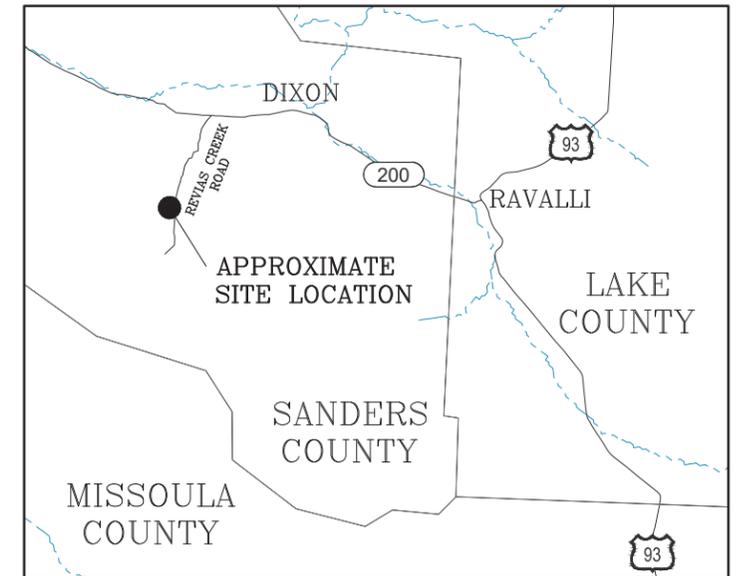


## **ATTACHMENT A - DRAWING SHEETS**



COUNTY MAP

# REVAIS CREEK TAILINGS REMOVAL ISSUED FOR BID FEBRUARY 23, 2024



VICINITY MAP

DRAWING INDEX		
DWG #	DRAWING TITLE	REV
001	COVER SHEET	0
002	SITE ARRANGEMENT	0
003	TAILINGS REMOVAL PLAN AND PROFILE	0
004	FINAL GRADE PLAN AND PROFILE	0
005	SITE DETAILS	0



**OWNER:**

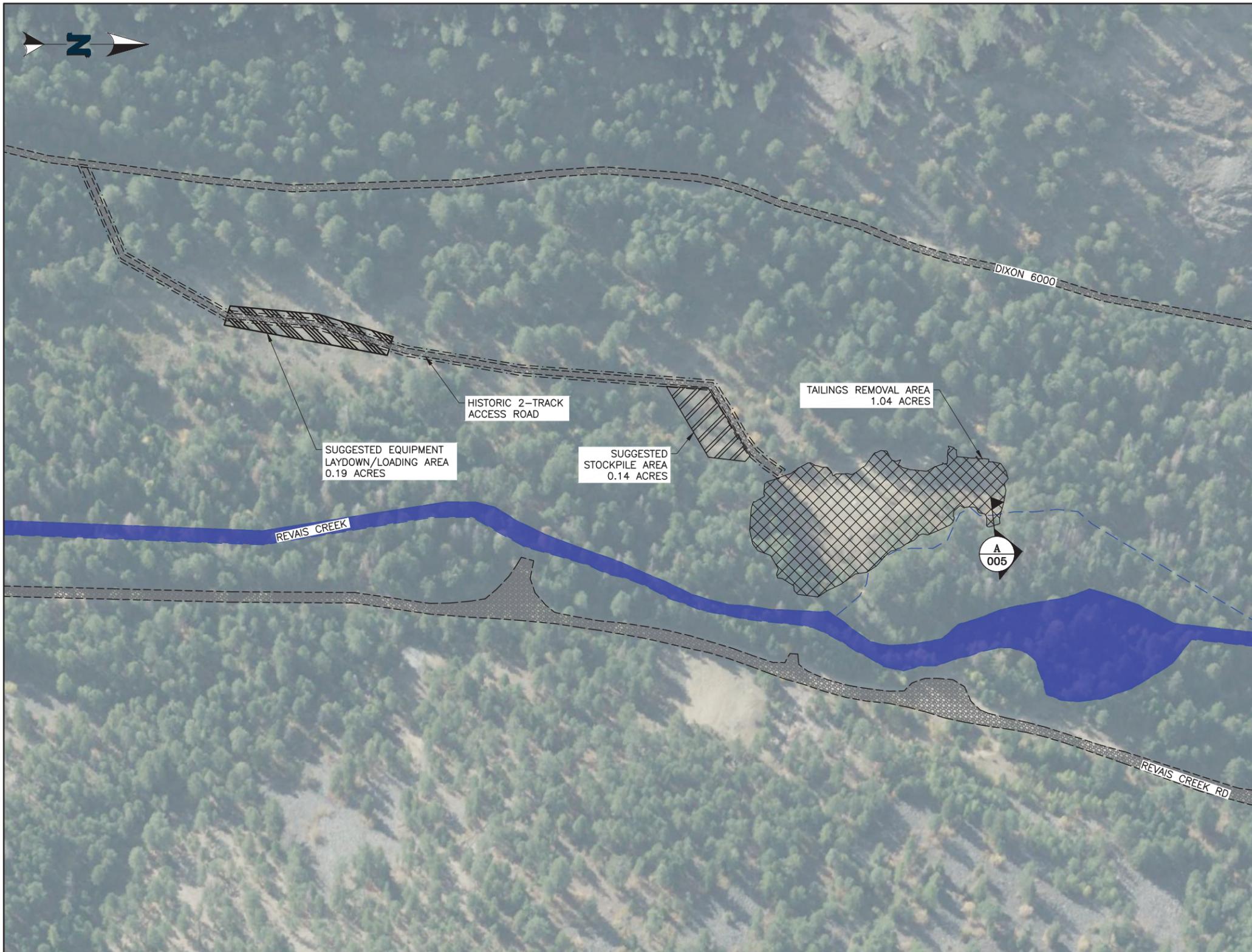


**CONFEDERATED SALISH & KOOTENAI TRIBES**  
301 MAIN STREET  
POLSON, MT 59860



700 SW Higgins Ave, Suite 15, Missoula, MT 59803  
Phone: (406) 549-8270 [www.newfields.com](http://www.newfields.com)

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**LEGEND:**

-  EXISTING TAILINGS, TO BE REMOVED
-  REVAIS CREEK OVERFLOW CHANNEL
-  REVAIS CREEK
-  EXISTING ROADWAYS
-  EQUIPMENT LAYDOWN/LOADING AREA
-  STOCKPILE AREA
-  CLEAR AND GRUB LIMITS

**CONSTRUCTION NOTES:**

1. RE-ESTABLISH HISTORIC SINGLE LANE ACCESS ROAD FROM DIXON 6000 TO THE TAILINGS REMOVAL AREA. THE ROAD ALIGNMENT AND EXTENTS SHOWN ON THIS SHEET ARE APPROXIMATE AND MAY BE MODIFIED. MAXIMUM OF 10% GRADE FOR RE-ESTABLISHED ACCESS ROAD. ALL MODIFICATIONS MUST BE APPROVED BY THE ENGINEER PRIOR TO IMPLEMENTATION.
2. CLEAR AND GRUB LIMITS INCLUDE THE EQUIPMENT LAYDOWN AREA, STOCKPILE AREA, AND A 15-FOOT WIDE CORRIDOR CENTERED ALONG THE EXISTING ACCESS ROAD. CLEAR AND GRUB LIMITS TO BE DELINEATED BY THE ENGINEER ONSITE PRIOR TO THE START OF CONSTRUCTION.
3. STOCKPILE ALL WOODY DEBRIS AND BOULDERS GREATER THAN 18-INCHES IN DIAMETER FOR PLACEMENT ON THE RESTORED TAILINGS REMOVAL AREA, SITE ACCESS ROAD, AND EQUIPMENT LAYDOWN AREA(S) AT THE COMPLETION OF THE PROJECT.
4. STOCKPILE AND EQUIPMENT LAYDOWN/LOADING AREAS ARE APPROXIMATE AND MAY BE MODIFIED. CONTRACTOR SHALL SELECT AREAS FOR STOCKPILE AND FOR EQUIPMENT LAYDOWN/LOADING AREAS THAT ARE GENERALLY FREE FROM MATURE TREES WITH MINIMAL NEEDS FOR CLEARING AND GRUBBING. SELECTED AREAS MUST BE APPROVED BY THE ENGINEER PRIOR TO IMPLEMENTATION.

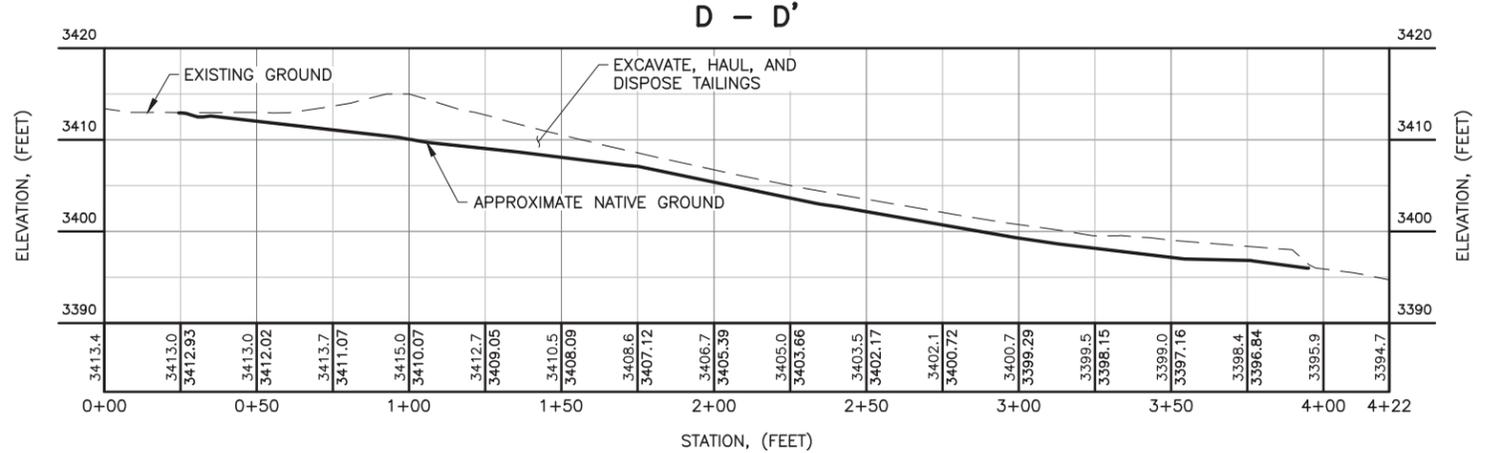
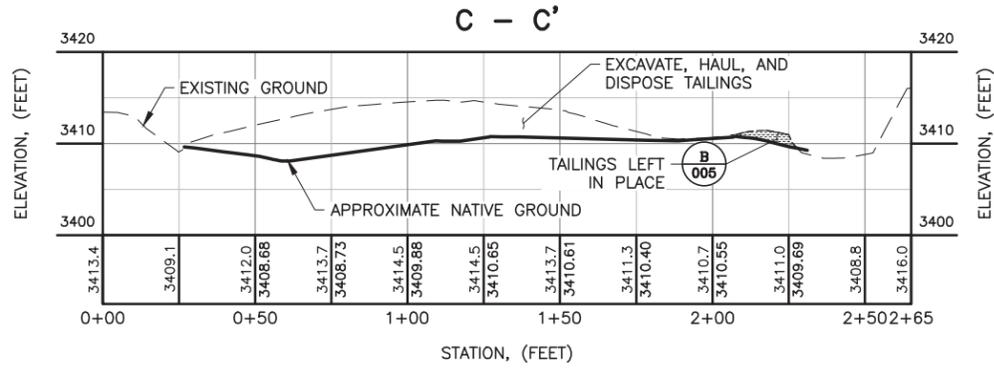
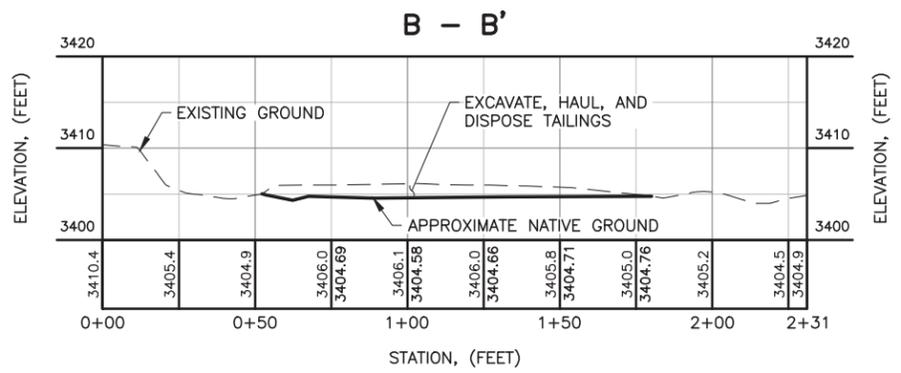
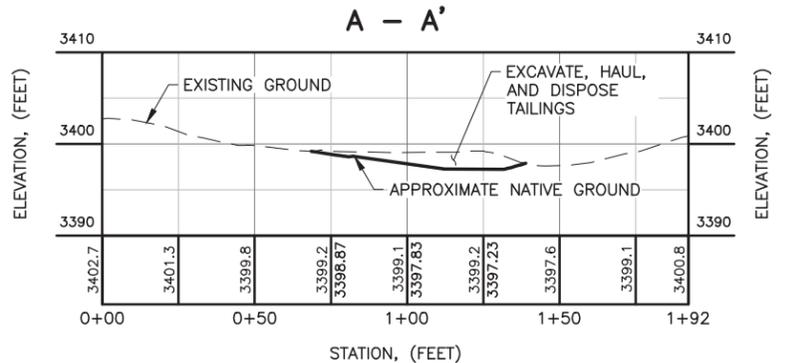
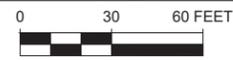
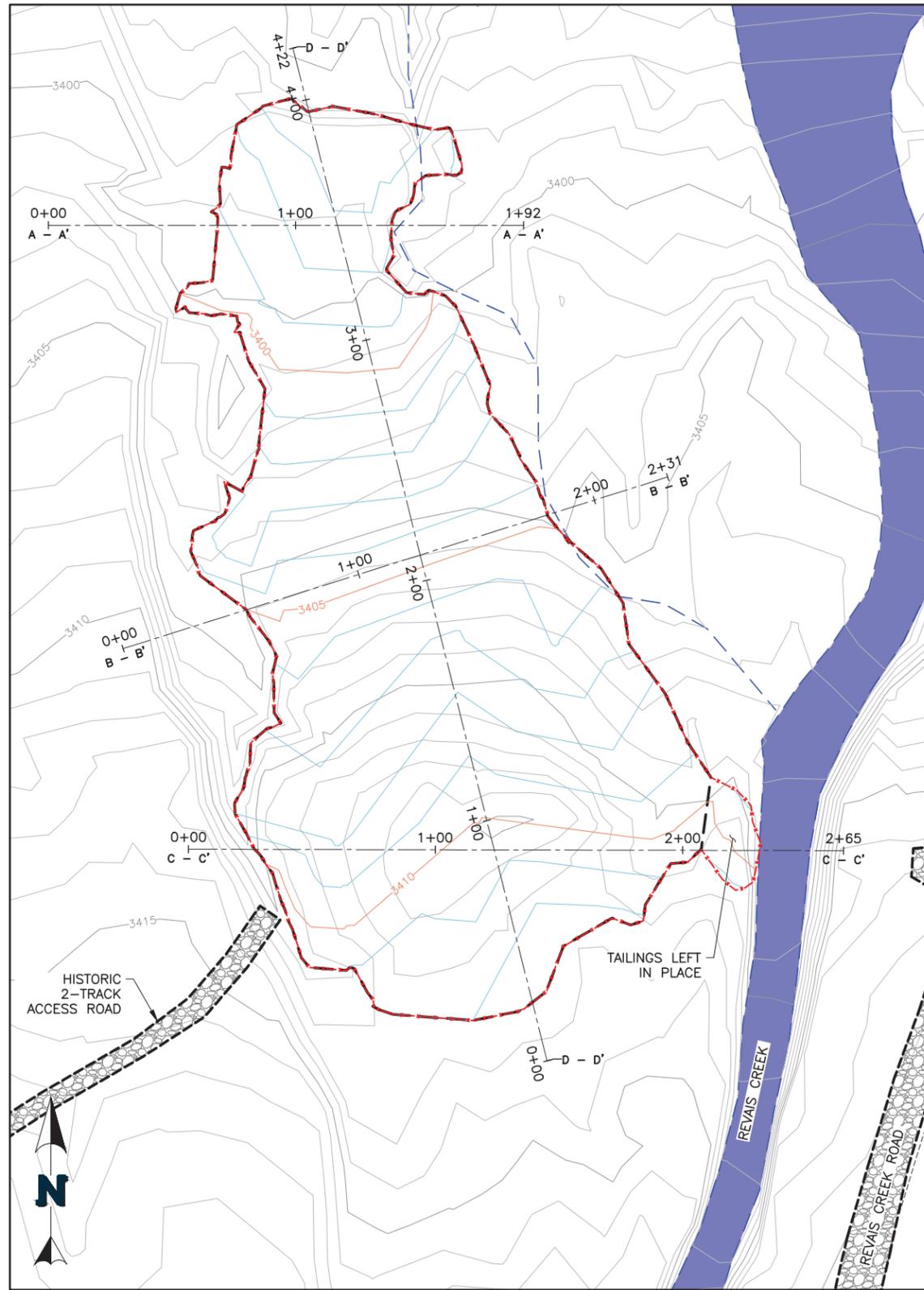


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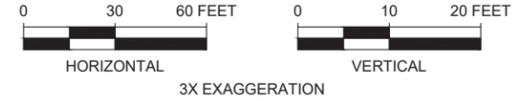
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	PROJECT	REVAIS CREEK TAILINGS REMOVAL
TITLE	SITE ARRANGEMENT	
	FILENAME	350.0072.002M
	DRAWING NO.	002
	REVISION	0

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- LEGEND:**
- EXISTING GROUND CONTOURS (1' AND 5' INTERVALS) SURVEYED MAY 2023 BY IMEG
  - APPROXIMATE NATIVE GROUND CONTOURS (1' AND 5' INTERVALS)
  - APPROXIMATE TAILINGS BOUNDARY
  - APPROXIMATE TAILINGS REMOVAL AREA BOUNDARY
  - REVAIS CREEK OVERFLOW CHANNEL
  - REVAIS CREEK
  - EXISTING ROADWAYS

- CONSTRUCTION NOTES:**
- TAILINGS BOUNDARY, NATIVE GROUND, AND TAILINGS REMOVAL AREA BOUNDARY SHOWN IS APPROXIMATE.
  - THE ENGINEER WILL DELINEATE THE HORIZONTAL AND VERTICAL EXTENTS OF THE TAILINGS REMOVAL.
  - NO WORK SHALL BE CONDUCTED OR EQUIPMENT OPERATED WITHIN 20 FT OF REVAIS CREEK. WORK LIMITS WILL BE DELINEATED BY THE ENGINEER ONSITE PRIOR TO THE START OF CONSTRUCTION.

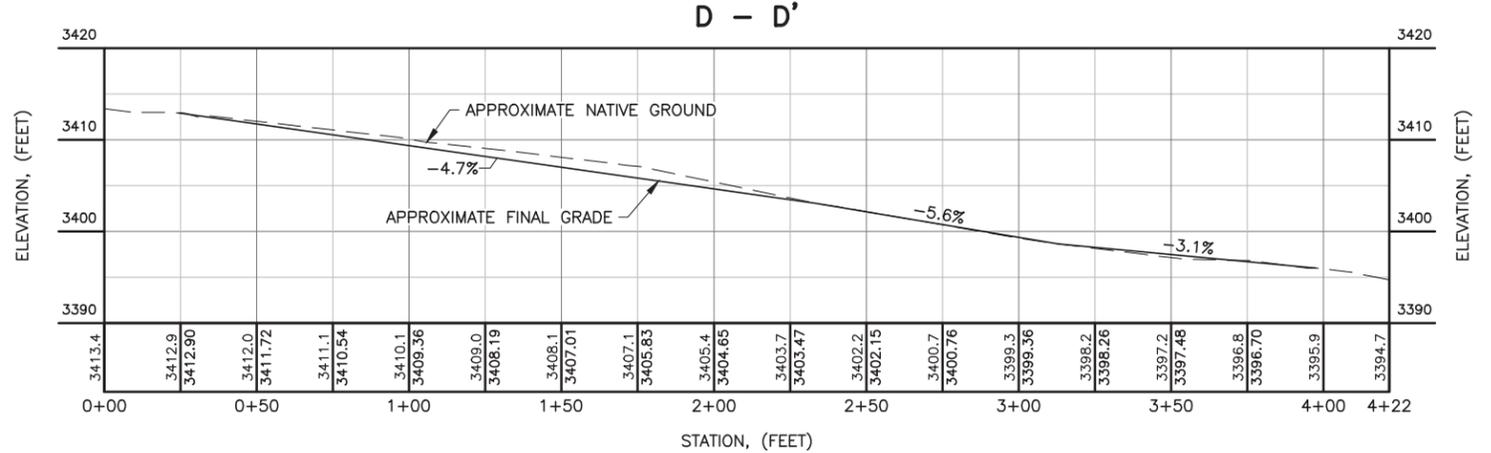
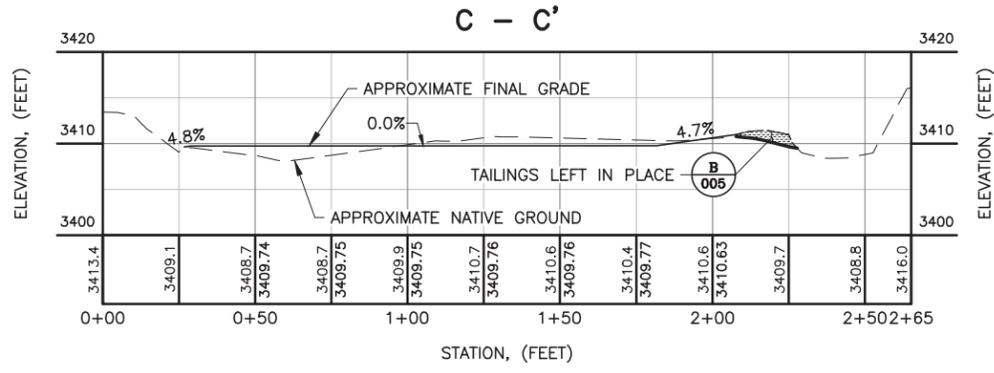
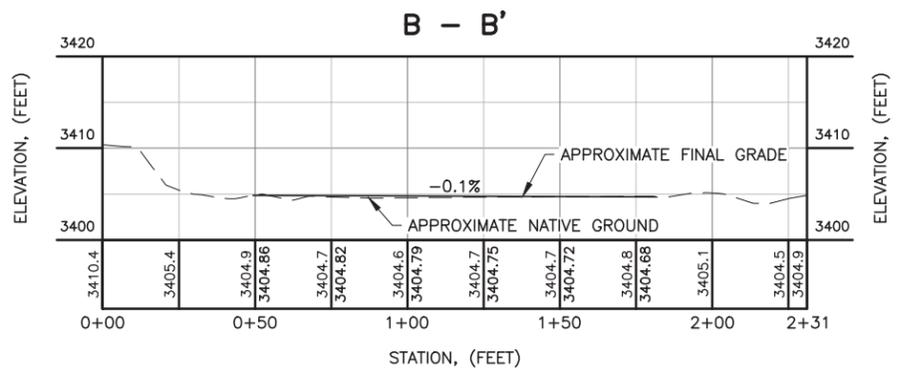
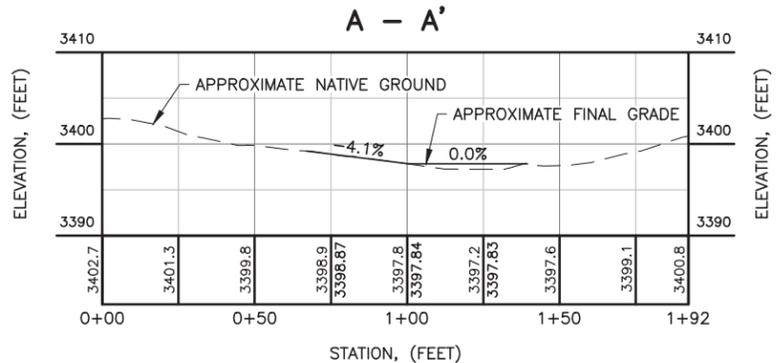
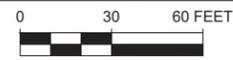
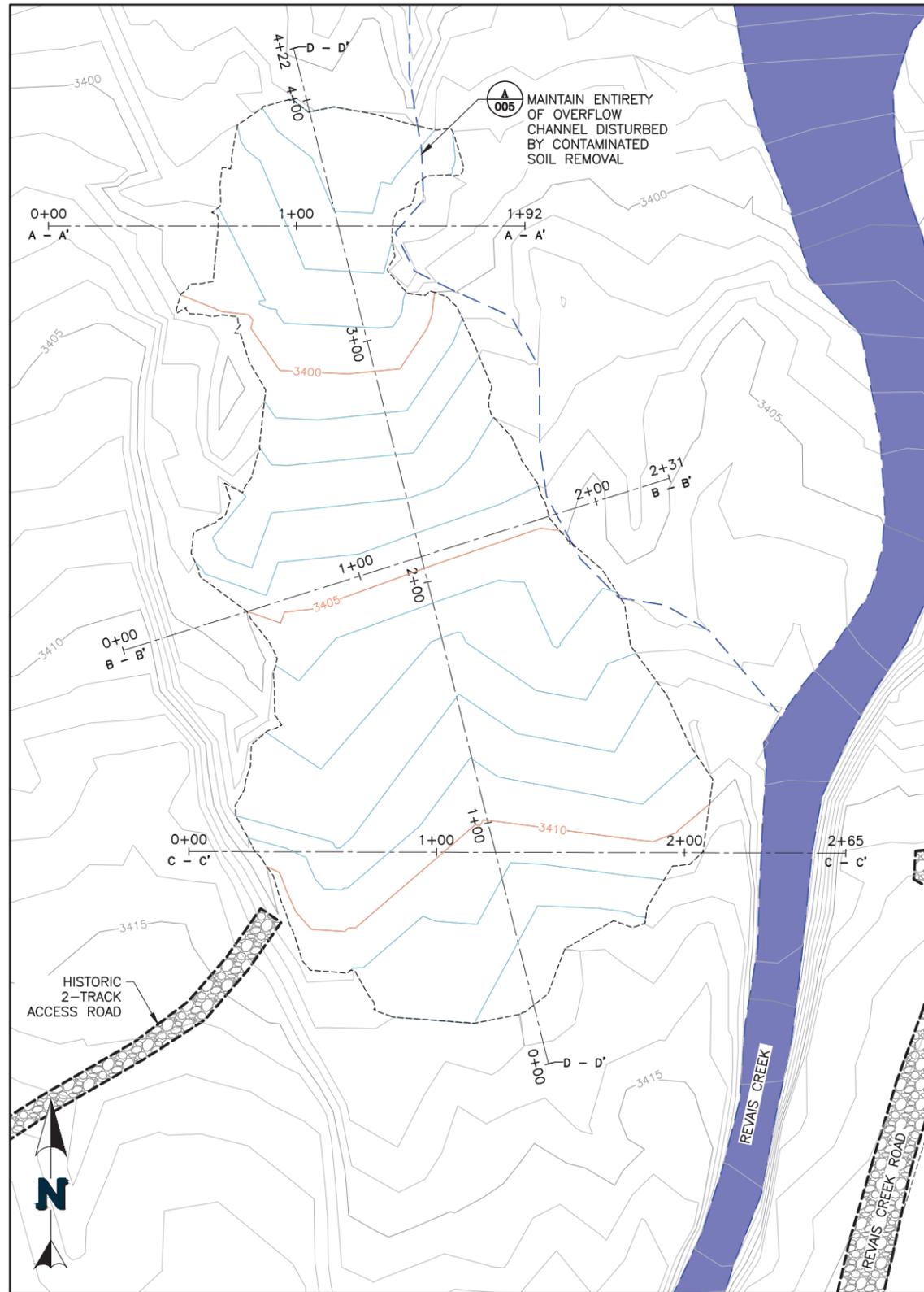


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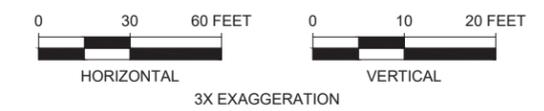
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TITLE	TAILINGS REMOVAL PLAN AND PROFILE	
FILENAME	350.0072.003P	
DRAWING NO.	003	REVISION
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- LEGEND:**
- EXISTING GROUND CONTOURS (1' AND 5' INTERVALS) SURVEYED MAY 2023 BY IMEG
  - APPROXIMATE POST TAILINGS REMOVAL CONTOURS (1' AND 5' INTERVALS)
  - APPROXIMATE TAILINGS REMOVAL AREA BOUNDARY
  - REVAIS CREEK OVERFLOW CHANNELS
  - REVAIS CREEK
  - EXISTING ROADWAYS

- CONSTRUCTION NOTES:**
- FINAL GRADING SHALL NOT BEGIN UNTIL THE ENGINEER HAS VERIFIED ALL TAILINGS HAVE BEEN REMOVED TO THE PLANNED EXTENT AND SURVEY HAS BEEN CONDUCTED.
  - FINAL GRADE SHOWN IS APPROXIMATE. ACTUAL FINAL GRADE WILL BE DETERMINED IN THE FIELD AND APPROVED BY THE ENGINEER. THE ENGINEER WILL CONDUCT A SURVEY FOLLOWING APPROVAL OF FINAL GRADE.
  - FINAL GRADE SHALL MAINTAIN INTEGRITY OF OVERFLOW CHANNELS DISTURBED BY TAILINGS REMOVAL.
  - FINAL GRADE SHALL BE FINISHED AS OUTLINED IN SECTION 32 91 14 OF THE PROJECT MANUAL.
  - REVEGETATE AND RECLAIM THE SITE ACCESS ROAD AND EQUIPMENT LAYDOWN AREAS AFTER FINAL GRADING ACTIVITIES ARE COMPLETE AS OUTLINED IN SECTION 31 22 00 AND 32 91 14 OF THE PROJECT MANUAL.
  - INSTALL A TEMPORARY LIVESTOCK EXCLUSION FENCE AROUND ALL SEEDING AREAS PRIOR TO COMPLETION OF SEEDING ACTIVITIES. VERIFY LOCATIONS WITH ENGINEER PRIOR TO PLACEMENT OF FENCING.



REV	DATE	DESCRIPTION	TECH	ENG
0	02/23/24	ISSUED FOR BID		SEK

**APPROVED BY:** SEK

**CHECKED BY:** MSP

**DESIGNED BY:** SEK

**DRAWN BY:** SEK

**DISCLAIMER**  
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**NewFields** CLIENT **CSKT**

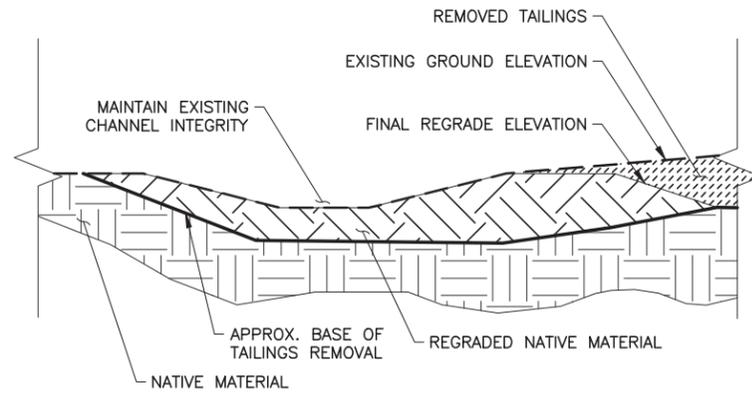
PROJECT **REVAIS CREEK TAILINGS REMOVAL**

TITLE **FINAL GRADE PLAN AND PROFILE**

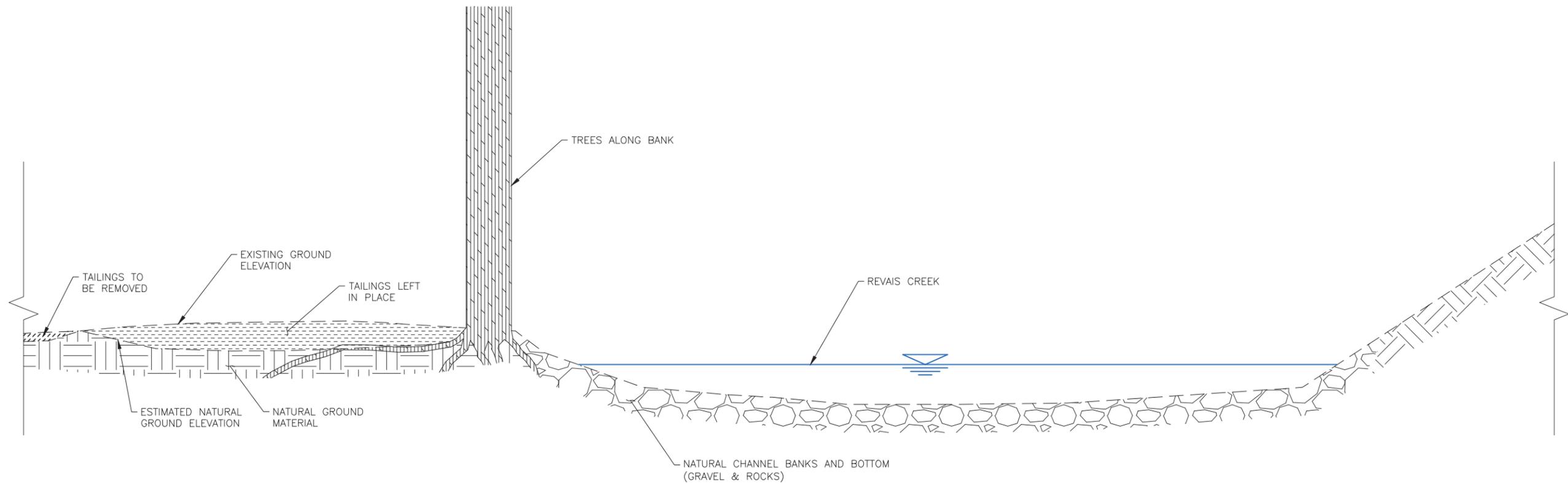
FILENAME **350.0072.004P**

DRAWING NO. **004** REVISION **0**

P:\BROWNFIELDS\350.0072.012 Revais Creek Tailings\_2023\02 PROJECTS\01 Project Management\Engineering\04 CAD\DWGS\350.0072.005D.dwg--2/23/2024 11:12 AM



**A** TYP. MAINTAINED CHANNEL SECTION  
002



**B** REVAIS CREEK BANK SECTION  
003



REV	DATE	DESCRIPTION	TECH	ENG
0	02/23/24	ISSUED FOR BID		SEK

APPROVED BY:	SEK
CHECKED BY:	MSP
DESIGNED BY:	SEK
DRAWN BY:	SEK

**DISCLAIMER**  
NEWFIELDS PRODUCED THE INFORMATION PRESENTED ON THIS DRAWING THROUGH THE USE OF AVAILABLE TECHNICAL INFORMATION AND EXPERIENCE. RECEIVING THIS DRAWING DOES NOT GUARANTEE ANY RIGHTS TO EITHER SUCH TECHNICAL INFORMATION OR EXPERIENCE. ANY MODIFICATION OR ADAPTATION OF THE DATA OR DRAWING SHALL BE AT USER'S RISK AND WITHOUT ANY LIABILITY OR LEGAL RESPONSIBILITY TO NEWFIELDS.

	CLIENT	CSKT
PROJECT REVAIS CREEK TAILINGS REMOVAL		
TITLE SITE DETAILS		FILENAME 350.0072.005D
	DRAWING NO. 005	REVISION 0



## **ATTACHMENT B - SITE PHOTOS**

## Project Information

Project	Revais Creek Tailings Removal and Floodplain Remediation
Project Manager	NewFields, Heather Brighton
Client	Confederated Salish and Kootenai Tribes
Engineer	NewFields, Sarah Kuhn
Project Location	Flathead Reservation, Revais Creek
Date	2023-07-20

## Photo Log

### RC\_1 View of tailings above west Ordinary High Water Mark (OHWM) of Revais Creek



Photo Description	View of tailings above west OHWM of Revais Creek
Photo Location	West Bank of Revais Creek
Photo Direction	South

## RC\_2 Tailings above west OHWM of Revais Creek



Photo Description

Tailings above west OHWM of Revais Creek

Photo Location

West Bank of Revais Creek

Photo Direction

North

## RC\_3 West Bank of Revais Creek



Photo Description

West Bank of Revais Creek

Photo Location

West Bank Revais Creek

Photo Direction

East

## RC\_4 Tailings deposit above west side of Revais



Photo Description	Tailings deposit above west side of Revais Creek
Photo Location	West TOB of Revais Creek
Photo Direction	West

## RC\_5 Reach 1 of east overflow channel of Revais Creek



Photo Description	Reach 1 of east overflow channel of Revais Creek
Photo Location	North end of Reach 1
Photo Direction	South

### RC\_6 Reach 1 of east overflow channel



Photo Description	Reach 1 of east overflow channel
Photo Location	South end of Reach 1
Photo Direction	North

### RC\_7 Reach 2 of east overflow channel of Revais Creek



Photo Description	Reach 2 of east overflow channel of Revais Creek looking south
Photo Location	North end of Revais Creek
Photo Direction	South

## RC\_8 Reach 2 of east overflow channel of Revais Creek



Photo Description	Reach 2 of east overflow channel of Revais Creek looking north west
Photo Location	South end Reach 2
Photo Direction	North

## RC\_9 West side erosional feature channel



Photo Description	West side erosional feature channel looking south
Photo Location	North end erosional feature
Photo Direction	South

**RC\_10 West erosional features, large rill in tailings meets erosional feature on west**



Photo Description	West erosional features, large rill in tailings meets erosional feature looking south
Photo Location	Middle of erosional feature
Photo Direction	South

**RC\_11 West side erosional feature**



Photo Description	West side erosional feature looking north
Photo Location	South end of erosional feature
Photo Direction	North



Photo Points  
 Revais Creek Tailings Site  
 Dixon, Montana





**ATTACHMENT C - PRE-BID MEETING MAP**

# Revais Creek Tailings Reclamation

Pre-Bid Meeting Location:



Intersection of Hwy 200 and Revais Creek Road.

