

**SECTION 00 90 01
BIDDING AND CONTRACT REQUIREMENTS
ADDENDUM NUMBER (02)**

**SmithGroup, Inc.
35 E Wacker Dr #900
Chicago, IL 60661
312.641.0770**

To: Prospective Bidders

Issued: April 25, 2024

Re: ADDENDUM NUMBER (02) TO THE BIDDING DOCUMENTS FOR

Bid 24-032 Elgin Sports Complex Expansion

Architect's Project Number: 14106

This addendum forms a part of the bidding and contract documents and modifies the original bidding documents dated April 11, 2024. Acknowledge receipt of this addendum in the space provided on Bid Form. FAILURE TO DO SO MAY SUBJECT BIDDER TO DISQUALIFICATION.

ADDENDA TO THE PROJECT MANUAL

1. Section 321813 S-Synthetic Turf, paragraph 2.1.D: Delete and replace with the following: D. The synthetic turf shall be dark green as selected from the manufacturer's standard color options, 15' wide rolls. Striping colors shall be as indicated on the drawings.
2. Section 321813 S-Synthetic Turf, paragraph 2.2.A.b: Delete and replace with the following: b. Blended monofilament and slit film product, minimum 42 oz per square yard total pile weight.
3. Section 321813 S-Synthetic Turf, paragraph 2.2.A.c: Delete and replace with the following: c. Minimum 6 pounds per square foot total infill weight (min 1.5 pounds sand to max 3.65 pounds sand).
4. Section 321813 S-Synthetic Turf, add paragraph 2.2.A.h. Sprinturf: DFE Extreme.
5. Section 321813 S-Synthetic Turf, add paragraph 2.2.C. Field Markings.
 - a. Field Markings
 1. Field 1
 - a. Regulation 225' x 360' Soccer – White
 - b. Regulation NFHS Football – Gold
 - c. Unified Lacrosse - Red
 2. Field 2
 - a. Regulation 225' x 360' Soccer – White
 - b. Regulation NFHS Football – Gold
 - c. 9 v 9 Soccer – Dark Blue
 3. Field 3 (Alternate)
 - a. Regulation 225' x 360' Soccer – White
 - b. Regulation NFHS Football – Gold
 - c. Unified Lacrosse - Red
6. Section 323300 S-Site Furnishings and Ornamental Fence, paragraph 1.1.A: add 10. Lacrosse Goals and 11. Combination Soccer and Football Goal.

7. Section 323300 S-Site Furnishings and Ornamental Fence, add paragraph 2.10: Lacrosse goals shall be regulation manufactured by Sportsfield Specialties model LCG, welded steel construction, powder coat orange, with net, or approved equal.
8. Section 323300 S-Site Furnishings and Ornamental Fence, add paragraph 2.11. Combination Soccer and Football Goal shall be regulation manufactured by Sportsfield Specialties model GPKS20HS, with Schedule 40 steel ground sleeve, Schedule 40 aluminum football goal crossbar and aluminum uprights, powder coat standard yellow, football goalpost pads; and extruded aluminum square posts, top crossbar and bottom ground bar, powder coat white, with net, or approved equal.
9. Invitation to Bid: Correction - The bid bond shall be 5% minimum of the base bid amount.
10. Information and Instructions to Bidders – Revise Submission of a Bid paragraph – Prior to the deadline for receipt of Bids, each Bid Bond shall be submitted to the Purchasing Department in a sealed envelope which is plainly marked on the outside with the name and address of the Bidder, the title of the Project, and the date and time of the Bid opening no later than **May 16, 2024** at noon CDT. All Bid submissions must be entered into the City of Elgin’s web portal at <https://cityofelgin.ionwave.net/VendorRegistration/PreliminaryInfo.aspx>, no later than **May 16, 2024** at 3:00 pm CDT. Any Bid received after the deadline shall not be accepted. Any Bid submitted to any other office or department of the City and received by the Purchasing Department after the deadline for receipt of Bids shall not be accepted. It is the responsibility of the Bidder to ensure that its Bid is received by the Purchasing Department in a timely fashion. The deadline for receipt of Bids can be extended by Addendum only.

Bids may not be submitted orally, by facsimile, by telephone, or by any other method except for the method described above.
11. Added General Conditions document to the project manual. See attachments.

ADDENDA TO THE DRAWINGS

1. CS-504, Detail 1, Notes: Add Note 11: All chain link fabric, posts, rails, caps, ties, clamps, etc., shall be galvanized and have PVC coated, fused and bonded, black.
2. CS-504, Detail 2, Notes: Revise Note 2. All chain link fabric, posts, rails, caps, ties, clamps, etc., shall be galvanized and have PVC coated, fused and bonded, black.
3. Sheet S-500, Detail 4: Football goal post added
4. Sheet S-500, Detail 5: Plate washers added
5. Sheet S-500, Detail 9: Wall dowel change

CLARIFICATIONS:

1. Additional contact for questions: Submit all questions to Daina DeNye - DeNye_D@cityofelgin.org, Jennifer Kelliher - jennifer.kelliher@smithgroup.com, and Bryan Zundel – bryan.zundel@smithgroup.com.
2. Qualified Bidders List Added (See Qualified Bidders List attachment)

This addendum consists of (3) pages, excluding attachments.

END 00 90 01.

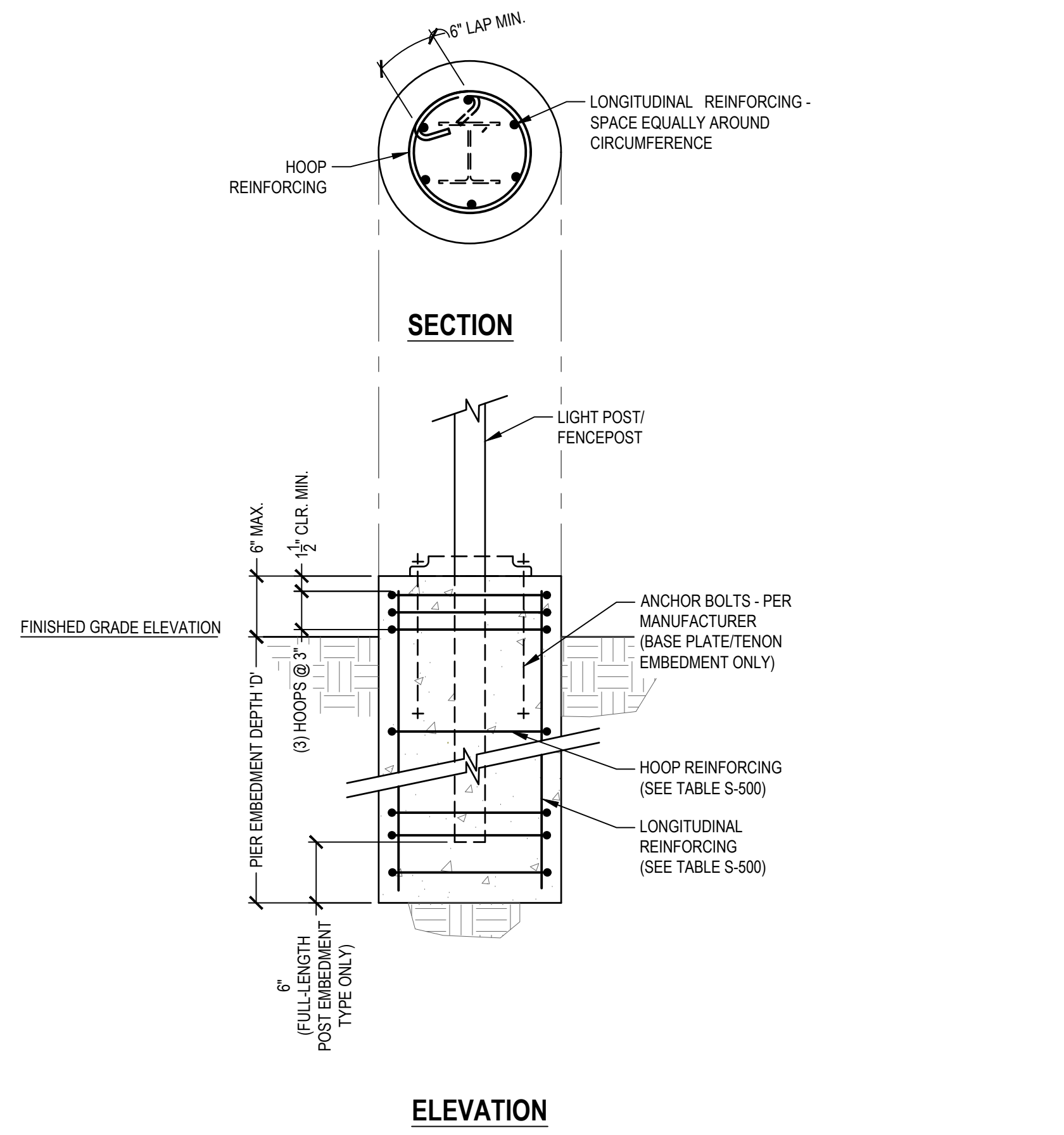
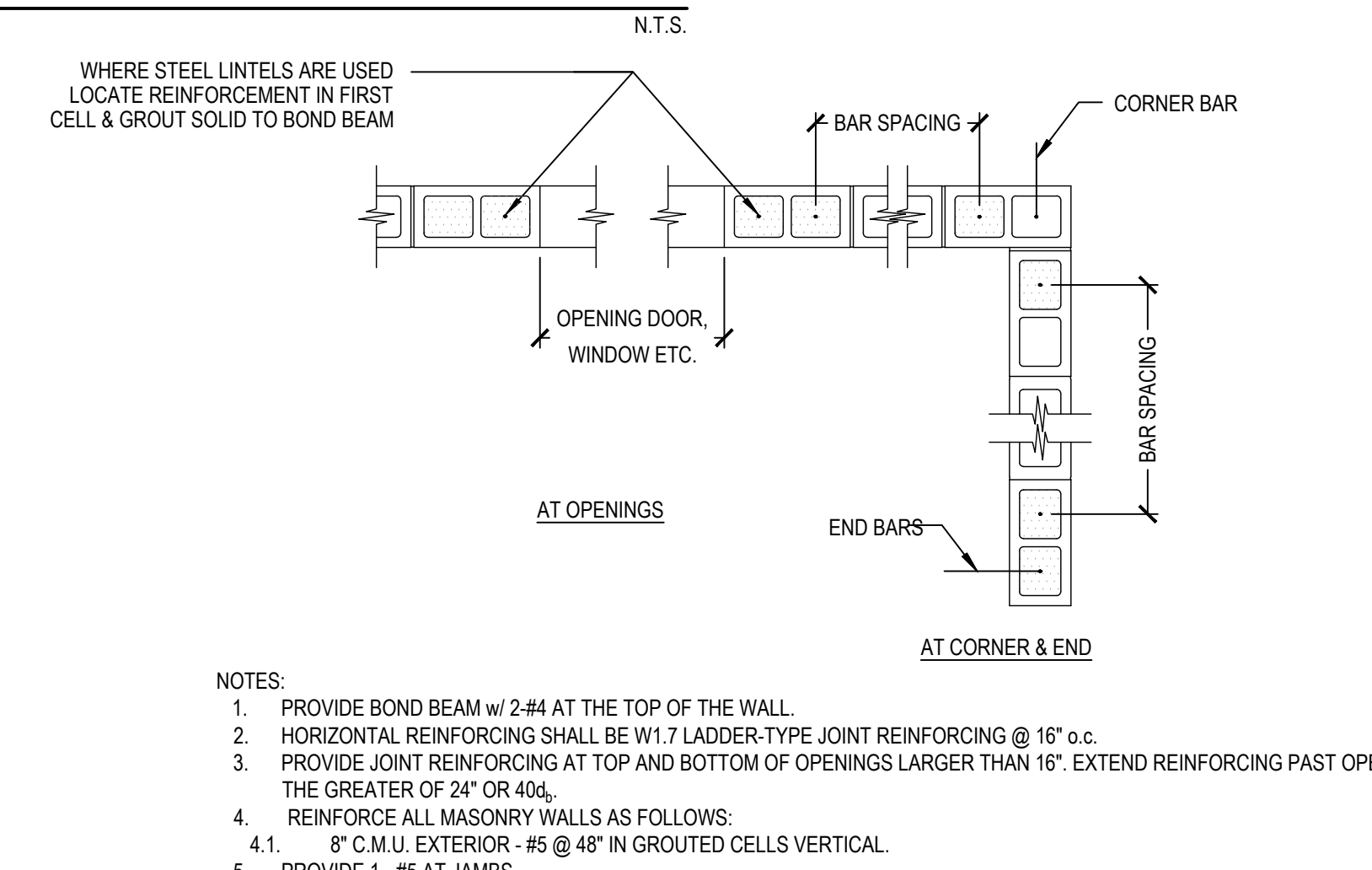
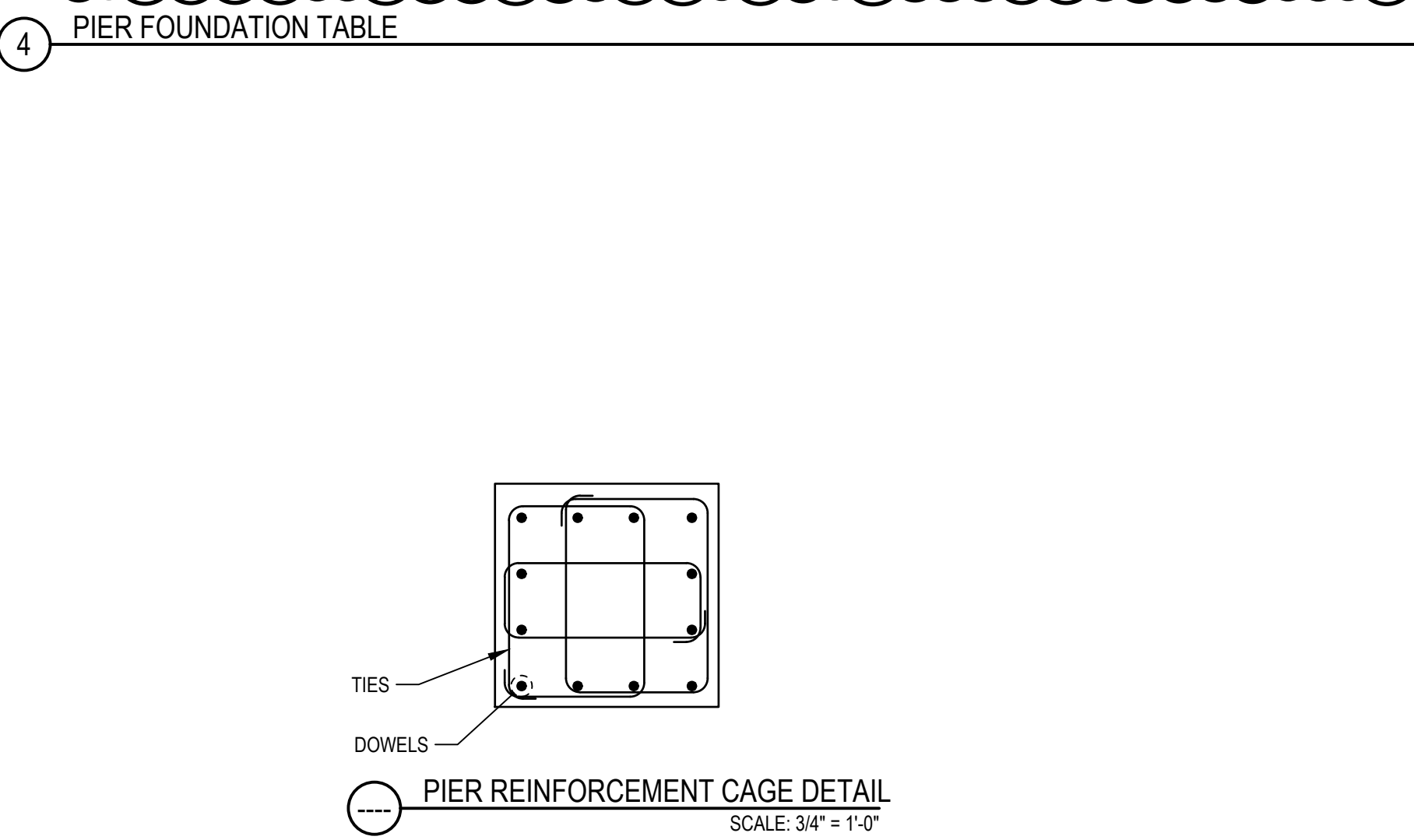
Attachments:

1. **Drawings**: S-500
2. Qualified Bidders List
3. General Conditions

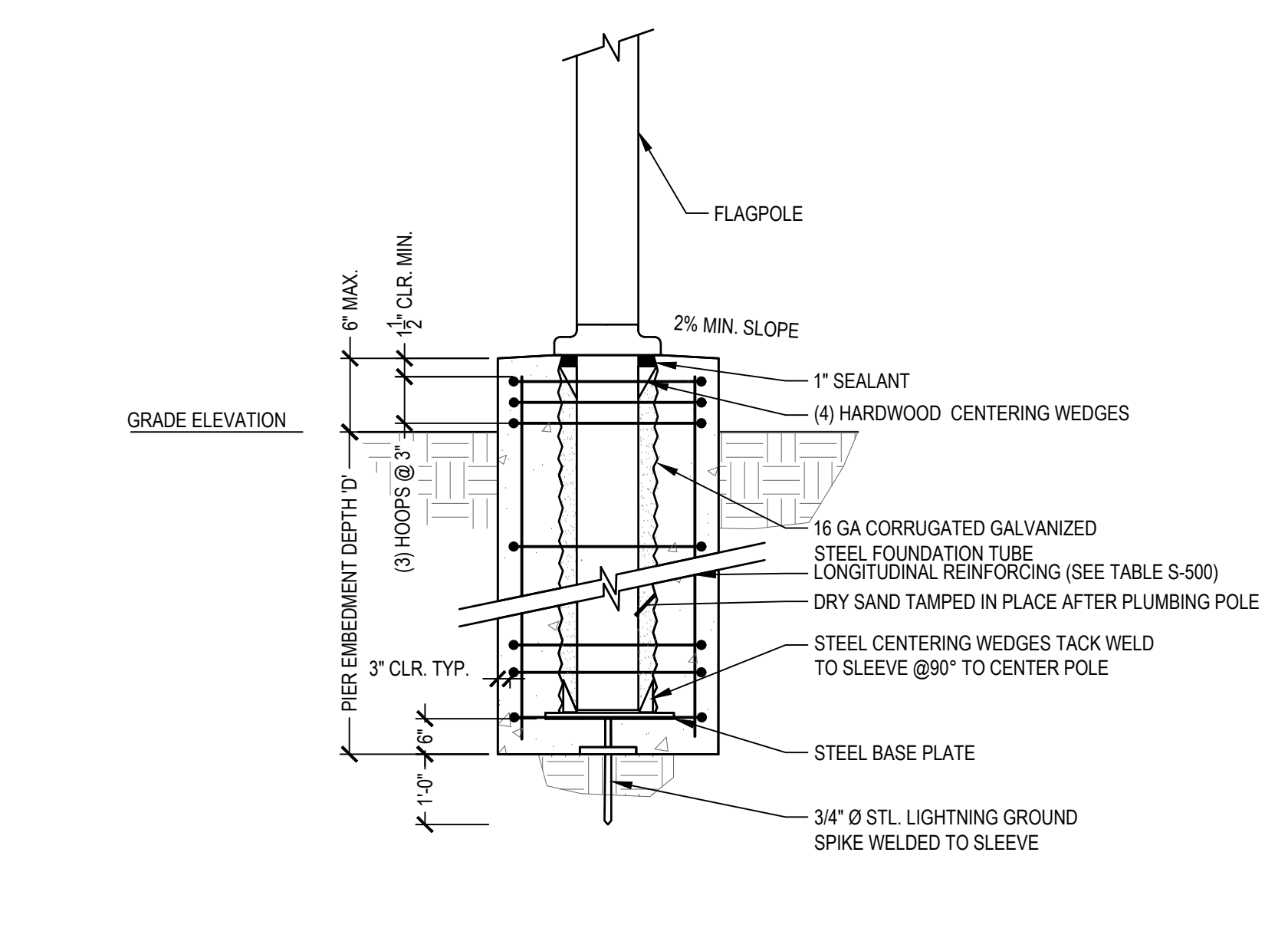
STRUCTURE	LOCATION DESCRIPTION	BASE MOUNT TYPE	PIER Ø (IN)	EMBED 'D' (FT)	LONGITUDINAL REINFORCING	HOOP REINFORCING	BASE DETAIL	MAX ATTACHMENT EFFECTIVE PROJECTED AREA (EPA) AT T/POLE (FT ²)	MAX HEIGHT OF POLE ATTACHMENTS ABOVE GRADE (FT)
18' LIGHT POLE	CORE AREA WALKWAY	STEEL TENON EMBEDMENT - PER POLE MFR.	18	6	(5) #4s	#4s @ 12"	1/S-500	26	-
25' LIGHT POLE	ROADWAY/PARKING LOT	STEEL TENON EMBEDMENT - PER POLE MFR.	18	6	(5) #4s	#4s @ 12"	1/S-500	9	-
BACKSTOP FENCE POSTS	BALLFIELDS - SEE CIVIL PLANS	FULL LENGTH POST EMBEDMENT	24	9	(6) #4s	#4s @ 18"	1/S-500	-	-
CHAIN-LINK FENCE LINE POSTS	BALLFIELDS - SEE CIVIL PLANS	FULL LENGTH POST EMBEDMENT	18	5	-	-	1/S-500	-	-
FLAG POLE	BALLFIELDS - SEE CIVIL PLANS	FULL LENGTH POST EMBEDMENT	30	8	(8) #5s	#4s @ 18"	2/S-500	96 (NOTE 3)	-
SCOREBOARD POSTS	BALLFIELDS - SEE CIVIL PLANS	FULL LENGTH POST EMBEDMENT	24	9	(8) #4s	#4s @ 18"	3/S-500	75 / POST (NOTE 4)	18
FOOTBALL GOAL POST	BALLFIELDS - SEE CIVIL PLANS	EMBEDDED SLEEVE	30	6	(8) #5s	#4s @ 12"	1/S-500	NOTE 5	-

NOTES:

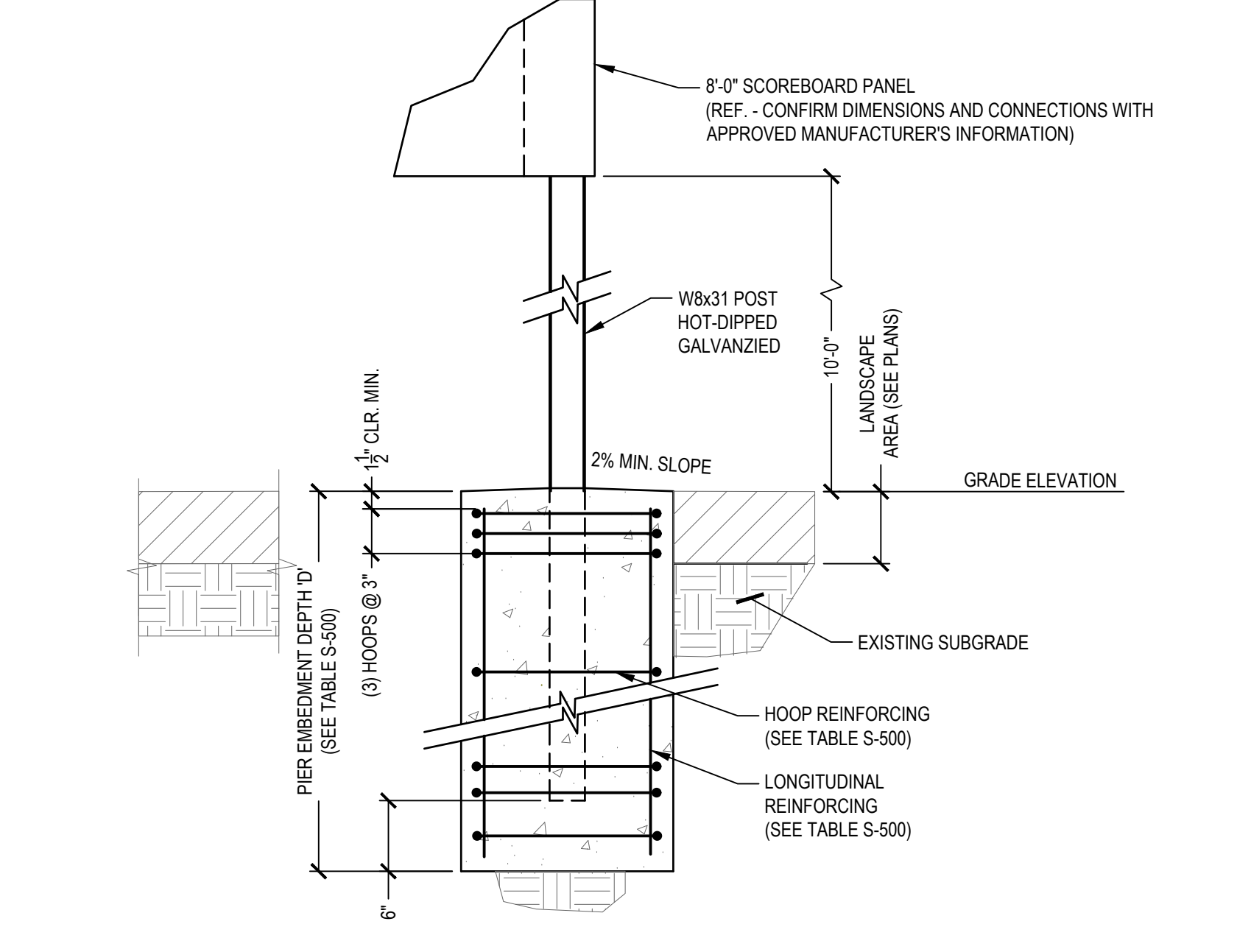
- DESIGN EMBEDMENT VALUES SHOWN ON THIS TABLE WERE DERIVED USING RECOMMENDED GEOTECHNICAL DESIGN PARAMETERS PROVIDED IN DECEMBER 2023 REPORT BY GSG CONSULTANTS ASSUMING AN UNCASED EXCAVATION OF THE PIER HOLE. IF CASINGS ARE DETERMINED NECESSARY BY CONTRACTOR, CONTACT ENGINEER FOR ALTERNATE PIER DIMENSIONS.
- MAXIMUM HEIGHTS AND PROJECTED AREAS OF POLE ATTACHMENTS SHOWN ARE THE DESIGN BASIS FOR STRUCTURAL DESIGN OF POLE FOUNDATIONS SHOWN THIS PAGE. THESE ARE PRESENTED FOR CONTRACTOR'S EVALUATION OF ALTERNATIVE ATTACHMENT PRODUCTS. CONTRACTOR IS RESPONSIBLE FOR REDESIGN OF FOUNDATIONS SUPPORTING ATTACHMENTS EXCEEDING THESE VALUES.
- ALLOWABLE AREA INDICATED ASSUMES WIND PRESSURE AGAINST A POLYESTER FLAG PER VALUES DEFINED IN ANSINAAM F1001 "GUIDE SPECIFICATIONS FOR METAL FLAGPOLES". CONTRACTOR SHALL CONSIDER FLAG MATERIAL EFFECTS ON WIND PRESSURE FOR SELECTING ALTERNATIVES.
- SCOREBOARD ASSUMED TO BE SUPPORTED BY TWO POST FOUNDATIONS.
- BASIS OF DESIGN PRODUCT: SPORTSFIELD SPECIALTIES GPK320S - HIGH SCHOOL FOOTBALL GOAL POST, 20' UPRIGHTS, SQUARE POST SOCCER GOAL.



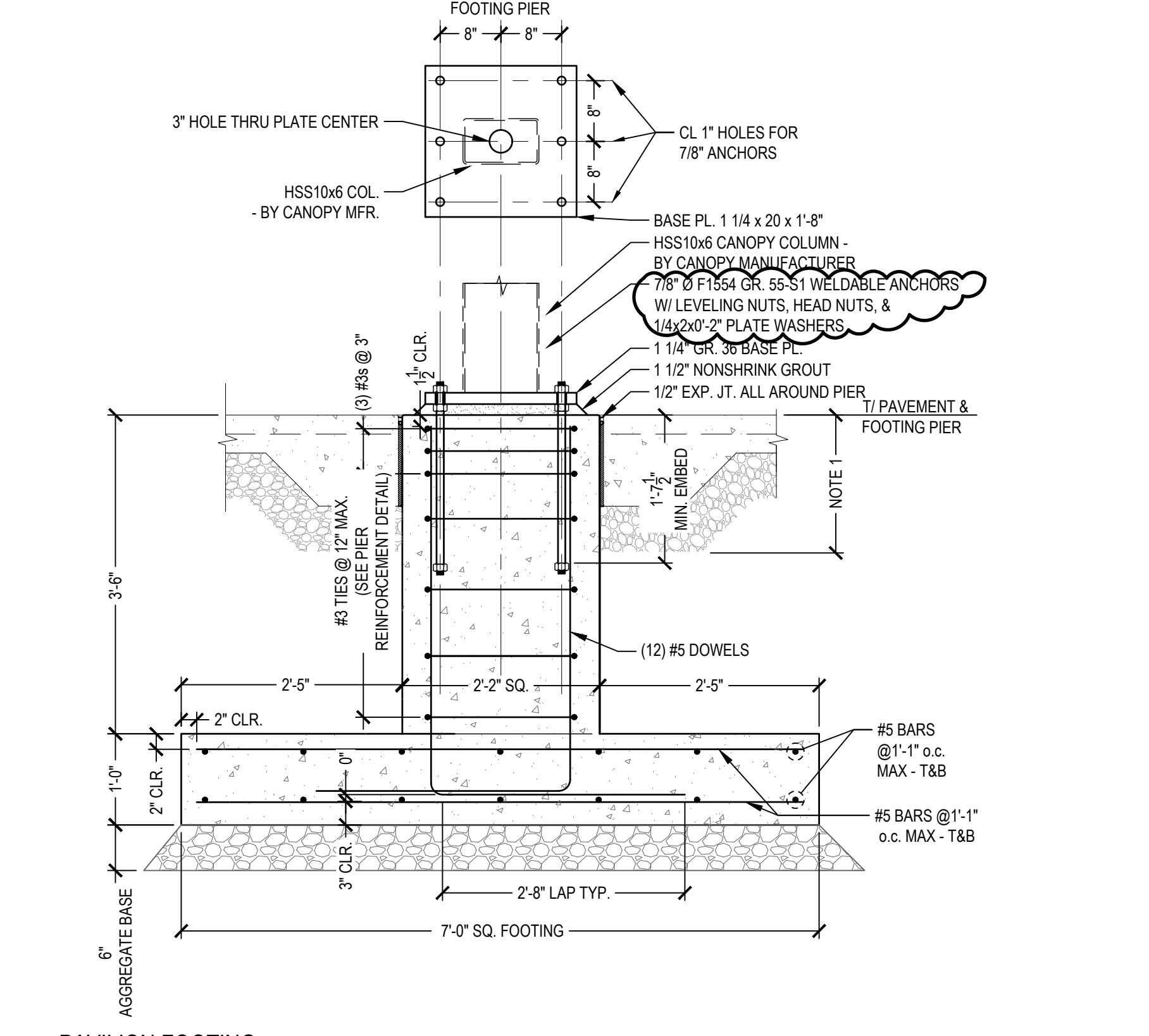
1 TYPICAL POLE BASE CONCRETE PIERS
SCALE: 1" = 1'



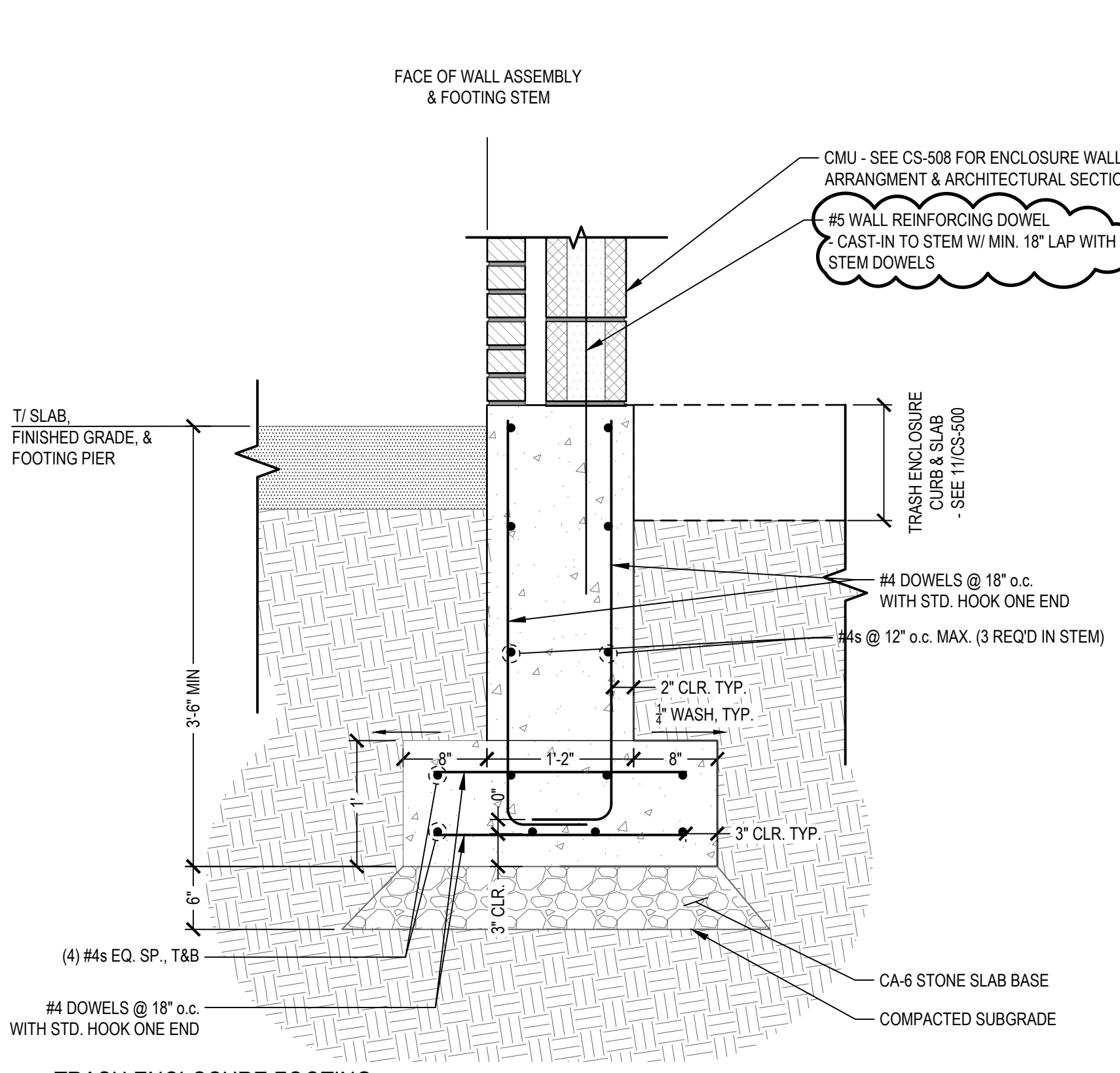
2 FLAGPOLE BASE PIER
SCALE: 1" = 1'



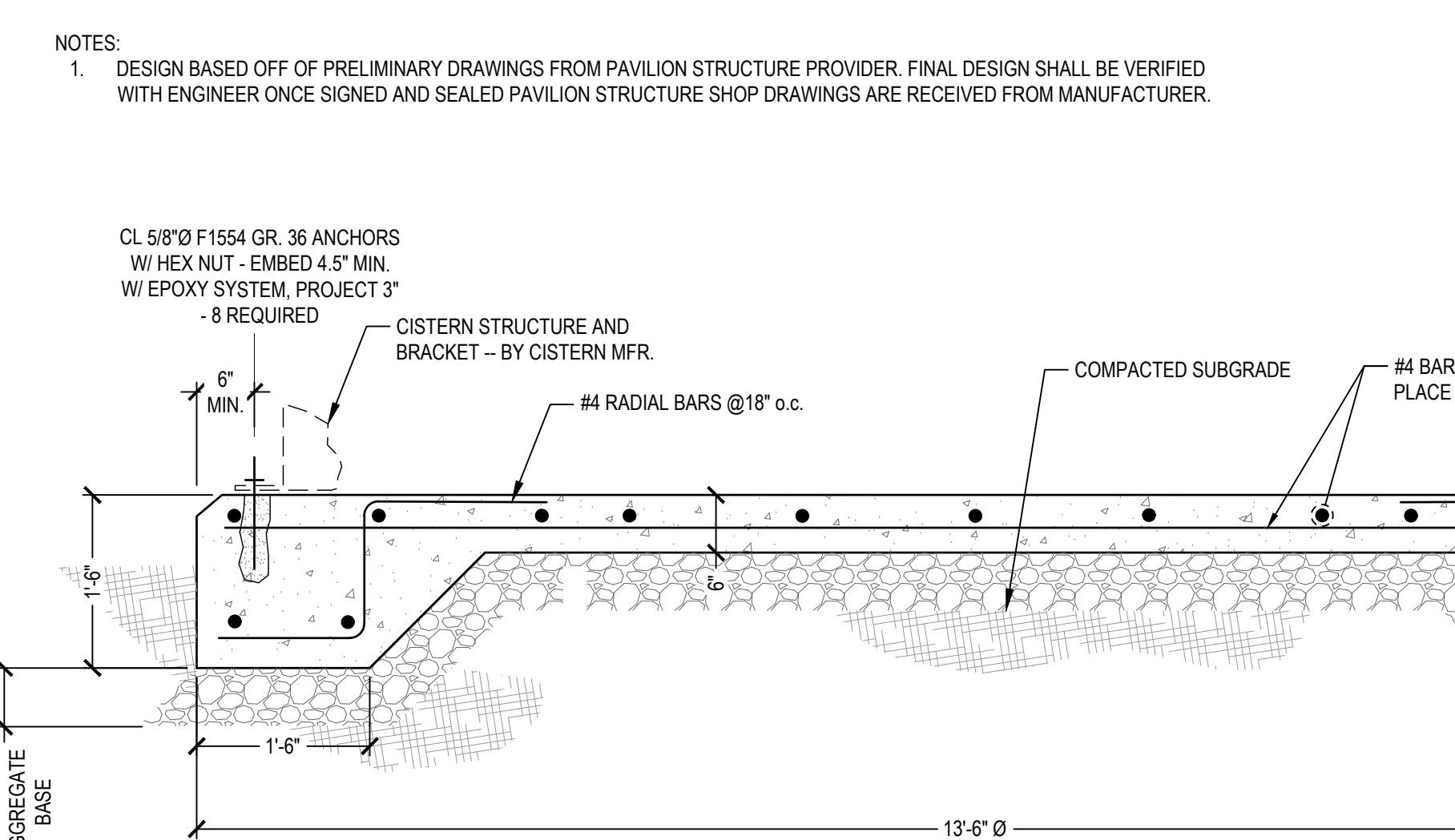
3 SCOREBOARD PIER SECTION
SCALE: 1" = 1'



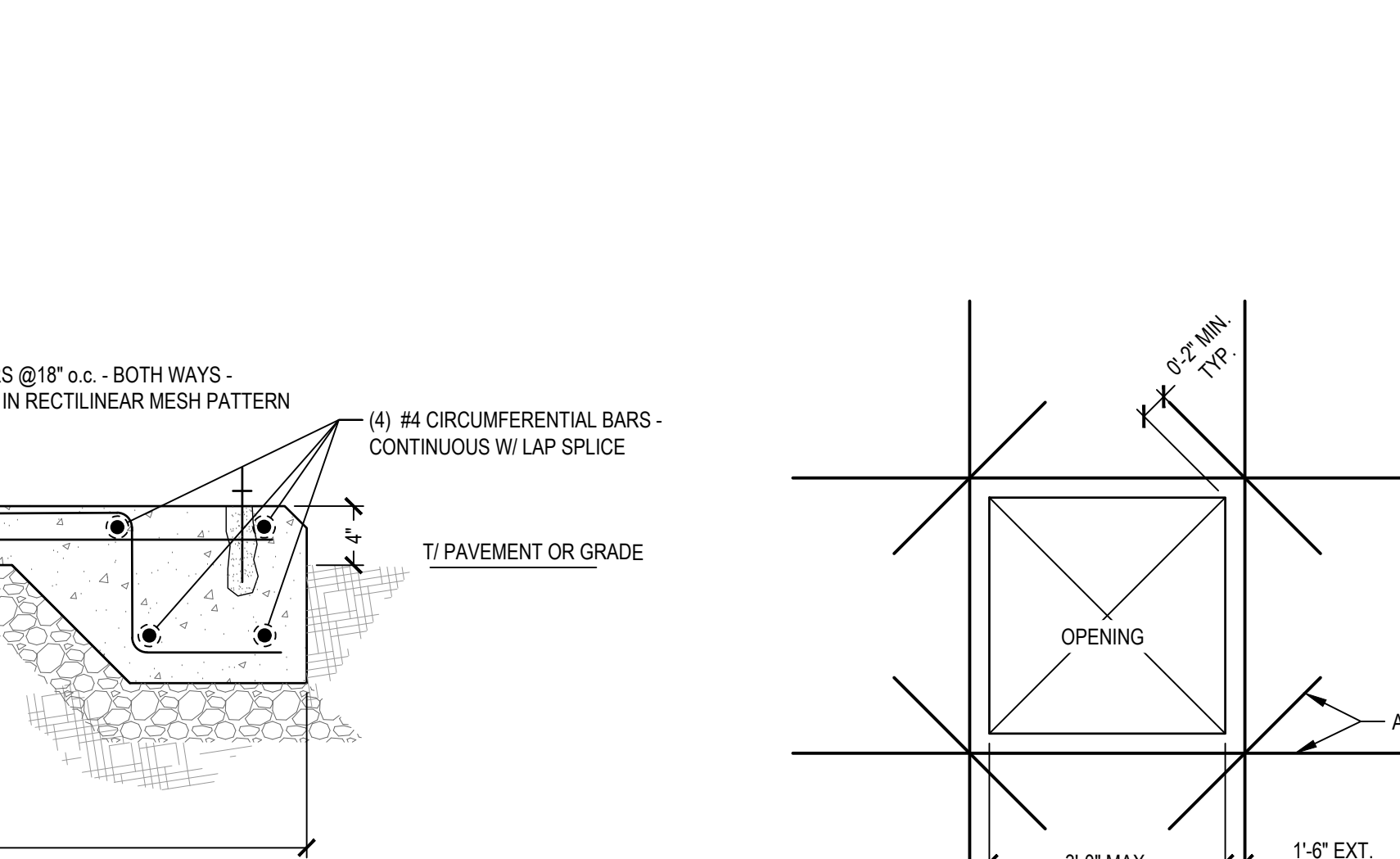
5 PAVILION FOOTING
SCALE: 3/4" = 1'-0"



9 TRASH ENCLOSURE FOOTING
SCALE: 1" = 1'



7 CISTERN FOUNDATION DETAIL
SCALE: 3/4" = 1'-0"



10 TYPICAL SLAB OPENING REINFORCING
SCALE: 3/4" = 1'-0"

DESIGN CRITERIA:

- INTERNATIONAL BUILDING CODE/2015.
- DESIGN LOADS:
 - DEAD LOADS: MATERIAL SELF WEIGHT
 - LIVE LOADS: 250 PSF (SLABS SUBJECT TO VEHICULAR LOADING)
 - SURCHARGE LOADS: 250 PSF AT ACCESSIBLE PATHWAYS AT GRADE AROUND PARKING AREAS
- WIND LOAD:
 - PAVILION & TRASH ENCLOSURE: BASIC WIND SPEED 115 MPH
 - RISK CATEGORY II
 - WIND EXPOSURE C
 - ALL OTHER STRUCTURES: BASIC WIND SPEED 105 MPH
 - RISK CATEGORY I
 - WIND EXPOSURE C
- SEISMIC LOAD:
 - SEISMIC IMPORTANCE FACTOR: I_s = 1.0
 - SITE CLASS D
 - S_{ds} = 0.151g S_{ml} = 0.085g
 - SEISMIC DESIGN CATEGORY B

STRUCTURAL SPECIAL INSPECTIONS:

- SPECIAL INSPECTIONS SHALL BE PROVIDED IN COMPLIANCE WITH IBC 2015, CHAPTER 17 AND AS NOTED IN THE SCHEDULE IN DIVISION 01 SPECIFICATIONS. THE CONTRACTOR SHALL SUBMIT A WRITTEN STATEMENT OF RESPONSIBILITY TO THE OWNER AND BUILDING CODE OFFICIAL PRIOR TO BEGINNING OF CONSTRUCTION WORK WHICH SHALL INCLUDE THE FOLLOWING AS A MINIMUM:
 - A. ACKNOWLEDGEMENT OF RECEIPT OF STATEMENT OF SPECIAL INSPECTIONS AND AWARENESS OF THE REQUIREMENTS CONTAINED WITHIN.
 - B. ACKNOWLEDGEMENT THAT CONTROL WILL BE EXERCISED TO OBTAIN CONFORMANCE WITH THE CONSTRUCTION DOCUMENTS APPROVED BY THE BUILDING CODE OFFICIAL.
 - C. QUALITY CONTROL PROCEDURES FOR EXERCISING CONTROL WITHIN THE CONTRACTOR'S ORGANIZATION, THE METHOD AND FREQUENCY OF REPORTING AND THE DISTRIBUTION OF REPORTS.
 - D. IDENTIFICATION AND QUALIFICATIONS OF THE PERSON(S) EXERCISING SUCH CONTROL AND THEIR POSITION IN THE ORGANIZATION.
- SEE SPECIFICATIONS FOR ADDITIONAL INSPECTION REQUIREMENTS.

CONCRETE

- STANDARDS:
 - A. ACI 318 BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE (2014 EDITION).
 - B. ALL DETAILING, FABRICATION AND ERECTION FOR REINFORCING BARS AND THEIR SUPPORT IN THE FORMS WITH ACCESSORIES MUST FOLLOW THE ACI MANUAL OF STANDARD PRACTICE FOR DETAILING REINFORCED CONCRETE STRUCTURES. (ACI 315- LATEST) AND CRS' MANUAL OF STANDARD PRACTICE (LATEST EDITION).
 - C. MINIMUM CONCRETE COVER, UNLESS NOTED OTHERWISE:
 - A. UNFORMED SURFACE IN CONTACT WITH THE GROUND: 3 IN.
 - B. FORMED SURFACES EXPOSED TO EARTH OR WEATHER: 2 IN.
 - C. FORMED SURFACES EXPOSED TO EARTH OR WEATHER: 1 1/2 IN.
 - D. IDENTIFICATION AND QUALIFICATIONS OF THE PERSON(S) EXERCISING SUCH CONTROL AND THEIR POSITION IN THE ORGANIZATION.
 - E. FORMED SURFACES NOT EXPOSED TO EARTH OR WEATHER: 1 1/2 IN.
- CONCRETE SHALL HAVE A 28-DAY COMPRESSIVE STRENGTH AND DENSITY, IN ACCORDANCE WITH THE FOLLOWING:

	STRENGTH (PSI)	DENSITY (PCF)
ALL CONCRETE - AIR ENTRAINED	4500	145
- DEVELOPMENT LENGTHS AND LAP SPLICES SHALL BE IN ACCORDANCE WITH TABLE BELOW AND ACI 318 BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE (LATEST EDITION) WHERE CLASSES ARE NOT CALLED ON DRAWINGS, USE CLASS "B" SPLICES.

CONCRETE REINFORCEMENT DEVELOPMENT LENGTHS (UNLESS NOTED OTHERWISE ON DRAWINGS)			CONCRETE REINFORCEMENT SPLICE LENGTHS (UNLESS NOTED OTHERWISE ON DRAWINGS)		
BAR SIZE	LENGTH OF LAPPED SPLICES FOR REIN. (INCHES)		BAR SIZE	LENGTH OF LAPPED SPLICES FOR REIN. (INCHES)	
	*TOP BARS	OTHERS		*TOP BARS	OTHERS
3	19	15	3	28	20
4	25	19	4	33	25
5	31	24	5	41	32
6	37	29	6	49	38
7	44	35	7	59	45
8	51	42	8	69	52

SPLICE LENGTH NOTES:
 *TOP BARS ARE HORIZONTAL BARS SO PLACED THAT MORE THAN 12" OF CONCRETE IS CAST IN THE MEMBER BELOW THE BAR. HORIZONTAL BARS IN WALLS ARE TO BE PROVIDED WITH LAP LENGTHS AS REQUIRED FOR TOP BARS. VERTICAL BARS MAY BE CONSIDERED AS OTHER BARS.
 REINFORCING BARS SHALL BE ASTM A615-GRADE 60 STEEL, U.N.O. WELDED WIRE FABRIC SHALL CONFORM TO ASTM A185. WELDED WIRE FABRIC MUST LAP AT LEAST 2' SIDE AND 6" AT ENDS AND BE WIRED TOGETHER. ASTM A-706 REINFORCING BARS SHALL BE UTILIZED WHERE NOTED ON PLANS.

FOUNDATION NOTES:

- FOUNDATIONS HAVE BEEN DESIGNED BASED ON A SOILS REPORT DATED 12/19/2023 ISSUED BY GSG CONSULTANTS.
- SHALLOW AND MAT FOUNDATIONS:
 - A. SPREAD AND STRIP FOOTINGS DESIGNED FOR A NET ALLOWABLE BEARING PRESSURE OF 3000 PSF FOR DEAD LOAD PLUS MAXIMUM LIVE LOAD.
 - B. ANY DISTURBED, LOOSE, OR SOFT MATERIAL THAT IS ENCOUNTERED IN FOUNDATION EXCAVATIONS SHOULD BE REMOVED PRIOR TO THE PLACEMENT OF CONCRETE.
 - C. MAT FOUNDATION SHALL BEAR ON CONTROLLED/ENGINEERED FILL WITH NEW ALLOWABLE PRESSURE OF 2000 PSF. SEE GEOTECHNICAL REPORT FOR OVEREXCAVATIONS/PROOFROLLING, AND ENGINEERED FILL REQUIRED.
- ALL FILL SHALL BE PLACED IN EIGHT INCH LOOSE LIFTS (MAXIMUM) COMPACTED WITH VIBRATORY ROLLERS. FILL MATERIAL SHALL BE TESTED BY STANDARD PROCTOR DENSITY METHOD (ASTM D698) AND MUST QUALIFY AS SELECT, WITH LESS THAN 10% PASSING THROUGH THE NO. 200 SIEVE. SOIL SHALL BE PLACED WITH MOISTURE CONTENT AND ENERGY TO PROVIDE 92% OF MAXIMUM DRY DENSITY BELOW SLABS ON GRADE AND 95% BELOW FOOTINGS. IN PLACE DENSITY TESTS SHALL BE TAKEN FOR EACH 10,000 SF IN EACH LIFT. FOR ACCEPTABLE OF SOIL, AVERAGE DENSITY TEST MUST EXCEED THE SPECIFIED COMPACTON. NO TESTS SHALL BE PERMITTED TO FALL BELOW 88% COMPACTON BELOW SLABS ON GRADE OR 80% COMPACTON BELOW FOOTINGS.
- WHERE GRANULAR SOILS ARE ENCOUNTERED, EXCAVATIONS FOR FOUNDATIONS SHALL BE NO STEEPER THAN 1.5H:1.0V. OTHERWISE, EXCAVATIONS SHALL BE NO STEEPER THAN 1.0H:1.0V.

MISCELLANEOUS:

- STRUCTURAL DRAWINGS ARE INTENDED TO BE USED WITH LANDSCAPE AND CIVIL DRAWINGS. CONTRACTOR IS RESPONSIBLE FOR COORDINATING SUCH REQUIREMENTS INTO THEIR SHOP DRAWINGS AND WORK.
- THE CONTRACTOR IS RESPONSIBLE FOR LIMITING THE AMOUNT OF CONSTRUCTION LOAD IMPOSED UPON STRUCTURAL FRAMING. CONSTRUCTION LOADS SHALL NOT EXCEED THE DESIGN CAPACITY OF THE FRAMING AT THE TIME THE LOADS ARE IMPOSED.
- THE STRUCTURE IS DESIGNED TO FUNCTION AS A UNIT UPON COMPLETION. THE CONTRACTOR IS RESPONSIBLE FOR FURNISHING ALL TEMPORARY BRACING AND/OR SUPPORT THAT MAY BE REQUIRED AS THE RESULT OF THE CONTRACTOR'S CONSTRUCTION METHODS AND/OR SEQUENCES.
- DO NOT SCALE THESE DRAWINGS. USE DIMENSIONS.
- CONTRACTOR'S CONSTRUCTION AND/OR ERECTION SEQUENCES SHALL RECOGNIZE AND CONSIDER THE EFFECTS OF THERMAL MOVEMENTS OF STRUCTURAL ELEMENTS DURING THE CONSTRUCTION PERIOD. EXPANSION JOINTS SHOWN ON THE DRAWINGS HAVE BEEN DESIGNED TO ACCOMMODATE ANTICIPATED THERMAL MOVEMENT AFTER THE BUILDING IS COMPLETE.
- THE DESIGN AND ENGINEERING OF SHORING NOTED ON THE DRAWINGS AND IN THE SPECIFICATIONS OR REQUIRED BY THE CONTRACTOR'S CONSTRUCTION METHODS, AS WELL AS ITS CONSTRUCTION, SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
- SEE PROJECT SPECIFICATIONS FOR ADDITIONAL INFORMATION.



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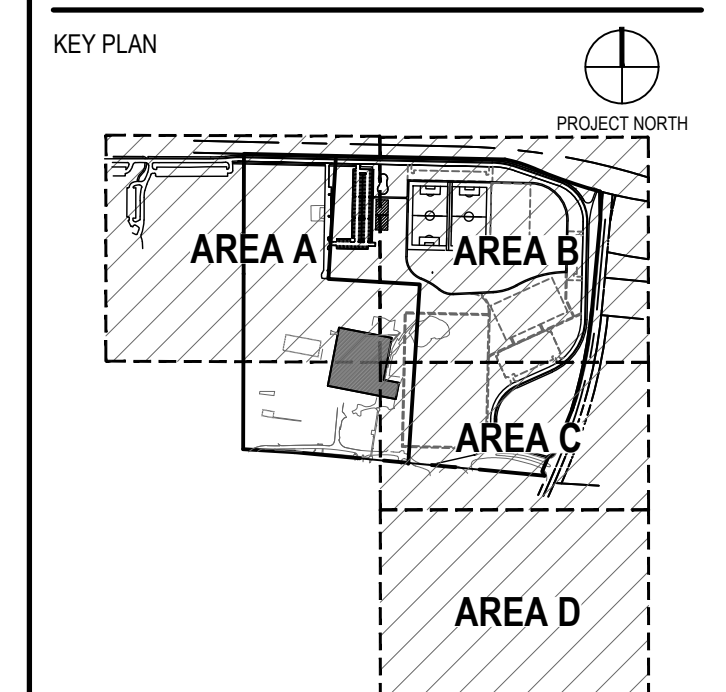
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HPZS
314 W INSTITUTE PL
SUITE 1E
CHICAGO, IL 60610
312.944.9600
www.hpzs.com

ISSUED FOR	REV	DATE

ADDENDUM 2
ISSUE FOR BID
2
1
04/26/2024
04/11/2024

SEALS AND SIGNATURES



STRUCTURAL DETAILS

DRAWING TITLE: STRUCTURAL DETAILS
SCALE: 1" = 1'
PROJECT NUMBER: 14106
DRAWING NUMBER: S-500

CALL J.U.L.I.E. 1-800-892-0123
48 Hours (2 working days) Before You Dig

FILE: C:\Users\jwagner\Source\SmithGroup - SmithGroup\01101006 - S-500.dwg - (USER: jwagner) DATE: Apr 26, 2024 TIME: 08:36 am
 FILE: C:\Users\jwagner\Source\SmithGroup - SmithGroup\01101006 - S-500.dwg - (USER: jwagner) DATE: Apr 26, 2024 TIME: 08:36 am

Qualified Bidder List
Bid 24-032 Elgin Sports Complex Expansion
MANDATORY PRE-BID MEETING
April 24, 2024

Haley Dunn, Helm Mechanical, hdunn@helmgroupp.com

Mary Comiskey - Hargrave Builders Mcomiskey@hargravebuilders.com

William Buford, Reed Construction, wbuford@reedcorp.com

Jose Lopez - Vidal Snow System, Vidalsnowsystem@gmail.com, 815-491-4644

Cass Price - Geneva Construction Cassp@genevaconstruction.net 630-774-9122

Adam Carver, John Keno & Company, Estimating@johnkeno.com

Tyler Lane Construction, Syed Quraishi and Javier Garcia, estimating@tylerlaneinc.com, 773-588-4500

Frank Bono, Frank@lauderdale-electric.com

Jill Cross - iWire Technologies: jcross@iwiretech.com

Steve Dompke, Curran Contracting Co. sdompke@currancontracting.com, 815-455-5100

Jacob Kandu - Kandu Construction Inc. - 847.779.3616 - jacob@kanduconstructioninc.com

Jake Lind - Kellenberger Electric jake@kellenbergerelectric.com

Mat Steinberg - Sprinturf msteinberg@sprinturf.com

Scott Anderson - Edwin Anderson Construction Company, scott@edwin-anderson.com

Greg Ellis - Ryan Central Greg.Ellis@Ryancentral.com,

William Buford, Reed Construction, wbuford@reedcorp.com

Tom Kemp, V3 Construction Group, tkemp@v3co.com

Tyler Brown, Carmichael Construction, Tyler@carmichaelconstruction.com

David Miller Plote Construction dmiller@plote.com

Scott Anderson - Edwin Anderson Construction Company, scott@edwin-anderson.com, 847-928-2200

Tim Reiland, Scale Construction Inc, tr@scaleconstruction.com

George Ismail, Martam Construction, Inc. george@martam.com

Edward Ismail, Martam Construction, Inc. edward@martam.com

Adam Dach, DFC Fence, adach@dacgfenceco.com

Steve Scanlan, Copenhaver Construction

Dan Berenelt, R.C. Wegman Construction, danb@rcwegman.com

Breut Marler, FH Paschew, bmarter@fhpaschew.com

Kevin Belke, FH Paschew, kbelke@fhpaschew.com

Jim Frosolid, Brock USA, jfrosolid@brockusa.com

Tom Cunniff, Midwest Sport and Turf Systems, LLC. t.cuniff@mwsts.com

Steve Scanlon, Copenhaver Construction, copenhaverinc@yahoo.com

Chaddrick Reynolds, Carpenters Union Local 1185, creynolds@carpentersunion.org

Robert Richaros, KR Miller, Robert.richaros@krmiller.com

Ashlee Dameron, George Sollitt estimating@sollitt.com

Steve Menke, IHC, smenke@ihcconstruction.com

Stephen Grimes, Schroeder Asphalt, vanessa@schroederasphalt.com

END OF QUALIFIED BIDDERS LIST

STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT

These General Conditions are based upon the EJCDC No. 1910-8 (1996 Edition) and have been modified by the City of Elgin Illinois. Revised 7/2006.

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

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

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

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

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

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

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

9. *Change Order*--a change in a contract term other than as specifically provided in the contract which authorizes or necessitates any increase or decrease in the cost of the contract or the time of completion by thirty (30) days or more.

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

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

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

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

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

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

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

17. *Drawings or Plans*--That part of the Contract Documents prepared or approved by ENGINEER which

graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

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

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

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

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

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

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

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

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

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

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

28. *Reserved*

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

30. *OWNER*--The City of Elgin

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

32. *PCBs*--Polychlorinated biphenyls.

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

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

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

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

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

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

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

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

furnished by OWNER which are designated for the use of CONTRACTOR.

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

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

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

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

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

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

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

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

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

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

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination shall be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

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

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract

Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

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

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

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times shall commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

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

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

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

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference*

A. Within 10 days after the date of delivery of the Project Schedules referenced herein but before any Work at the Site is

started, a conference attended by CONTRACTOR, ENGINEER, the OWNER and others as appropriate shall be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules: reserved*

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT,
AMENDING, REUSE

3.01 *Intent*

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

B. Any applicable labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided whether or not specifically called for at no additional cost to OWNER.

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

3.02 *Reference Standards*

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing within three business days. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by OWNER or ENGINEER as provided for herein.

B. *Resolving Discrepancies*

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

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); provided however, that any conflict between the provisions of the Contract Documents and any Laws or Regulations applicable to the performance of the Work shall be resolved in favor of the Laws or Regulations.

3.04 *Amending and Supplementing Contract Documents*

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

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

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such

Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written ratification by ENGINEER. This prohibition shall survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL CONDITIONS;
REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish reasonable access to the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER shall obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.

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

4.02 *Subsurface and Physical Conditions*

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

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

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

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

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to,

any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

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

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

4.03 *Differing Subsurface or Physical Conditions*

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

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

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

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

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

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, shall be equitably adjusted, in the form of a Change Order, to the extent that the existence of such differing subsurface or physical condition causes an increase or

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

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

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

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

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

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

c. CONTRACTOR failed to give the written notice promptly and as required by paragraph 4.03.A.

d. CONTRACTOR represents he has made a reasonable inspection of the construction site and hereby voluntarily waives the incorporation of the provisions of 30 ILCS 557/1 et seq. and represents that the negotiated contract price is the sole consideration for the construction of the improvement described in this contract. Further, OWNER shall not be liable to CONTRACTOR for any amount of money over the negotiated contract price.

3. OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* Any information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including

OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

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

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

a. reviewing and checking all such information and data,

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

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

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

B. *Not Shown or Indicated*

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

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order may be issued at OWNER'S discretion to reflect and document such consequences.

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

4.05 *Reference Points*

A. OWNER shall provide land surveys necessary to establish right of way, easements and property lines. ENGINEER shall provide base lines, benchmarks and reference points which in ENGINEER'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall provide all stakes, markers, labor and assistance required by ENGINEER. 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 and pay for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

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

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

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

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at

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

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

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work 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. OWNER shall be entitled to deduct the cost of such Work from the Contract Price.

G. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

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

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

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

B. Such insurance shall apply as primary insurance with respect to any other insurance or self-insurance program afforded to the City of Elgin. There shall be no endorsement or modification of such insurance to make it excess over other available insurance, and alternatively, if the insurance states that it is excess or pro rata, it shall be endorsed to be primary with respect to the City of Elgin.

C. The policies to be purchased and maintained shall be furnished by insurers with A.M. Best Company rating of at least A- (Excellent) and a financial size category of VIII or greater.

5.04 *CONTRACTOR's Liability Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

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

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

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

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

3. include completed operations insurance;

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

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

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

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

5.05 *Contractor's Property Insurance*

A. Contractor shall purchase and maintain property insurance coverage for the Work at each site in the amount of the full replacement cost thereof. This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, Engineer, and Engineer's Consultants, each of whom is deemed to have an insurable interest and shall be listed as a named insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, Work in transit including ocean transit, and Work in storage at each project site or at another location acceptable to Owner, and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, flood, and damage caused by frost and freezing;

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

4. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer, with 30 days' written notice to each other insured.

5.06 *Waiver of Rights*

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.05 shall protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and shall provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers shall have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition,

waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.07 *Acceptance of Bonds and Insurance; Option to Replace*

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

5.8 *Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.05 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

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

6.02 *Labor; Working Hours*

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

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

6.03 *Services, Materials, and Equipment*

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract

Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with the Contract Documents as may be adjusted from time to time as provided below.

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

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

6.05 *Substitutes and "Or-Equals"*

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

1. The procedure for review by ENGINEER for "or equal" or substitute items shall be as set forth in below, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

2. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item shall

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

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

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

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

E. *ENGINEER's Cost Reimbursement*: ENGINEER shall record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection. Any person employed by CONTRACTOR or Subcontractors who does not perform his work in a proper and skillful manner, or who is intemperate, disorderly, or otherwise objectionable, shall, at the written request of OWNER, be forthwith removed from the project site and shall not be employed again in any portion of the Work without written consent of OWNER.

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

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier shall be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.05, the agreement between the CONTRACTOR and the Subcontractor or Supplier shall contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR shall obtain the same.

6.07 *Patent Fees and Royalties*

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

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids. CONTRACTOR shall pay all charges of utility owners for connections to the Work.

6.09 *Laws and Regulations*

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

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

this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

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

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

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

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

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim as provided by law.

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

causes of action, and any and all liability of any nature arising out of or in connection with CONTRACTOR's negligent or illegal failure to comply with any law or regulation, including but not limited to any claim for injunctive relief or for any attorney's fees incurred thereof.

B. Removal of Debris During Performance of the Work:

During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

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

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals shall be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings shall 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.

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

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal shall be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

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

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

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

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

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

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract

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

E. *ENGINEER's Review*

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

2. ENGINEER's review and approval shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such shall not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in

writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor shall any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of the Contract Documents.

F. *Resubmittal Procedures*

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

6.18 *Continuing the Work*

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

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work shall be in accordance with the Contract Documents and shall not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

This warranty shall guarantee all work for a period of three years from the date of acceptance of the Work and final acceptance by the OWNER, except for equipment, motors, electrical controls and other mechanical devices that shall be guaranteed for a period of two years from the date of acceptance and use of each item of equipment by OWNER unless a different guarantee period of time is specified under other parts of the Contract Documents.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following shall constitute an acceptance of Work that is not in accordance with the Contract

Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. Indemnification. To the fullest extent permitted by law, Contractor agrees to and shall indemnify, defend and hold harmless the Owner, the Engineer, Engineer's consultants and the officers, employees, boards and commissions of each and any of them from and against any and all claims, suits, judgments, costs, attorneys' fees, damages or any and all other relief or liability arising out of or resulting from or through, or alleged to arise out of, any acts or negligent acts or omissions of Contractor or Contractor's officers, employees, agents or subcontractors in the performance of this agreement, or arising out of or in connection with litigation based on any mechanic's lien or other claims, suits, judgments and/or demands for damages by subcontractors. In the event of any action against the Owner, its officers, employees, agents, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of Owner's choosing. In the event and to the extent that any legal work is performed by Owner's in-house legal counsel pursuant to the provisions of this section, Owner shall be reimbursed by Contractor for such legal work at the rate of \$200 per hour, which rate Contractor hereby agrees and acknowledges to be a reasonable rate for such in-house attorneys' fees. The provisions of this paragraph shall survive any expiration and/or termination of this agreement.

B. Contractor Specification Indemnification. To the fullest extent permitted by law, and notwithstanding anything to the contrary in any specifications, plans or Contract Documents, Contractor hereby warrants and represents that it has thoroughly and carefully reviewed all specifications, plans and

Contract Documents; and Contractor hereby waives, releases, indemnifies and agrees to hold harmless Owner, Engineer, Engineer's consultants, and any and all other entities which may have contributed or been involved in or with the preparation or drafting of any plans, specifications or Contract Documents, and the officers, employees, boards and commissions of each and any of them from and against any and all claims, suits, judgments, costs, attorneys' fees, damages or any and all other relief or liability arising out of or resulting from or through, or alleged to arise out of or through, ambiguities, errors or conflicts in such specifications, plans or Contract Documents. Contractor hereby agrees and acknowledges that any such claims, suits, judgments, costs, attorneys' fees, damages or any and all other relief or liability shall inherently and per se be based upon and result from Contractor's negligent acts or omissions in failing to detect any such errors, ambiguities or conflicts. The provisions of this paragraph shall survive any expiration and/or termination of this agreement.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

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

1. written notice thereof shall be given to CONTRACTOR prior to starting any such other work; and

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

B. CONTRACTOR shall afford each other contractor who is a party to any contract or work as provided in the paragraph above and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and shall only cut or alter their work with the written consent of

ENGINEER, OWNER and the others whose work may be affected.

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

7.02 *Coordination*

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

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

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

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

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

B. Requirements to Provide Documents. To the extent they are available, the OWNER shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the Site.

The OWNER shall obtain and pay for necessary approvals, easements, assessments, and charges which are customarily secured prior to the execution of the Contract.

The OWNER shall furnish information or services required of the OWNER hereunder with reasonable promptness after receipt from the CONTRACTOR of a written request for such information or services.

The OWNER shall provide the CONTRACTOR, at no charge, such copies of the Project Manual as are reasonably necessary for the execution of the Work.

C. OWNER's Right to Perform Construction and to Award Separate Contracts. The OWNER reserves the right to perform construction or operations at the Site with its own forces or others. If the CONTRACTOR claims that a delay or additional cost is involved because of such action by the OWNER, the CONTRACTOR shall make such Claim as provided elsewhere in the Contract Documents.

When the separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate OWNER-Contractor Agreement.

The OWNER shall provide for coordination of the activities of the OWNER's own forces and of each separate contractor with the Work of the CONTRACTOR, who shall cooperate with them. The CONTRACTOR shall afford each other person access to the Site and shall properly coordinate its Work with that of the persons performing other work. The CONTRACTOR shall participate with other separate contractors and the OWNER in reviewing their construction schedules when directed to do so. The CONTRACTOR shall make any revisions to the construction schedules deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the CONTRACTOR, separate contractors, and the OWNER until subsequently revised.

D. Limitations on the OWNER's Responsibilities. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for the CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the CONTRACTOR to comply with laws, codes and regulations applicable to the furnishing or performance of the Work. The OWNER will not be responsible for the CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents. The OWNER is not responsible for the acts or omissions of the CONTRACTOR, any Subcontractor, Supplier, or anyone for whose acts the CONTRACTOR, any Subcontractor or Suppliers may be liable.

The OWNER's authority to review any of the CONTRACTOR's progress schedules, or its decision to raise or not to raise any objections about such schedules shall not impose on the OWNER any responsibility for the timing, planning, scheduling, or execution of the Work, nor in any way give rise to any duty or responsibility on the part of the OWNER to exercise this authority for the benefit of the

CONTRACTOR, any Subcontractor or Supplier or any other party.

The OWNER's decision to raise or not to raise objections with regard to any aspects of the CONTRACTOR's insurance shall in no way give rise to any duty or responsibility on the part of the OWNER to or for the benefit of the CONTRACTOR, any Subcontractor, any Supplier, or any other party.

E. Reservation of Rights. The OWNER reserves the right to correct at any time any error in any progress payment that may have been made.

Should defective Work be discovered subsequent to final payment, the OWNER reserves the right to make a claim and recover all costs and professional fees associated therewith, including the cost of removing and/or replacing the defective Work.

F. Waivers. All waivers by the OWNER are valid only to the extent that they are signed by the OWNER. Any such waivers pertain only to the specific matter contained in the waiver and not to any similar, subsequent matters.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S Representative

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

9.02 Visits to Site

A. ENGINEER shall make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER reasonably deems necessary in order to observe 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, shall determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER shall not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. On the basis of such visits and observations, ENGINEER shall keep OWNER informed of the progress of the Work and shall use its best efforts 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 herein, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER shall not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

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

9.04 Clarifications and Interpretations

A. ENGINEER shall issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations shall be binding on OWNER and CONTRACTOR.

9.05 Authorized Variations in Work

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and shall be binding on CONTRACTOR, who shall perform the Work involved promptly.

9.06 Rejecting Defective Work

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

herein whether or not the Work is fabricated, installed, or completed.

9.07 Determinations for Unit Price Work

A. ENGINEER shall determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER shall 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 shall be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

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

B. When functioning as provided under paragraph 9.07, ENGINEER shall not show partiality to OWNER or CONTRACTOR and shall not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.08 with respect to any such Claim, dispute, or other matter shall be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.09 Limitations on ENGINEER's Authority and Responsibilities

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

B. ENGINEER shall 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 shall not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

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

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

E. The limitations upon authority and responsibility set forth in this paragraph 9.09 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

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

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

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented

as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

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

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

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

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be CONTRACTOR's responsibility. The amount of each applicable Bond shall be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim,

dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Article 12. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

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

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

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

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

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

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work.

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

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

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

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

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

5. Supplemental costs including the following:

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

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

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

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.05), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and

expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

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

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

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

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

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

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, 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 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

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

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

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

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

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

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

11.02 *Cash Allowances*

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing shall be valid.

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

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price shall be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of

Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR shall be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price shall be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

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

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

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

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price

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

12.01 *Change of Contract Price*

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum; or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph

12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or

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

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

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

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

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

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

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making

the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

12.03 *Delays Beyond CONTRACTOR's Control*

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

12.04 *Delays Within CONTRACTOR's Control*

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

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

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

12.06 *Delay Damages*

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

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

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or

acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

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

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

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

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

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other

representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

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

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

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

13.04 *Uncovering Work*

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

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

13.05 *OWNER May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

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

13.07 *Correction Period*

A. If within three years after the date of Substantial Completion (except for equipment, motors, electrical controls and other mechanical devices which are guaranteed for a period of two years from the date of acceptance and use of each item of equipment by OWNER pursuant to Section 6.19(A) herein), or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or

relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) shall be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

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

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

13.08 *Acceptance of Defective Work*

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

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with

the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

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

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 shall be charged against CONTRACTOR, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents with respect to the Work.

Such claims, costs, losses and damages shall include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

B. CONTRACTOR shall submit revisions to the initial schedule of progress payments whenever actual outlays for the Work vary beyond -5 percent and +10 percent from the schedule, as determined by ENGINEER.

14.02 *Progress Payments*

A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

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

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

B. *Review of Applications*

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

2. ENGINEER's recommendation of any payment requested in an Application for Payment shall constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER shall not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

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

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

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

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

C. *Payment Becomes Due*

1. Within 30 days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended shall (subject to the provisions of paragraph 14.02.D) become due, and when due shall be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

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

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

b. Liens have been filed in connection with the Work;

c. there are other items entitling OWNER to a set-off against the amount recommended, including, but not limited to, the failure of Contractor to provide any lien waivers and/or certifications which may be required by Owner or as a result of Owner's payments to subcontractors pursuant to the provisions of the Contract Documents; or

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

14.03 *CONTRACTOR's Warranty of Title*

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

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER shall notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER shall prepare and deliver to OWNER a tentative

certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have fourteen days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER shall within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER shall within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive and final certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER shall deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive and final certificate of Substantial Completion, ENGINEER's aforesaid recommendation shall be binding on OWNER and CONTRACTOR until final payment.

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

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work that has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR shall certify to

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

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

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment*

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the

surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

B. Review of Application and Acceptance

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

C. Payment Becomes Due

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

14.08 *Waiver of Claims*

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

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

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

ARTICLE 15 - TERMINATION

15.01 *OWNER May Terminate for Cause*

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

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

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

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

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

B. If one or more of the events identified in paragraph 15.01.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess shall be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER shall be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination shall not affect any rights or remedies of OWNER against CONTRACTOR then

existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER shall not release CONTRACTOR from liability.

15.02 *OWNER May Terminate For Convenience*

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

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. for reasonable expenses directly attributable to termination.

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

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. This Agreement shall be subject to and governed by the laws of the State of Illinois. Venue for the resolution of any dispute or the enforcement of any rights pursuant to this Agreement shall be in the Circuit Court of Kane County.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to

a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation.

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

A. This Contract is to be governed by the law of Illinois.

17.06 *Professional Fees and Court Costs Included*

A. Whenever reference is made to Aclaims, costs, losses and damages, it shall specifically exclude all fees and charges of attorneys and all court or dispute resolution costs.

17.07 *Prevailing Wage Rates*

A. CONTRACTOR shall comply with the attached prevailing wage rates as determined by the Illinois Department of Labor.