

# Office of the Controller

Fayette County, Pennsylvania

**SCOTT T. ABRAHAM**

*Controller*



Phone (724) 430-1217  
Fax (724) 430-1366

July 21, 2020

## A D V E R T I S E M E N T

Sealed bids will be received in the Fayette County Office of the Controller, Fayette County Courthouse, Pennsylvania, until 3:00 p.m. Thursday, August 6, 2020 for the bids for Fayette County Design Build Broadband Deployment at 61 East Main Street, Uniontown, Pennsylvania 15401. McMillen Engineering, Inc., 115 Wayland Smith Drive, Uniontown, PA 15401, by telephone 724-439-8110 or by fax 724-439-4733.

Bid forms and specifications are on file and may be examined at the Offices of the Fayette County Commissioners and McMillen Engineering, Inc.

A digital copy of the contract documents may be obtained by registering through McMillen Engineering, Inc.

All bids submitted to this advertisement must be sealed with **clear tape** and clearly marked on the outside of the envelope **Bid No. 20-05**.

Submit one (1) original and five (5) copies to the Office of the Controller, Courthouse, 61 East Main Street, Uniontown, PA 15401.

The Fayette County Commissioners reserve the right to reject any or all bids or parts thereof.

Scott Abraham

Fayette County Controller

Advertise: 7/22/2020, 7/26/2020

Opening: August 6, 2020



**CONTRACT TECHNICAL SPECIFICATIONS  
FOR  
FAYETTE COUNTY DESIGN BUILD BROADBAND  
DEPLOYMENT FOR FREE HOT SPOT WIFI IN UNDERSERVED  
AND UNSERVED RURAL AREAS FOR TELEWORK,  
TELEMEDICINE, AND DISTANCE LEARNING FOR COVID-19**

---

**Bid Contract No. 20-05**

**July 2020**

*Prepared For:*  
**Fayette County  
Board of Commissioners**  
61 East Main Street  
Uniontown, PA 15401  
724-430-1200

*Prepared By:*  
**McMillen Engineering, Inc.**  
Civil Engineers/Land Surveyors  
115 Wayland Smith Drive  
Uniontown, PA 15401  
Phone 724-439-8110  
Email [info@mcmilleng.com](mailto:info@mcmilleng.com)

## TABLE OF CONTENTS

### **Part I Standard General Conditions**

Attachment 1	Information for Bidders
Attachment 2	Bid Form
Attachment 3	Bid Bond
Attachment 4	Agreement
Attachment 5	Performance Bond
Attachment 6	Payment Bond
Attachment 7	Notice of Intent to Award
Attachment 8	Notice of Award
Attachment 9	Notice to Proceed
Attachment 10	Application for Payment
Attachment 11	Change Order
Attachment 12	Davis Bacon Wages
Attachment 13	Equal Employment Opportunity Poster
Section 1	Instruction to Bidders
Section 2	Standard General Conditions of the Construction Contract
Section 3	Location, Scope, Special Conditions and Description of Bids

Appendix	Map of Identified Hot Spots
----------	-----------------------------

**ATTACHMENT I**  
**INFORMATION FOR BIDDERS**

BIDS will be received by the County of Fayette (herein called the "Owner"), until 3:00PM, Thursday, August 6, 2020 at the **Office of the County Controller, Fayette County, 61 East Main Street, Uniontown, PA 15401**, and then publicly open and read aloud at the Fayette County Commissioners Conference Room.

Each BID must be submitted in a sealed envelope, addressed to the Office of the County Controller, Fayette County, 61 East Main Street, Uniontown, PA 15401. Each sealed (clear tape) envelope containing a BID must be plainly marked on the outside of the envelope as BID NO. 20-05 and the envelope should bear on the outside the Bidder's name and address. If forwarded by mail, the sealed (clear tape) envelope containing the BID must be enclosed in another envelope (sealed with clear tape) addressed to the Owner at:

Office of the County Controller, Fayette County, 61 East Main Street, Uniontown, PA  
15401

ALL BIDS must be made on the required BID form (Attachment 2). All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. One (1) original and five (5) copies of the Bid Form are to be submitted.

The Owner may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. The award of the Contract and the issuance of Notice to Proceed shall be contingent upon the approval of the Performance Bond, Payment Bond, Agreement, and the Certificates of Insurance.

The Owner shall award the contract to the lowest responsible Bidder or shall reject all BIDS within 60 days of the date of the BID opening, and no Bidder may withdraw a BID before the expiration of such 60-day period; PROVIDED, however, that if the award of contract is delayed by a required approval of another government agency, the sale of bonds, of the award of a grant or grants, the Owner shall reject all BIDS or award the contract within 120 days of the date of BID opening, and no Bidder may withdraw a BID before the expiration of such 120-day period. Thirty (30) day extensions of this date for the award of the contract may be made by the mutual written consent of the Owner and the Bidders.

Bidders must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks fulfilling any of the conditions of the Contract.

Each BID must be accompanied by a BID bond payable to the Owner for ten percent of the total amount of the BID. As soon as the BID prices have been compared, the Owner will return the BONDS of all except the three lowest responsible Bidder. When the Agreement is executed these bonds also will be returned.

A performance BOND and a payment BOND each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the Owner, will be required for the faithful performance of the contract. All bonds shall be furnished on the forms included in the Contract Documents. No other forms shall be accepted.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the Notice of Intent to Award is given will be required to obtain the performance BOND and payment BOND within ten (10) calendar days from the date of receipt of the NOTICE OF INTENT TO AWARD. The NOTICE OF INTENT TO AWARD shall be accompanied by the necessary BOND forms. In case of failure of the Bidder to execute and deliver the BONDS, the Owner may at his option consider the Bidder in default, in which case the BID BOND accompanying the proposal shall become the Property of the Owner.

Within ten (10) calendar days after the approval of the BONDS, by the Owner, the Owner will issue the NOTICE OF AWARD. The NOTICE OF AWARD shall be accompanied by the necessary Agreement form. The party to whom the NOTICE OF AWARD is given will be required to execute the Agreement and deliver it together with the Certificates of Insurance to the Owner within ten (10) calendar days from the date when the NOTICE OF AWARD is delivered to the Bidder. In case of the failure of the Bidder to execute the Agreement, the Owner may at his option consider the Bidder to be in default in which case the BID BOND accompanying the proposal shall become the property of the Owner.

The NOTICE TO PROCEED shall be issued to the Contractor within thirty (30) days of the AWARD OF THE CONTRACT unless the time is extended by mutual written consent of the Owner and the CONTRACTOR. In case the Performance Bond, Payment Bond, Agreement and/or the Certificates of Insurance submitted by the Bidder do not meet the requirements of the Contract Documents and changes are to be made before it can be accepted by the Owner, the Bidder is obligated to accept an extension of the DATE OF AWARD of the CONTRACT and/or the DATE OF ISSUE of NOTICE TO PROCEED for that period of additional time required to furnish acceptable documents.

The Owner may make such investigations as deemed necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any BID if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible Bidder, and in the best interest of the Owner.

Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to its BID.

The low Bidder shall supply the names and addresses of major material SUPPLIERS and SUB-CONTRACTORS when required to do so by the Owner.

**ATTACHMENT 2**  
**BID FORM**

Proposal of \_\_\_\_\_  
Hereinafter called "Bidder", organized and existing under the laws of the State of  
" \_\_\_\_\_ " doing business as \_\_\_\_\_

To the County of Fayette hereinafter called "Owner".

In compliance with your Advertisement for Bids, Bidder hereby proposes to perform all work for the construction of the "Fayette County Design Build Broadband Deployment" in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each Bidder certifies that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other Bidder or with any competitor.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT by December 15, 2020 and fully in operation by December 15, 2020. Time is of the essence. No payment shall be made for any work not completed and operational at the specified speeds, conditions and uses by December 15, 2020.

Bidder acknowledges receipt of the following ADDENDUM:

---

---

---

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following price:

<b>Base Bid Tabulation – Mountain Area and Route 40 West</b>					
Item No.	Description	Quantity	Unit	Unit Cost	Total Cost
1	Ohiopyle Borough Zone	1			
2	Route 40 Zone (Main Street/Fayette Street intersection down Main Street to Northgate Highway)	1			
3	North Union Township Recreation Center	1			
4	LaFayette School	1			
5	East End Community Center	1			
6	Former Army Reserve Center (proposed Fayette County Jail) Route 21	1			
7	Uniontown Hospital	1			
8	Bailey Park	1			
9	Meadowbrook Ballfield	1			
10	Hutchinson Ballfield North	1			
11	Hutchinson Ballfield South	1			
12	South Union Recreation Center (Township Drive)	1			
13	Lick Hollow Park (Route 40)	1			
14	Watering Trough (Route 40)	1			
15	Scenic Outlook (Route 40)	1			
16	Wharton Furnace Road	1			
17	Wharton Furnace Chapel	1			
18	Laurel Mountain Baptist Church	1			
19	Wharton Park (SR 381)	1			
20	Mountain Fellowship Center	1			
21	Henry Clay Township Municipal Park	1			
22	Kentuck Knob	1			
23	Fallingwater	1			

Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05

24	Mill Run	I			
25	Jumonville Training Center	I			
<b>Total Base Bid</b>					

Fayette County Board of Commissioners  
 Fayette County Design Build Broadband Deployment  
 Bid Contract No. 20-05

<b>Alternate Bid Tabulation – Route 51 North</b>					
Item No.	Description	Quantity	Unit	Unit Cost	Total Cost
1	Eberly Park	1			
2	Phillips Ballfield	1			
3	Franklin Industrial Park	1			
4	Giant Eagle Plaza	1			
5	Perry Township Municipal Park	1			
6	Star Junction Park	1			
7	Sampey Park (Perryopolis Borough)	1			
8	Whittset Park (Perry Township)	1			
9	Wickhaven Park (Perry Township)	1			
10	Flatwoods (Franklin Township) at intersection with the Township Community Pool	1			
11	Keisterville Ballfield	1			
<b>Total Alternate Bid</b>					

Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05

The unit prices are listed for each hot spot but this is a lump sum contract. The County reserves the right to eliminate a hot spot, at their discretion.

**One (1) original and five (5) copies of the Bid Form are to be submitted.**

Respectfully submitted:

---

Signature

---

Address

---

Title

---

Date

---

License number (if applicable)

SEAL – (if BID is by a corporation)

**ATTACHMENT 3**  
**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned,  
\_\_\_\_\_  
as Principal, and  
\_\_\_\_\_  
as Surety, are hereby held and firmly bound unto  
\_\_\_\_\_  
as Owner in the penal sum of  
\_\_\_\_\_  
for the payment of which, well and truly to be made, we hereby jointly and  
severally bind ourselves, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_.

The Condition of the above obligation is such that whereas the Principal has submitted to \_\_\_\_\_  
\_\_\_\_\_ a certain BID, attached hereto and hereby made a part hereof to enter  
into a contract in writing, for the \_\_\_\_\_

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form  
of Contract attachment hereto (Properly completed in accordance with said BID) and shall  
furnish a BOND for faithful performance of said contract, and for the payment of all persons  
performing labor or furnishing materials in connection therewith, and shall in all other respects  
perform the agreement created by the acceptance of said BID, then this obligation shall be void,  
otherwise the same shall remain in force and effect; it being expressly understood and agreed  
that the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of  
this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its  
BOND shall be in no way impaired or affected by any extension of the time within which the Owner  
may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and  
such of them as are corporations have caused their corporate seals to be hereto affixed and these  
presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

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

IMPORTANT – Surety companies executing BONDS must appear on the Treasury Department's most  
current list (Circular 570 as amended) and authorized to transact business in Pennsylvania.

**ATTACHMENT 4**  
**AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, by and between County of Fayette, hereinafter called "Owner"

And \_\_\_\_\_ doing business as (an individual,) or (a partnership,) or (a corporation) hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements herein after mentioned:

1. The CONTRACTOR will commence and complete the construction of the Fayette County Design Build Broadband Deployment, also called "Project".
2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction, completion, and five-year maintenance and operation of the hot spots of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within 10 calendar days or as directed by contract documents after the date of the NOTICE TO PROCEED and will complete the construction of and operational by December 15, 2020 unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the work described in the CONTRACT DOCUMENTS and comply with terms therein for the sum of \$\_\_\_\_\_ or as shown in the BID Schedule for the Base Bid.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
  1. "Contract Documents dated July 2020 for the Fayette County Design Build Broadband Deployment"
  2. Drawings by McMillen Engineering, Inc. dated July 2020 for the Fayette County Design Build Broadband Deployment.
6. The Owner will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS. Under no circumstance will the CONTRACTOR be paid for any work not completed and operational at the specified speeds, conditions, and uses by December 15, 2020.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized official, this Agreement in Five (5) copies each of which shall be deemed an original on the date first above written.

Owner:

Agreement

Attachment 4-1

Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05

County of Fayette

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

(Seal)

ATTEST:

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

CONTRACTOR:

By \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Employer Identification Number

\_\_\_\_\_

(Seal)

ATTEST:

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**ATTACHMENT 5  
PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS: that

---

(Name of Contractor)

---

(Address of Contractor)

A\_\_\_\_\_, hereinafter called Principal, and  
(Corporation, Partnership, or Individual)

---

(Name of Surety)

---

(Address of Surety)

Hereinafter called Surety, are held and firmly bound unto

---

(Name of Owner)

---

(Address of Owner)

Hereinafter called Owner in the total aggregate penal sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_)

In lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal submitted a certain bid to the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_ a copy of which is hereto attached and made a part hereof and intends to enter into a certain agreement with the Owner for the construction of:

---

---

---

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extensions of time, alteration or addition to the terms of the contract or to WORK to be performed there under or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performances of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND, and whether referring to this BOND, the Contract or the Loan modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the Owner and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied.

Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05

IN WITNESS WHEREOF, this instrument is executed in Five (5) Counterparts, each of which shall be deemed an original, each with an original power of attorney, this \_\_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
(SEAL)

By \_\_\_\_\_ (s)  
\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
Witness to Surety

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of NOTICE OF INTENT TO AWARD. If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Pennsylvania.

**ATTACHMENT 6**  
**PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS: that

---

Name of Contractor

---

Address of Contractor

A \_\_\_\_\_ hereinafter called PRINCIPAL and (Corporation, Partnership or Individual)

---

Name of Surety

Hereinafter called Surety, are held and firmly bound unto

---

Name of Owner

---

Address of Owner

hereinafter called Owner and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL submitted a certain bid to the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_ a copy of which is hereto attached and made a part hereof, and intends to enter into a certain agreement with the Owner for the construction of:

---

---

---

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDE, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL shall have given written notice to any two of the following: The PRINCIPAL, the Owner, or the Surety above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepared, in an envelope addressed to the PRINCIPAL, Owner, OR SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the Owner and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05

IN WITNESS WHEREOF, this instrument is executed in Five (5) Counterparts, each of which shall be deemed an original, each with an original power of attorney, this \_\_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
(SEAL)

By \_\_\_\_\_ (s)  
\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
Witness to Surety

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of NOTICE OF INTENT TO AWARD. If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Pennsylvania.

**ATTACHMENT 7**  
**NOTICE OF INTENT TO AWARD**

To: \_\_\_\_\_  
Contractor

\_\_\_\_\_  
Address

Gentlemen:

You are the Bidder selected for the design, building, operation, maintenance and ownership of the Fayette County Design Build Broadband Deployment for the County of Fayette Pursuant to the Specification under which your Proposal was submitted you are hereby notified that the Owner represented by the undersigned intends to award a Contract to you for the aforesaid work. The Contract Price is computed to be \$\_\_\_\_\_, on the basis of the acceptance of your proposal for the Base Bid.

Enclosed herewith are copies of the required Performance BOND and Payment Bond to be executed by the Contracting Party and by an approved corporate surety, as required by the Specifications. These bonds may bear any date on or after your receipt of this notice and must be accompanied by proper powers of attorney from the corporate surety, bearing the same date as the BONDS. The BONDS shall be executed in Five (5) counterparts, each of which shall be deemed an original, each with an original power of attorney, and returned to the undersigned within ten (10) days after receipt of this letter.

The BONDS must be supplied before an award of the Contract can be made to you.

If you fail to execute and deliver the BONDS within the time specified, you shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with your Proposal.

Dated this \_\_\_\_ day of \_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

County of Fayette  
Owner  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Title \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above Intent of Award is hereby acknowledged this the \_\_\_\_ day of \_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT 8**  
**NOTICE OF AWARD**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PROJECT Description: Fayette County Design Build Broadband Deployment**

The Owner has considered the BID submitted by you for the above described WORK in response to its Advertisement for the Bids dated \_\_\_\_\_, and information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of  
\$ \_\_\_\_\_ for the Base Bid.

You are required by the Information for Bidders to execute the Agreement and furnish the required certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement within ten (10) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Owner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

County of Fayette  
Owner

By \_\_\_\_\_

Title \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF AWARD is hereby acknowledged

By \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**ATTACHMENT 9**  
**NOTICE TO PROCEED**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
Project: Fayette County Design Build  
Broadband Deployment

You are hereby notified to commence WORK in accordance with the Agreement dated \_\_\_\_\_ on or before \_\_\_\_\_, and you are to complete the WORK and OPERATIONAL by December 15, 2020.

County of Fayette  
Owner

By \_\_\_\_\_

Title \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by

\_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Employer Identification Number \_\_\_\_\_

**Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05**

## Contractor's Application for Payment No. [REDACTED]

<b>Contractor's Application for Payment No. [REDACTED]</b>	
Application Period:	Application Date:
From (Contractor):	Via (Engineer):
Project:	Contract:
Owner's Contract No.:	Contractor's Project No.:
	Engineer's Project No.:

## Application For Payment Change Order Summary

Approved Change Orders		Original Contract Price	
Number	Additions	Deductions	
4. TOTAL COMPLETED AND STORED TO DATE			
(Column F on Progress Estimate)			\$
5. RETAINAGE:			
a. <input checked="" type="checkbox"/> X <input type="checkbox"/> Work Completed.....			\$
b. <input checked="" type="checkbox"/> X <input type="checkbox"/> Stored Material.....			\$
c. Total Retainage (Line 5a + Line 5b).....			\$
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c).....			\$
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....			\$
8. AMOUNT DUE THIS APPLICATION.....			\$
9. BALANCE TO FINISH, PLUS RETAINAGE			
TOTALS			
NET CHANGE BY			
CHANGE ORDERS			

Contractor's Certification

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

<b>Contractor's Certification</b>			
<p>The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials, and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.</p>			
Payment of:	\$ _____	(Line 8 or other - attach explanation of the other amount)	
is recommended by:	_____ (Engineer)	_____ (Date)	
Payment of:	\$ _____	(Line 8 or other - attach explanation of the other amount)	
is approved by:	_____ (Owner)	_____ (Date)	
Approved by:	_____ By: _____	Date: _____	

Endorsed by the Construction Specifications Institute.

## Progress Estimate

## Contractor's Application

**Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05**

Application for Payment, EJCDC C-620  
Prepared by the Engineers Joint Contract Documents Committee

## Attachment 10-2

## Progress Estimate

## Contractor's Application

**Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05**

Application for Payment, EJCDC C-620  
Prepared by the Engineers Joint Contract Documents Committee

### Attachment 10-3

## Stored Material Summary

## Contractor's Application

**Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05**

**Application for Payment, EJCDC C-620**  
**Prepared by the Engineers Joint Contract Documents Committee**

#### Attachment 10-4

**ATTACHMENT II**  
**CHANGE ORDER**  
**No. \_\_\_\_**

Date of Issuance: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Project: Fayette County Broadband Deployment	Owner: County of Fayette	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.: 2020-111

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description:

Design, Build, Ownership, Operate, and Maintain Broadband Deployment for identified hot spots for five years. The WiFi hot spots are provided free to users and Fayette County.

**Attachments (list documents supporting change):**

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:

\$ \_\_\_\_\_

[Increase] [Decrease] from previously approved Change Orders No. to No. :

\$ \_\_\_\_\_

Contract Price prior to this Change Order:

\$ \_\_\_\_\_

[Increase] [Decrease] of this Change Order:

\$ \_\_\_\_\_

Contract Price incorporating this Change Order:

\$ \_\_\_\_\_

**CHANGE IN CONTRACT TIMES:**

Original Contract:  Working days  Calendar days

Substantial completion (days or date):

Ready for final payment (days or date):

[Increase] [Decrease] from previously approved Change Orders No. to No. :

Substantial completion (days): \_\_\_\_\_

Ready for final payment (days): \_\_\_\_\_

Contract Times prior to this Change Order:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

Contract Times with all approved Change Orders:

Substantial completion (days or date): \_\_\_\_\_

Ready for final payment (days or date): \_\_\_\_\_

**RECOMMENDED:**

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

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

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

**ACCEPTED:**

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

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

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

**ACCEPTED:**

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

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

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

## **CHANGE ORDER INSTRUCTIONS**

### **GENERAL INFORMATION**

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

### **COMPLETING THE CHANGE ORDER FORM**

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

# **Attachment 12**

## **Davis Bacon Wages**

"General Decision Number: PA20200002 07/10/2020

Superseded General Decision Number: PA20190002

State: Pennsylvania

Construction Types: Heavy and Highway

Counties: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington and Westmoreland Counties in Pennsylvania.

HEAVY AND HIGHWAY CONSTRUCTION PROJECTS (excluding sewer grouting projects and excluding sewage and water treatment plant projects)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/03/2020
1	01/24/2020
2	01/31/2020
3	02/07/2020
4	02/14/2020
5	02/28/2020
6	03/13/2020
7	04/10/2020
8	06/05/2020
9	06/19/2020
10	06/26/2020
11	07/03/2020
12	07/10/2020

BOIL0013-005 03/01/2018

CENTRE, FRANKLIN, POTTER, CLINTON, FULTON, HUNTINGDON AND

## MIFFLIN COUNTIES

	Rates	Fringes
BOILERMAKER.....	\$ 45.89	33.39

-----  
BOIL0154-004 01/01/2017

ALLEGHENY, ARMSTRONG, BEAVER, BEDFORD, BLAIR, BUTLER, CAMBRIA, CAMERON, CLARION, CLEARFIELD, CRAWFORD, ELK, FAYETTE, FOREST, GREENE, INDIANA, JEFFERSON, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON AND WESTMORELAND COUNTIES

	Rates	Fringes
BOILERMAKER.....	\$ 40.90	27.27

-----  
BOIL0744-003 07/01/2008

## ERIE COUNTY

	Rates	Fringes
BOILERMAKER.....	\$ 35.34	18.48

-----  
BRPA0005-033 05/01/2018

## MIFFLIN COUNTY

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 31.36	17.73

-----  
BRPA0005-046 05/01/2016

## FRANKLIN COUNTY

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 32.21	14.18

-----  
BRPA0005-071 05/01/2018

## CLINTON COUNTY

	Rates	Fringes
BRICKLAYER.....	\$ 33.16	16.31

-----  
BRPA0009-004 12/01/2018

BEDFORD, BLAIR, CAMBRIA, CENTRE COUNTY (Halfmoon, Houston, Patton, Rush, Taylor and Worth Townships), FULTON, HUNTINGDON, and SOMERSET COUNTIES

	Rates	Fringes
Bricklayer, Stonemason & Marble Setter.....	\$ 29.46	19.58

-----  
BRPA0009-006 06/01/2020

CLEARFIELD, FOREST, JEFFERSON, VENANGO, AND CLARION (Except  
 Brady, Madison, Perry, Porter, Redbank, and Toby Townships)  
 COUNTIES

Rates	Fringes
-------	---------

Bricklayer, Stonemason.....\$ 31.35	20.76
Marble mason.....\$ 31.35	20.76

---

BRPA0009-023 06/01/2018

BEAVER COUNTY

Rates	Fringes
-------	---------

BRICKLAYER.....\$ 30.16	21.41
-------------------------	-------

---

BRPA0009-025 06/01/2019

BUTLER, LAWRENCE, AND MERCER COUNTIES

Rates	Fringes
-------	---------

BRICKLAYER.....\$ 30.51	21.94
-------------------------	-------

---

BRPA0009-032 06/01/2017

FAYETTE (Jefferson & Washington Twps), GREENE (Except  
 Cumberland, Dunkirk, Greene, Monongahelia Twps), INDIANA, AND  
 WESTMORELAND (Rostraver Twp) COUNTIES

Rates	Fringes
-------	---------

BRICKLAYER.....\$ 31.00	20.66
-------------------------	-------

---

BRPA0009-033 06/01/2020

ARMSTRONG, CLARION (Brady, Madison, Perry, Tobe, Porter,  
 Redbank Twps), FAYETTE (Except Jefferson & Washington Twps),  
 GREENE (Cumberland, Dunkirk, Greene, Monongahelia Twps),  
 INDIANA, AND WESTMORELAND (Except Rostraver Twp) COUNTIES

Rates	Fringes
-------	---------

BRICKLAYER.....\$ 33.65	22.56
-------------------------	-------

---

BRPA0009-034 11/01/2019

ERIE COUNTY

Rates	Fringes
-------	---------

BRICKLAYER.....\$ 28.64	21.86
-------------------------	-------

---

BRPA0009-058 06/01/2020

ALLEGHENY, WASHINGTON (Cross Creek, Hanover, Jefferson, Mt  
 Pleasant, Nottingham, Peters, Robinson, Smith, Union Twps)  
 COUNTIES

Rates	Fringes
-------	---------

BRICKLAYER.....	\$ 34.05	22.81
-----------------	----------	-------

-----  
BRPA0009-059 06/01/2020

CAMERON, ELK, McKEAN, POTTER AND WARREN COUNTIES

Rates	Fringes
-------	---------

BRICKLAYER.....	\$ 29.01	20.62
-----------------	----------	-------

-----  
CARP0443-004 06/01/2020

Rates	Fringes
-------	---------

MILLWRIGHT.....	\$ 41.68	19.97
-----------------	----------	-------

-----  
CARP2235-005 01/01/2019

Rates	Fringes
-------	---------

**PILEDRIVERMAN**

Piledriverman (welder).....	\$ 35.25	19.30
Piledriverman.....	\$ 34.30	19.30

-----  
CARP2235-006 01/01/2019

Rates	Fringes
-------	---------

Diver.....	\$ 51.45	19.30
------------	----------	-------

Tender.....	\$ 34.30	19.30
-------------	----------	-------

-----  
CARP2274-001 01/01/2020

Rates	Fringes
-------	---------

CARPENTER (ALLEGHENY,  
ARMSTRONG, BEAVER, BUTLER,  
ERIE, FAYETTE, GREENE,  
LAWRENCE, MERCER, WASHINGTON,  
AND WESTMORELAND COUNTIES)

Carpenters (Welders).....	\$ 35.97	18.92
Carpenters.....	\$ 35.02	18.92

CARPENTER (BEDFORD, BLAIR,  
CAMBRIA, CAMERON, CENTRE,  
CLARION, CLINTON, CLEARFIELD,  
CRAWFORD, ELK, FOREST,  
FRANKLIN, FULTON, HUNTINGDON,  
INDIANA, JEFFERSON, MCKEAN,  
MIFFLIN, POTTER, SOMERSET,  
VENANGO, AND WARREN COUNTIES)

Carpenters (Welders).....	\$ 35.72	18.92
Carpenters.....	\$ 34.77	18.92

-----  
ELEC0005-006 12/22/2019

ALLEGHENY, ARMSTRONG, BEDFORD, BLAIR, BUTLER CAMBRIA, CAMERON,  
CENTRE (Remainder), CLARION, CLEARFIELD, ELK, FAYETTE, FULTON,  
GREENE, HUNTINGDON, INDIANA, JEFFERSON, MCKEAN, SOMERSET,  
VENANGO, WASHINGTON, AND WESTMORELAND COUNTIES

Rates	Fringes
-------	---------

ELECTRICIAN.....	\$ 42.61	27.19
------------------	----------	-------

-----  
ELEC0056-004 06/01/2020

## ERIE, FOREST AND WARREN COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 35.29	23.30

-----  
ELEC0126-005 06/01/2020

ALLEGHENY, ARMSTRONG, BEAVER, BEDFORD, BLAIR, CAMBRIA, CENTRE,  
CLARION, CLEARFIELD, FAYETTE, FULTON, GREENE, HUNTINGDON,  
INDIANA, JEFFERSON, SOMERSET, WASHINGTON AND WESTMORELAND

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 48.51	31.25%+11.75
Groundman.....	\$ 29.10	31.25%+11.75
Lineman.....	\$ 48.51	31.25%+11.75
Truck Driver.....	\$ 31.53	31.25%+11.75
Winch Truck Operator.....	\$ 33.96	31.25%+11.75

-----  
ELEC0126-007 06/01/2020

## FRANKLIN AND MIFFLIN COUNTIES

	Rates	Fringes
Line Construction:		
Cable Splicer.....	\$ 47.42	31.25%+11.75
Groundman.....	\$ 28.45	31.25%+11.75
Lineman.....	\$ 47.42	31.25%+11.75
Truck Driver.....	\$ 30.82	31.25%+11.75
Winch Truck Operator.....	\$ 33.20	31.25%+11.75

-----  
ELEC0143-007 06/01/2020

## FRANKLIN and MIFFLIN COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 32.50	24.90

-----  
ELEC0712-003 12/30/2019

## CRAWFORD, BEAVER, LAWRENCE AND MERCER COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 40.55	24.96

-----  
\* ELEC0812-008 06/01/2020

## CLINTON COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 35.25	21.31

-----  
\* ELEC0812-009 06/01/2020

## POTTER COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 36.26	21.34

-----  
\* ELEC0812-011 06/01/2020

CENTRE COUNTY (Burnside, Curtin, Liberty, Howard, Marion, Walker, Miles, Haines Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 35.25	21.31

-----  
ELEC1319-004 01/01/2020

BUTLER, CAMERON, CLINTON, CRAWFORD, ELK, ERIE, FOREST, LAWRENCE, MCKEAN, MERCER, VENANGO, WARREN AND POTTER COUNTIES

	Rates	Fringes
Line Construction:		
Equipment Operator.....	\$ 57.49	20.91
Groundmen.....	\$ 35.64	12.34
Linemen.....	\$ 57.49	24.41
Truck Driver.....	\$ 37.37	12.46

-----  
ENGI0066-016 01/01/2020

	Rates	Fringes
Power equipment operators:		
(ALLEGHENY, ARMSTRONG, BEAVER, BLAIR, BUTLER, CAMBRIA, CENTRE, CLARION, CLEARFIELD, CRAWFORD, ERIE, ELK, FAYETTE, GREENE, INDIANA, JEFFERSON, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON, AND WESTMORELAND COUNTIES)		
GROUP 1.....	\$ 32.89	22.23
GROUP 1-A.....	\$ 35.89	22.23
GROUP 1-B.....	\$ 34.89	22.23
GROUP 2.....	\$ 32.63	22.23
GROUP 3.....	\$ 28.98	22.23
GROUP 4.....	\$ 28.52	22.23
GROUP 5.....	\$ 28.27	22.23

Power equipment operators:		
(BEDFORD, CAMERON, CLINTON, FOREST, FRANKLIN, FULTON, HUNTINGDON, MIFFLIN, AND POTTER COUNTIES)		
GROUP 1.....	\$ 32.60	22.23
GROUP 1-A.....	\$ 35.60	22.23
GROUP 1-B.....	\$ 34.60	22.23
GROUP 2.....	\$ 32.32	22.23
GROUP 3.....	\$ 28.68	22.23
GROUP 4.....	\$ 28.19	22.23
GROUP 5.....	\$ 27.98	22.23

#### POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Asphalt Paving Machine (Spreader), Autograde (C.M.I. and similar); Backfiller, Compactor with Blade, Backhoe - 360 and 180 degree Swing; Cableway; Caisson Drill (similar to Hugh Williams), Central Mix Plant; Cooling Plant; Concrete Paving Mixer, Concrete Pump (self-propelled); Cranes; Cranes (boom or mast over 101ft. \$ .50 per each additional 50 feet inclusive of jib), Cranes (Tower Stationary- Climbing Tower Crane); Derrick; Derrick Boat; Dozer(greater than 25,000 lbs.); Dragline; Dredge; Dredge Hydraulic; Elevating Grader; Franki Pile Machine; Gradall (remote control or otherwise), Grader (power-fine grade); Hllift (4 cy. and over); Hoist 2 Drums or more (in one unit); Hydraulic Boom Truck with pivotal cab (single motor-Pitman or similar), (Boom and Mast over 101 feet will be paid an additional 50 feet inclusive of jib if used;) Kocal; Mechanic, Locomotive (std. Gauge); Metro-chip Harvester or similar; Milling Machine (Roto Mill or similar); Mix Mobile; Mix Mobile (with Self Loading Attachment), Mucking Machine (tunnel); Pile Driver Machine; Pipe Extrusion Machine; Prespliter Drill (self contained); Refrigeration Plant (soil Stabilization) Rough Terrain Crane (25 ton over) (Boom and Mast over 101 feet will be paid an additional 50 feet inclusive of jib if used); Rough Terrain Crane (under 25 ton), Scrapers; Shovel-Power; Slip form Paver (C.M.I. and similar); Trenching Machine (30,000 lbs. and over), Trenching Machine (under 30,000 lb.), Tunnell Machine (Mark XXI Jarva or similar), Vermeer Saw, Whirley, Mechanic, Compactor with blade

GROUP 1-A Backhoes-360 degree swing (above 120,000 lbs. gross weight); Cranes (over 100 tons), Cranes-Rough Terrain (over 100 ton)

GROUP 1-B Backhoes-360 degree swing (above 70,000 lbs. to 120,000 lbs. gross weight); Cranes (up to 100 ton), Cranes-Rough Terrain (65 ton-100 ton), Tower Crane

GROUP 2: Asphalt plant operator; auger (tractor mtd.); auger (truck mtd.); belt loader (euclid or similar); boring machine; cable placer or layer; Directional drill over 3,000 lbs thrust; concrete batch plant (electronically synchronized); concrete belt placer (C.M.I. and similar); concrete finishing machine and spreader, concrete mixer (over 1 cy.) concrete pump (stationary); core drill (truck or skid mtd. - similar to penn drill), dozer (25,000 lbs or less); Ditch Witch Saw, force feedloader; fork lift (lull or similar); grader - power; grease unit opertor (head); guard rail post driver (truck mounted) guard rail post driver (skid type); hilight (under 4 cy.); skid steer loader; hydraulic boom truck (non-pivotal cab); job work boat (powered), jumbo operator; locomotive (narrow guage); minor equipment operator (accumulative four units); mucking machine; multi-head saw (groover); overhead crane; roller -power- asphalt; ross carrier; side boom or tractor mounted boom; shuttle buggy (asphalt), stone crusher (screening-washing plants); stone spreader (self propelled) truck mounted drill (davey or similar); welder and repairman; well point pump operator; bidwell concrete finishing machine (or similar).

GROUP 3: Broom Finisher (C.M.I. or similar); Compactors/Rollers (static or vibratory (Self-propelled) on dirt or stone; Curb Builder; Minor Equipment Opertor (two or three units); Multi-head Tie Tamper; Pavement Breaker (self-propelled or ridden); Soil Stabilizer Machine; Tire

Repairman; Tractor (snaking and hauling); Well Driller and Horizontal: Winch or "A" Frame Truck (when hoisting and lowering).

GROUP 4: Ballast Regulator; Compressor; Concrete Mixer (1 cy. & under with skip); Concrete Saw (Ridden or self-propelled); Conveyor; Elevator (Material hauling only); Fork-lift (Ridden or self-propelled); Form Line Machine; Generator; Groute Pump; Heater (Machinical); Hoist (single Drum); Ladavator, Light Plant; Mulching Machine; Personnel Boat (Powered), Pulverizer, Pumps, Seeding Machine, spray Cure Machine (powered Driven); Subgrader; Tie Puller; Tugger; Welding Machine (Gas or Diesel).

GROUP 5: Deck Hand; Farm Tractor; Fireman on Boiler; Oiler; Power Broom; Side Delivery Shoulder Spreader (attachment);

-----  
IRON0003-001 06/01/2020

ALLEGHENY, FAYETTE, WESTMORELAND, CAMBRIA, INDIANA, ARMSTRONG, BUTLER, BEAVER, CLARION, AND WASHINGTON COUNTIES

Rates	Fringes
-------	---------

IRONWORKER.....	\$ 37.29	32.40
-----------------	----------	-------

-----  
IRON0003-007 06/01/2020

BLAIR, CAMERON, CENTRE, CLEARFIELD, CLINTON, ELK, JEFFERSON, MCKEAN, AND POTTER COUNTIES

Rates	Fringes
-------	---------

IRONWORKER.....	\$ 31.11	30.48
-----------------	----------	-------

-----  
IRON0003-011 06/01/2020

CRAWFORD, ERIE, FOREST, AND WARREN COUNTIES

Rates	Fringes
-------	---------

IRONWORKER.....	\$ 32.31	30.26
-----------------	----------	-------

-----  
IRON0207-002 06/01/2020

LAWRENCE, MERCER, AND VENANGO COUNTIES

Rates	Fringes
-------	---------

IRONWORKER.....	\$ 30.25	25.75
-----------------	----------	-------

-----  
IRON0404-008 07/01/2019

FRANKLIN (Remainder), HUNTINGDON (Remainder), AND MIFFLIN COUNTIES

Rates	Fringes
-------	---------

IRONWORKER, STRUCTURAL.....	\$ 32.76	29.88
-----------------------------	----------	-------

-----  
IRON0549-002 12/01/2012

## GREENE COUNTY

	Rates	Fringes
IRONWORKER.....	\$ 30.45	16.04

---

IRON0568-004 05/01/2019

BEDFORD, FRANKLIN (Southwest 1/3), FULTON, HUNTINGDON (Western 2/3), AND SOMERSET COUNTIES

	Rates	Fringes
IRONWORKER		
Structural, Ornamental, Reinforcing, Machinery Mover, Rigger & Machinery Erector, Welder, Fence Erector.....	\$ 28.66	21.51

---

LAB01058-001 01/01/2020

	Rates	Fringes
LABORER (BEDFORD, CAMERON, CENTRE, CLINTON, CRAWFORD, FOREST, FRANKLIN, FULTON, HUNTINGDON, JEFFERSON, MIFFLIN, AND POTTER COUNTIES)		
GROUP 1.....	\$ 26.00	24.10
GROUP 2.....	\$ 26.16	24.10
GROUP 3.....	\$ 26.65	24.10
GROUP 4.....	\$ 27.10	24.10
GROUP 5.....	\$ 27.51	24.10
GROUP 6.....	\$ 24.35	24.10
GROUP 7.....	\$ 27.00	24.10
GROUP 8.....	\$ 28.50	24.10
Laborers: (ALLEGHENY, ARMSTRONG, BEAVER, BLAIR, BUTLER, CAMBRIA, CLARION, CLEARFIELD, ELK, ERIE, FAYETTE, GREENE, INDIANA, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON, AND WESTMORELAND COUNTIES)		
GROUP 1.....	\$ 26.10	24.10
GROUP 2.....	\$ 26.26	24.10
GROUP 3.....	\$ 26.65	24.10
GROUP 4.....	\$ 27.10	24.10
GROUP 5.....	\$ 27.51	24.10
GROUP 6.....	\$ 24.35	24.10
GROUP 7.....	\$ 27.10	24.10
GROUP 8.....	\$ 28.60	24.10

## LABORERS CLASSIFICATIONS

GROUP 1: Asphalt curb sealer; Asphalt tamper; Batcherma  
(weigh) Blaster, Boatman, Brakeman, Change house attendant,  
Coffer dam, Concrete curing pitman, Puddler, Drill Runner's  
helper (Includes Drill Mounted on Truck, Track, or similar  
and Davey Drill Spots, Clean up, helps to maintain),  
Electric Brush and or Grinder, Fence Construction

(Including Fence Machine Operator) Form stripper and Mover, Gabion (Erectors and Placers) Hydro jet blaster nozzleman; Landscape laborer, Manually moved emulsion sprayer, Radio actuated traffic control operator Rip rap work, scaffolds and Runways, Sheeters and Shorers (includes lagging) structural concrete Top Surfacer, Walk Behind Street Sweeper, and Wood Chipper; water boy

GROUP 2: Air tool operator (all types); Asphalt, batch & concrete plant operator (manually operated) Burner, Caisson; men (open air); Carryable pumps; Chain saw operator including attachments, Cribbing, (concrete or steel); Curb machine operator (asphalt or concrete walk behind); Diamond head Core Driller, Drill runner's helper (tunnel) Fork Lift, (walk behind), Form Setter (Road Forms Line man) Highway Slab reinforcement placers (including joint and Basket Setters) Hydraulic pipe pusher; Liner plates (Tile or Vitrified Clay) Mechanical compacting equipment operators, Mechanical joint sealer, Dope pot and Tar Kettle, Mortar mixer (hand or machine) Muckers, Brakemen & all other Labor, (Includes installation of utility lines) Pipe Layers /Fusion /Heating Iron (Regardless of materials) Portable Single Unit Conveyor, Post Hole Auger, (2 or 4 cycle hand operated) Power wheelbarrows and buggies, Rail porter or similar; Sand blaster; Signal Man, Vibrator operator, All RAILROAD TRACK WORK TO INCLUDE THE FOLLOWING: adzing machine, ballast Router, Bolting Machine, Power Jacks, Rail Drills, Railroad Brakeman, Rail Saws, Spike Drivers (Manually or hand held tool) Spike Pullers Tamping Machine, Thermitweld

GROUP 3: Asphalt Luteman/Raker, Blacksmith, Blaster, Brick, stone and block pavers and block cutters (wood, belgian and asphalt); Cement mortar lining car pusher; Cement mortar mixer (pipe relining); Cement mortar pipe reliners; concrete saw operator (walk behind); Curb cutters and setters; Elevated roadway drainage construction; erector of overhead signs, Form setter (road forms-lead man); Grout machine operator; Gunite or dry pack gun (nozzle and machine man); Manhole or catch basin builder (Brick block concrete or any prefabrication) Miners and drillers (including lining, supporting and form workmen, setting of shields, miscellaneous equipment and jumbos); Multi-plate pipe (aligning and securing); Placing wire mesh on gunite projects; Wagon drill operators (air track or similar); Walk behind ditching machine (trencher or similar); crown screed adjuster and welder

GROUP 4: Reinforcing Steel Placer (Bending, aligning, and securing, Cadweld)

GROUP 5: High Burner, (Any burning not done from deck), Welder (Pipeline)

GROUP 6: Uniformed Flagperson, Watchman

GROUP 7: Toxic/Hazardous Waste Removal Laborer Levels C & D

GROUP 8: Toxic/Hazardous Waste Removal Laborer Levels A & B

---

PAIN0021-019 05/01/2018

CLINTON COUNTY

## Rates Fringes

## Painters:

Bridge.....	\$ 36.67	18.80
Brush & Roller.....	\$ 27.67	18.80
Spray.....	\$ 28.67	18.80

PAIN0021-024 05/01/2018

## FRANKLIN COUNTY

## Rates Fringes

## PAINTER

Brush.....	\$ 23.92	14.23
------------	----------	-------

PAIN0057-014 06/01/2019

## ALLEGHENY, FAYETTE, GREENE, WASHINGTON COUNTIES

## Rates Fringes

## Painters:

Bridge.....	\$ 35.25	19.82
Brush & Roller.....	\$ 28.50	19.82
Spray.....	\$ 28.50	19.82

PAIN0057-015 06/01/2019

ARMSTRONG, BEAVER, BEDFORD, BLAIR, BUTLER, CAMBRIA, CENTRE,  
 CLARION, CLEARFIELD, ELK, FULTON, HUNTINGTON, INDIANA,  
 JEFFERSON, LAWRENCE, MERCER, MIFFLIN, SOMERSET, VENANGO AND  
 WESTMORELAND COUNTIES

## Rates Fringes

## Painters:

Bridge.....	\$ 35.25	19.82
Brush and Roller.....	\$ 28.50	19.82
Spray.....	\$ 28.50	19.82

PAIN0057-022 05/01/2019

## Rates Fringes

Painters: (ERIE, McKEAN, AND  
 WARREN (Including Columbus  
 and Freehold twps) COUNTIES)

Bridges,Stacks,Towers.....	\$ 25.37	18.71
Brush and Roller.....	\$ 22.87	18.71
Spray and Sandblasting.....	\$ 23.62	18.71

PAIN0057-027 06/01/2019

CAMERON, CRAWFORD, POTTER, WARREN, (Excluding Columbus and  
 Freehold twps)

## Rates Fringes

## PAINTER

Brush and Roller.....	\$ 25.11	19.14
-----------------------	----------	-------

PLAS0526-002 01/01/2020

Rates	Fringes
-------	---------

CEMENT MASON/CONCRETE FINISHER...\$ 32.84	21.10
---	-------

-----  
PLUM0027-001 06/01/2020

ALLEGHENY, ARMSTRONG, GREENE (Except extreme Eastern portion), WASHINGTON (Except extreme Eastern portion) and WESTMORELAND (City of Arnold and City of New Kensington Only) COUNTIES

Rates	Fringes
-------	---------

Plumbers and Pipefitters (Bridge Drain Pipe).....\$ 43.45	23.47
--	-------

-----  
PLUM0047-005 05/01/2013

BEAVER, BUTLER, MCKEAN, MERCER, VENANGO, CLARION, LAWRENCE, FOREST, WARREN, CRAWFORD, AND ERIE COUNTIES

Rates	Fringes
-------	---------

Plumbers and Pipefitters (Bridge Drain Pipe).....\$ 38.52	20.11
--	-------

-----  
PLUM0354-005 06/01/2012

BEDFORD, BLAIR, CAMBRIA, CAMERON, CLEARFIELD, ELK, FAYETTE, GREENE (Extreme Eastern portion), HUNTINGDON, INDIANA, JEFFERSON, SOMERSE, WASHINGTON (Extreme Eastern portion), AND WESTMORELAND COUNTIES

Rates	Fringes
-------	---------

Plumbers and Pipefitters (Bridge Drain Pipe).....\$ 35.54	19.97
--	-------

-----  
TEAM0040-001 01/01/2019

Rates	Fringes
-------	---------

TRUCK DRIVER (ALLEGHENY, ARMSTRONG, BEAVER, BLAIR, BUTLER, CAMBRIA, CENTRE, CLARFIELD, CRAWFORD, ERIE, FAYETTE, GREENE, INDIANA, JEFFERSON, LAWRENCE, MCKEAN, MERCER, SOMERSET, VENANGO, WARREN, WASHINGTON, AND WESTMORELAND)

GROUP 1.....\$ 28.99	19.43
GROUP 2.....\$ 29.13	19.51
GROUP 3.....\$ 29.59	19.82

Truck drivers: (BEDFORD, CAMERON, CLAIRON, CLINTON, ELK, FOREST, FRANKLIN, FULTON, HUNTINGDON, MIFFLIN, AND POTTER COUNTIES)

GROUP 1.....\$ 28.83	19.32
GROUP 2.....\$ 28.99	19.43
GROUP 3.....\$ 29.45	19.73

FOOTNOTES: A. Hazardous/toxic waste material/work level A & B receive additional \$2.50 per hour above classification rate

B. Hazardous/toxic waste materials/Work level C & D receive \$1.00 per hour above classification

#### TRUCK DRIVERS CLASSIFICATIONS

GROUP 1 - Single Axle (2 axles including steering axle);  
Includes partsman and warehoueman

GROUP 2 - Tandem - Tri-Axle - Semi-Tractor Trailer  
(combination) (3 axles or more including steering axle)

GROUP 3 - Specialty Vehicles; Heavy equipment whose capacity exceeds that for which state licenses are issued specifically refers to units in excess of eight (8) feet width (such as Euclids, Atley Wagon, Payloder, Tournawagons, and similar equipment when not self loaded); Tar and Asphalt Distributors Trucks, Heavy Duty Trailer, such as Low Boy, High Boy

---

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

---

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

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

---

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate

(weighted union average rate).

#### Union Rate Identifiers

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

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

#### Survey Rate Identifiers

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

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

#### Union Average Rate Identifiers

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

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

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

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

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

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

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

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

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

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

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

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

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

=====

END OF GENERAL DECISION"

# Equal Employment Opportunity is THE LAW

## Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

### RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

### DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

### AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

### SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

### GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

### RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

### WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected.

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free) TTY number for individuals with hearing impairments). EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov) or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at [www.eeoc.gov](http://www.eeoc.gov).

## Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

### RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

### DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

### RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6351 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

## Programs or Activities Receiving Federal Financial Assistance

### RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

### INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

## SECTION I INSTRUCTION TO BIDDERS

1.01 **Definitions:** Wherever in these specifications or in other Contract Documents the following words, terms and expressions or pronouns in place of them are used, the intent and meaning shall be interpreted as follow:

**Owner:** The party of the first part or first party to this Contract, acting directly or through any agent, officer or employee duly authorized to act for the said party in the execution of the work required by this contract. Under this Contract, the Owner shall not own, maintain nor operate the infrastructure utilized to deploy the broadband hot spots.

**Engineer:** McMillen Engineering, Inc., duly employed by the Owner as consultant, and as an agent authorized to inspect the results of the performance of the work under this Contract by the Contractor. The work "Engineer" shall include the officers, agents and employees of the Engineer.

**Contractor:** Party of the second part or second party to this contract, acting directly or through his authorized lawful agents, legal representatives, superintendents, or employees, appointed to act for said party in the performance of the work under contract, or the Surety in case of default.

**Inspection:** The examination of the work performed by the contractor to ascertain its conformity with the contract documents.

**Contract:** The written agreement executed by and between the Owner and the successful Bidder including collectively all of the contract documents, covering the performance of the work and the furnishing of labor, material and service in the construction of the Project, also any and all supplemental agreements which could be reasonably be required to complete the construction contemplated.

**Bidder:** Any individual, firm or corporation submitting a proposal for the work contemplated herein, acting directly or through a duly authorized representative.

**Proposal or bid:** The written offer of a bidder submitted on the approved form prepared for the purpose, to perform the work and to furnish the labor, materials and service embraced in the contract, for the considerations of payment at the prices stated. The entire contents of this volume is a necessary part of the proposal. No documents shall be detached and all addenda, exhibits, whether bound or attached to the Proposal or otherwise, are also a necessary part thereof.

**Abbreviations:** ACI -American Concrete Institute; ASA -American Standards Association; ASTM - American Society for Testing Materials; AWWA -American Water Works Association; PennDOT -Pennsylvania Department of Transportation; NEMA -National Electrical Manufacturing Association; ANSI -American National Standards Institute; FCC Federal Communications Commission.

"Approved," etc.: The words approved, acceptable, satisfactory, or words of like import, shall mean approved by or acceptable or satisfactory to the engineer, unless another meaning is plainly intended or otherwise specifically stated.

"Required by the Engineer", etc.: The words require, prescribed, directed, ordered by the Engineer, or words of like import, shall have the meaning only of interpreting the specifications, or conditions essential to quality of workmanship and work, materials, and finished results necessary to assure conformity to and compliance with the specifications and drawings and are not intended or implied as any directions, instructions or superintendent of the contractor's methods of construction, use of equipment, personnel or safety measures, of precautions or liability therefore by the Owner or engineer.

Operational: An operable network which will be owned, maintained, and operated by the selected Contractor for five years from December 15, 2020. The service provider will be required to update the system throughout the contract period as necessary to stay current with the latest Wi-Fi version at no additional cost to the County. The hot spots must have a minimum speed of 1GB download and 1GB upload speed at the interconnect with capacity for future expansion to 10GB download and 10GB upload. The system must have a maximum latency of 50 milliseconds. Each hot spot shall be compatible with the latest version of Wi-Fi including Wi-Fi 6. There are two (2) hot spot corridors / zones for which the contractor must provide broadband service. In these corridors / zones, the contractor must provide a minimum speed of 125Mb download and 25Mb upload speed to each user within the corridor. The corridors / zones shall be compatible with the latest version of Wi-Fi including Wi-Fi 6.

1.02 **Bidder Responsibility:** The Bidder is required to examine careful, in detail the character of the soil, the site of the project, the contract documents, as defined in these specifications, and all other matters pertinent to the work contemplated. It will be assumed that he has satisfied himself as to the conditions to be encountered overhead, on the surface and underground, the character, quality and quantities of work to be done and materials to be furnished, and the requirements of the contract and specifications. No allowance or concession will be made for the lack of such information on the part of the contractor. Where boring test pits, test piles, and existing underground and overhead structure locations are shown, they are for the information of the Owner only, their correctness is not guaranteed by the Owner or the engineer, and in no event is this information to be considered a part of the contract, or to be used for computations in submitting a proposal.

If this information is used by a Bidder in preparing his proposal, he must assume all risks resulting from conditions differing from the approximation shown. If Bidders desire to obtain such data, the Owner will, to the extent possible afford them the opportunity, at their own expense, to make corings, or soundings, to drive test piles, to dig test pits on the site of the work, and to make measurements and studies of all kinds; where the Owner cannot grant such rights, it will cooperate with the contractor in endeavoring to secure such rights.

There is no expressed or implied agreement that the depths, locations or character of the materials have been correctly indicated and Bidders should take into account that conditions affecting the cost or quantities of work to be done may differ from those indicated.

Bidder shall ascertain all governmental and utility requirements with respect to wage scales, trench and structure excavations, tunnel construction, blasting, equipment, materials, labor, safety and sanitation, and shall base his bid prices on full compliance therewith.

1.03 **Approximate estimate of quantities:** The Bidder's attention is directed to the fact that in contracts based on unit prices the estimate of quantities of work to be done and materials to be furnished under these specifications, as shown on the proposal form, and in the contract, is approximate and is given only for the benefit of the Owner to be used as a basis of calculation upon which to determine the lowest Bidder. Neither the Owner nor the engineer assumes any responsibility that the quantities shall obtain in the construction of the project, nor shall the contractor plead misunderstanding or deception because of such estimate of quantities, or the character of the work or location, or other locations, or other conditions pertaining thereto. The Owner reserves the right to increase or diminish any or all of the above-mentioned quantities of work or to omit any of them as it may deem necessary, and any such increase or decrease of the quantities given for any of the items shall not be considered as sufficient grounds for granting and increase in the unit prices bid, except as set forth in these specifications.

1.04 **Right to reject proposals:** The unqualified right is reserved by the Owner to waive any informalities in or reject any or all Proposals as may be deemed to be in the best interest of the Owner. Proposals which contain omissions, erasures, alterations, additions not called for, conditional bids or irregularities of any kind, or proposals otherwise regular which are not accompanied by proposal security, may be rejected as informal. Proposals in which the bid prices are obviously unbalanced may be rejected.

1.05 **Changes prior to the opening of bids:** During the period allowed for preparation of bids, the Bidders may be furnished addenda or bulletins for additions to, or alterations of the plans or specifications, which shall be included in the work covered by the proposal and become a part of the contract documents. If any prospective Bidder is in doubt as to the true meaning of any part of the plans, specifications, or other contract documents, he may submit to the Engineer a written request for an interpretation thereof. The Bidder submitting the request will be responsible for its prompt delivery. Any interpretation of the contract documents will be made only by an addendum duly issued and a copy of such addendum will be mailed or delivered to each prospective Bidder of record. The Owner will not be responsible for any other explanations or interpretations of the proposed contract documents.

1.06 **Scope of work :** Unless otherwise provided in the construction specifications or the proposal, it is in the intent of the contract documents to prescribe a complete project which the Bidder proposes to construct, by furnishing all labor, materials, services, equipment, tools, necessary utilities and other facilities, and performing all work necessary or incidental to such construction, in full compliance with the drawings, specification, proposal and contract and any special requirements contained therein, or supplements attached thereto. At conclusion of construction (design build), the selected Contractor will own, maintain, and operate the identified hot spots for five years. All hot spots are at no cost for users or Fayette County for five years from December 15, 2020.

Should any construction or conditions be anticipated which is not covered by these specifications, the special requirements thereof will be stated in the proposal and any such special requirements shall be considered a part of these specifications as though they are fully contained herein. If any special requirements stated in the proposal conflicts with any of the provisions of these specifications, the former shall govern.

1.07 **Submitting proposal:** Each Bid must be submitted in a sealed envelope, addressed to Office of County Controller, Fayette County, 61 East Main Street, Uniontown, PA 15401. Each sealed (clear tape) envelope containing a BID must be plainly marked on the outside of the envelope as BID NO. 20-05 and the envelope should bear on the outside the Bidder's name and address. If forwarded by mail, the sealed (clear tape) envelope containing the BID must be enclosed in another envelope (sealed with clear tape) addressed to the following owner at: Office of the County Controller, Fayette County, 61 East Main Street, Uniontown, PA 15401. One (1) original and five (5) copies of the Bid Form is to be submitted.

1.08 **Submission of bonds and awards and execution of contract:** When a proposal received has been determined to be satisfactory, a contract will be awarded within the time specified in the advertisement or the proposal. The Bidder selected as the apparent successful Bidder will be notified by the Owner of its intention to award the contract. The notification will state that the apparent successful Bidder shall furnish to the engineer in **triplicate** properly executed Performance Bond and Payment Bond and Insurance Certificate within (7) days after the date of such notice.

The Bidder to whom the award is made shall execute the contract and return it together with the properly executed insurance certificates and copies of the policies to the office of the Engineer in time outlined herein. The insurance certificates shall stipulate also any conditions or exclusions affecting coverage specified in the policies.

If the contractor executes his contract as herein provided and the contract is not executed by the Owner within thirty (30) days after the receipt thereof from the contractor, the Owner upon written request of the contractor will return the proposal security and performance and payment bonds. In such event the award of the contract shall be considered annulled.

1.09 **Cancellation of award:** The Owner reserves the right to cancel the award of any contract at any time prior to the execution by the Owner.

1.10 **Surety bonds:** Prior to award of the contract, the successful Bidder shall furnish performance and payment bonds in the amount to not less than 100% of the contract amount, covering payment in full for all services rendered, including reasonable rentals of equipment; materials furnished and labor supplies or performed. The same surety must execute both bonds. All bonds shall be issued by companies authorized to transact business in Pennsylvania. All bonds shall be in the form as set forth in the contract documents.

Should any surety upon any bond furnished in connection with this contract become unacceptable or be deemed unsatisfactory to the Owner at any time, the contractor shall upon written notice from the Owner, promptly furnish acceptable or substitute security as may be required to protect the interests of the Owner or of persons supplying service (rentals included), labor, or materials

in the prosecution of the work under contract. No further payment shall be deemed due or shall be made under the contract until the new surety or sureties shall qualify and be accepted by the Owner.

1.11 **Insurances:** The contractor shall not commence work under this contract until he has obtained all insurance required and furnished the Owner and engineer with certificates of insurance and such insurance and certificates have been approved.

- (a) **Compensation insurance** -The contractor shall take out and maintain during the life of this contract workmen's compensation insurance for all of his employees employed at the site of the project, and in case any work is sublet, the contractor shall require the subcontractor similarly to provide workmen's compensation insurance for all the latter's employees. The contractor shall at all times, indemnify and save harmless the Owner and engineer of and from all claims for workmen's compensation which may be made by any employee of the contractor or his subcontractors.
- (b) **Liability insurance** - The contractor shall take out and maintain during the life of this contract such public liability and automobile liability insurance as shall protect contractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. Property damage liability insurance shall be written to include the hazards of explosion, collapse and underground. The amounts of the liability insurance shall be nondeductible and in amounts acceptable to the Owner.
- (c) **Builder's risk insurance** -The contractor during the progress of the work and until final acceptance by the Owner upon completion of the entire contract, shall maintain insurance on all work included in the contract against loss or damage by fire, lightening, wind, explosion, and those perils covered by extended coverage endorsement and vandalism and malicious mischief on the completed value form, in the names of the Owner and the contractor as their respective interests may appear in an amount equal to 100% of the insurable value of each building or structure and materials included in this contract as shall fully protect the interests of the Owner and the contractor; the risk of damage to the construction work due to the perils covered by said insurance, as well as any other hazards which might result in damage to the construction work, that of the contractor and surety, and no claims for such loss or damage excuse the compete and satisfactory performance of the contract by the contractor.
  - (1) **Accidents and claims** -The contractor shall be responsible for all accidents and shall provide all of the indemnification.
  - (2) **Mutual responsibility of contractors** -Should a contractor in the performance of his contract cause damage to any person, any property, or work of another contractor working on this project, he shall upon due notice to do so from the Owner or other party to the damage, arrange for an amicable settlement thereon. It is agreed by all parties herein that such disputes shall not delay completion of the work, nor be cause for claim

against the Owner. Work shall be continued by the party claiming damages at his expense, subject to such damages as may be obtained by due course of law.

(3) **Contractor's liability:** The status of the contractor in the work to be performed by him under this contract is that of an independent contractor and as such he shall properly safeguard against any and all injury or damage to the public, to public and private property, materials and things. The contractor shall keep the Owner and engineer free and discharged of any and all responsibility and liability for risks and casualties of every description as provided in the Agreement between the Owner and the contractor. The contractor shall assume and be liable for all blame and loss of whatsoever nature by reason of neglect or violation of any federal, state, county, or local laws, regulations or ordinances.

1.12 **Indemnity:** The contractor shall indemnify and hold harmless the Owner and the engineer and their agents and employees from all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease or to destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by and of them or anyone for whose acts of them may be liable, regardless of whether or not it is caused in part by a party indemnified thereunder. In any and all claims against the Owner or the engineer or any of their agents or employees by any employee of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

1.13 **Notice of accidents:** The contractor shall daily give written notice to Owner and engineer (in triplicate) of all accidents occurring in connection with the project. The contractor shall also make daily reports to the insurance companies of all said accidents, and to the Department of Labor and Industry.

1.14 **Payment of taxes:** The contractor will be responsible for the payment of all excise, sales, and use taxes, and all other taxes required by law on all materials, tools, apparatus equipment, fixtures, services, uses and incidentals which he purchases or uses for the purpose of fulfilling the work of this contract, and he shall include all amounts required for such taxes within the item prices bid in his proposal.

1.15 **Materials and Workmanship:** All materials, equipment, appliances and workmanship, unless otherwise specified, shall be the best of their respective kinds, and be in conformity and in harmony with the general intent and requirements to secure the best standard of work, the purpose of the design and all the work contemplated and described in them shall be done in a perfect and thoroughly workmanlike manner, and shall be required to produce the results specified in this contract, all to the satisfaction of the engineer. If at any time before commencement or during the process of the work, the materials and appliances used or to be used appear to the engineer as insufficient or improper for securing the quality of work required,

he may order the contractor to improve their character and the contractor shall conform to such order, but the failure of the engineer to demand such improvement shall not release the contractor from his obligation to secure the quality of the work specified. The contractor shall use such plant and equipment as are required to properly execute the work within the time fixed in the contract. Where no requirements are specified for materials or for the methods of testing materials or equipment, they shall be determined by the latest standard or tentative specifications of the American Society for Testing Materials or the latest codes of the National Board of Fire Underwriters as they apply.

**1.16 Intent of Inspection:** The contractor shall not however, by such inspection be relieved of his obligation to supervise the work and fulfill in every way his contract, for it is hereby distinctly understood and mutually agreed to by both parties to this contract that an assistant or inspector on the work is not in any sense to be considered as a deputy-in-charge. The duties of an assistant or inspector are simply to act as a representative to protect the interests of the Owner, to report any deviations he may notice from the specifications and, if in his opinion, such action becomes necessary, to order the work stopped until the engineer is notified and has decided in what manner and by what methods the work shall proceed. Stop work orders will be issued in writing and will give the reason for their issuance. Such orders shall be received and immediately obeyed by the foreman in charge of the work.

**1.17 Delegation of Inspection:** The engineer or Owner shall have the right to delegate such inspection to such person or persons as they may see fit to employ for the said purpose. Such inspectors or assistants will call to the attention of the contractor or his representative any departure from or infraction of the provisions of this contract in the progress of the work, but no person or persons other than by the consent of all parties to the agreement shall have power or authority to waive or modify any provisions of this contract. No instructions or permissions shall be given to the contractor by said inspectors or assistants or by persons other than by expressed authority of the engineer in writing. The failure on the part of the said inspector or assistants, or any other persons to notify the said contractor of faults or omissions in the carrying out of said work shall not justify or excuse the said contractor for any failure on his part to fully perform all of the conditions, provisions and agreements that are to be kept, observed, or performed by him in accordance with the terms of this contract.

**1.18 Provisional Acceptance:** All material, equipment, appurtenances or work once accepted by the Engineer may be rejected at any time should any defect in the same or any variations from the requirements of the specifications be discovered before the entire work has been finally accepted. No certificate given or, payments made shall be construed as acceptance of defective work or improper material.

**1.19 Progress of Work:** If at any time, the rate of progress is such that in the judgment of the engineer, the work will not be completed within the time specified, he may so notify the contractor who thereupon will proceed at once with such additional force, machinery, equipment, and methods as are required to finish the work on time, but the failure of the engineer to give such notice shall not relieve the contractor of his obligation to complete the work at the time specified in this contract.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT**

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES



**AMERICAN COUNCIL OF ENGINEERING COMPANIES**

**ASSOCIATED GENERAL CONTRACTORS OF AMERICA**

**AMERICAN SOCIETY OF CIVIL ENGINEERS**

**PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE**  
*A Practice Division of the*  
**NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS**

Endorsed by



**CONSTRUCTION SPECIFICATIONS  
INSTITUTE**

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

Copyright © 2007 National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
(703) 548-3118  
[www.agc.org](http://www.agc.org)

The copyright for this EJCDC document is owned jointly by the four EJCDC sponsoring organizations and held in trust for their benefit by NSPE.

STANDARD GENERAL CONDITIONS OF THE  
CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1 – Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology .....	5
Article 2 – Preliminary Matters .....	6
2.01 Delivery of Bonds and Evidence of Insurance.....	6
2.02 Copies of Documents.....	6
2.03 Commencement of Contract Times; Notice to Proceed .....	6
2.04 Starting the Work.....	7
2.05 Before Starting Construction .....	7
2.06 Preconstruction Conference; Designation of Authorized Representatives .....	7
2.07 Initial Acceptance of Schedules .....	7
Article 3 – Contract Documents: Intent, Amending, Reuse .....	8
3.01 Intent .....	8
3.02 Reference Standards .....	8
3.03 Reporting and Resolving Discrepancies .....	9
3.04 Amending and Supplementing Contract Documents.....	9
3.05 Reuse of Documents .....	10
3.06 Electronic Data .....	10
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points.....	11
4.01 Availability of Lands .....	11
4.02 Subsurface and Physical Conditions .....	11
4.03 Differing Subsurface or Physical Conditions.....	12
4.04 Underground Facilities.....	13
4.05 Reference Points .....	14
4.06 Hazardous Environmental Condition at Site .....	14
Article 5 – Bonds and Insurance.....	16
5.01 Performance, Payment, and Other Bonds .....	16
5.02 Licensed Sureties and Insurers.....	16
5.03 Certificates of Insurance .....	17
5.04 Contractor's Insurance .....	17
5.05 Owner's Liability Insurance.....	19
5.06 Property Insurance .....	19
5.07 Waiver of Rights .....	20
5.08 Receipt and Application of Insurance Proceeds .....	21
5.09 Acceptance of Bonds and Insurance; Option to Replace .....	21

5.10 Partial Utilization, Acknowledgment of Property Insurer.....	22
Article 6 – Contractor’s Responsibilities .....	22
6.01 Supervision and Superintendence.....	22
6.02 Labor; Working Hours.....	22
6.03 Services, Materials, and Equipment.....	22
6.04 Progress Schedule.....	23
6.05 Substitutes and “Or-Equals” .....	23
6.06 Concerning Subcontractors, Suppliers, and Others.....	25
6.07 Patent Fees and Royalties .....	27
6.08 Permits.....	27
6.09 Laws and Regulations.....	28
6.10 Taxes .....	28
6.11 Use of Site and Other Areas .....	28
6.12 Record Documents.....	29
6.13 Safety and Protection.....	29
6.14 Safety Representative.....	30
6.15 Hazard Communication Programs.....	30
6.16 Emergencies.....	30
6.17 Shop Drawings and Samples .....	31
6.18 Continuing the Work.....	32
6.19 Contractor’s General Warranty and Guarantee .....	33
6.20 Indemnification.....	33
6.21 Delegation of Professional Design Services .....	34
Article 7 – Other Work at the Site.....	35
7.01 Related Work at Site .....	35
7.02 Coordination.....	35
7.03 Legal Relationships.....	36
Article 8 – Owner’s Responsibilities .....	36
8.01 Communications to Contractor.....	36
8.02 Replacement of Engineer .....	36
8.03 Furnish Data .....	36
8.04 Pay When Due .....	36
8.05 Lands and Easements; Reports and Tests .....	36
8.06 Insurance .....	37
8.07 Change Orders.....	37
8.08 Inspections, Tests, and Approvals .....	37
8.09 Limitations on Owner’s Responsibilities .....	37
8.10 Undisclosed Hazardous Environmental Condition.....	37
8.11 Evidence of Financial Arrangements .....	37
8.12 Compliance with Safety Program .....	37
Article 9 – Engineer’s Status During Construction.....	37
9.01 Owner’s Representative .....	37
9.02 Visits to Site.....	38
9.03 Project Representative .....	38

9.04	Authorized Variations in Work .....	38
9.05	Rejecting Defective Work.....	39
9.06	Shop Drawings, Change Orders and Payments.....	39
9.07	Determinations for Unit Price Work.....	39
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work.....	39
9.09	Limitations on Engineer's Authority and Responsibilities .....	40
9.10	Compliance with Safety Program .....	40
	 Article 10 – Changes in the Work; Claims .....	40
10.01	Authorized Changes in the Work.....	40
10.02	Unauthorized Changes in the Work.....	41
10.03	Execution of Change Orders.....	41
10.04	Notification to Surety .....	41
10.05	Claims.....	41
	 Article 11 – Cost of the Work; Allowances; Unit Price Work.....	42
11.01	Cost of the Work.....	42
11.02	Allowances.....	45
11.03	Unit Price Work .....	46
	 Article 12 – Change of Contract Price; Change of Contract Times.....	46
12.01	Change of Contract Price.....	46
12.02	Change of Contract Times.....	47
12.03	Delays.....	48
	 Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....	48
13.01	Notice of Defects .....	48
13.02	Access to Work.....	48
13.03	Tests and Inspections.....	49
13.04	Uncovering Work.....	49
13.05	Owner May Stop the Work .....	50
13.06	Correction or Removal of Defective Work .....	50
13.07	Correction Period .....	50
13.08	Acceptance of Defective Work.....	51
13.09	Owner May Correct Defective Work .....	52
	 Article 14 – Payments to Contractor and Completion .....	52
14.01	Schedule of Values .....	52
14.02	Progress Payments.....	53
14.03	Contractor's Warranty of Title .....	55
14.04	Substantial Completion .....	55
14.05	Partial Utilization .....	56
14.06	Final Inspection .....	57
14.07	Final Payment .....	57
14.08	Final Completion Delayed .....	58
14.09	Waiver of Claims .....	58

Fayette County Board of Commissioners  
Fayette County Design Build Broadband Deployment  
Bid Contract No. 20-05

Article 15 – Suspension of Work and Termination.....	59
15.01 Owner May Suspend Work.....	59
15.02 Owner May Terminate for Cause.....	59
15.03 Owner May Terminate For Convenience.....	60
15.04 Contractor May Stop Work or Terminate .....	61
Article 16 – Dispute Resolution.....	61
16.01 Methods and Procedures.....	61
Article 17 – Miscellaneous .....	62
17.01 Giving Notice .....	62
17.02 Computation of Times .....	62
17.03 Cumulative Remedies .....	62
17.04 Survival of Obligations .....	62
17.05 Controlling Law.....	62
17.06 Headings .....	62

## ARTICLE I – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument 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. *Bidder*—The individual or entity who submits a Bid directly to Owner.
7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions 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 Milestones, if any; (ii) achieve Substantial Completion; and (iii) 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 for definition.
17. *Drawings*—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. *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.
21. *General Requirements*—Sections of Division I of the Specifications.
22. *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.
23. *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.
24. *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.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *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.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *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.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *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.
35. *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.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *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.
41. *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.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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.
44. *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.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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 Subcontractor.
48. *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.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen

subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

I. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

I. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

I. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

- I. 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.

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

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01    *Delivery of Bonds and Evidence of Insurance***

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### **2.02    *Copies of Documents***

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### **2.03    *Commencement of Contract Times; Notice to Proceed***

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

## **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

### **3.01 Intent**

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

### **3.02 Reference Standards**

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

- I. 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 (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

**3.03 Reporting and Resolving Discrepancies**

**A. Reporting Discrepancies:**

1. *Contractor's Review of Contract Documents Before Starting Work:* 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 discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* 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 (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

**B. Resolving Discrepancies:**

- I. 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, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

**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 by either a Change Order or 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;

2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

### 3.05 *Reuse of Documents*

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

### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### **4.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **4.02 Subsurface and Physical Conditions**

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
  2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the 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 or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

**4.03 Differing Subsurface or Physical Conditions**

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
  1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

**C. Possible Price and Times Adjustments:**

- I. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 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 with respect to 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 as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

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

- 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
- 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all 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:*

- I. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence 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 will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 Reference Points

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

#### 4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the 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 or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  - I. 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 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.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- 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 written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the

scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 5 – BONDS AND INSURANCE**

### **5.01 Performance, Payment, and Other Bonds**

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, 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 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. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- 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 promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### **5.02 Licensed Sureties and Insurers**

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly

licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

**5.03 Certificates of Insurance**

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee 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.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee 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.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

**5.04 Contractor's Insurance**

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

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
  - b. 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 required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, 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, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
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 contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. 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
6. include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

**5.05 Owner's Liability Insurance**

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

**5.06 Property Insurance**

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

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
5. allow for partial utilization of the Work by Owner;
6. include testing and startup; and
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors

of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 Waiver of Rights

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

- I. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

**5.08 Receipt and Application of Insurance Proceeds**

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

- A. If either Owner or Contractor has any objection to the coverage 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 2.01.B. 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.

**5.10 Partial Utilization, Acknowledgment of Property Insurer**

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

**ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

**6.01 Supervision and Superintendence**

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

**6.02 Labor; Working Hours**

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

**6.03 Services, Materials, and Equipment**

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

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

#### 6.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
  - I. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 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.
  - I. “Or-Equal” Items: If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.I, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - I) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
- 3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

- 1) shall certify that the proposed substitute item will:
  1. perform adequately the functions and achieve the results called for by the general design,
  2. be similar in substance to that specified, and
  3. be suited to the same use as that specified;

- 2) will state:

1. the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
2. whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

3. whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
  1. all variations of the proposed substitute item from that specified, and
  2. available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is 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 requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

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

E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - I. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against

Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 Patent Fees and Royalties

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

#### 6.08 Permits

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

**6.09 Laws and Regulations**

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work 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 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 shall 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:**

- I. 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 by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable,

brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

#### 6.12 Record Documents

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

#### 6.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, 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.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 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 anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

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

#### 6.15 *Hazard Communication Programs*

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

#### 6.16 *Emergencies*

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

**6.17 *Shop Drawings and Samples***

**A.** Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

**I. *Shop Drawings:***

- a.** Submit number of copies specified in the General Requirements.
- b.** Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

**2. *Samples:***

- a.** Submit number of Samples specified in the Specifications.
- b.** Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

**B.** Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

**C. *Submittal Procedures:***

**I. Before submitting each Shop Drawing or Sample, Contractor shall have:**

- a.** 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;
- b.** determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c.** determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d.** determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

**D. Engineer's Review:**

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

**E. Resubmittal Procedures:**

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

**6.18 Continuing the Work**

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

**6.19 Contractor's General Warranty and Guarantee**

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

**6.20 Indemnification**

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly

employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - I. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents.

Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 7 – OTHER WORK AT THE SITE**

### **7.01 Related Work at Site**

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - I. written notice thereof will be given to Contractor prior to starting any such other work; and
  2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### **7.02 Coordination**

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

- I. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

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

**7.03 *Legal Relationships***

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

**ARTICLE 8 – OWNER'S RESPONSIBILITIES**

**8.01 *Communications to Contractor***

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

**8.02 *Replacement of Engineer***

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

**8.03 *Furnish Data***

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

**8.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

**8.05 *Lands and Easements; Reports and Tests***

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of

explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

**8.06 *Insurance***

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

**8.07 *Change Orders***

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

**8.08 *Inspections, Tests, and Approvals***

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

**8.09 *Limitations on Owner's Responsibilities***

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

**8.10 *Undisclosed Hazardous Environmental Condition***

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

**8.11 *Evidence of Financial Arrangements***

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

**8.12 *Compliance with Safety Program***

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

**9.01 *Owner's Representative***

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

**9.02 Visits to Site**

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

**9.03 Project Representative**

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

**9.04 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 will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties 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.

**9.05 Rejecting Defective Work**

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

**9.06 Shop Drawings, Change Orders and Payments**

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

**9.07 Determinations for Unit Price Work**

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

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

**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 will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

**9.10 Compliance with Safety Program**

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

**10.01 Authorized Changes in the Work**

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

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

#### 10.02 *Unauthorized Changes in the Work*

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

#### 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### 10.04 *Notification to Surety*

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

#### 10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim 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. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, 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). 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 Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;
2. approve the Claim; or
3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; 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, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than

those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 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, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the 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, express and courier services, and similar petty cash items in connection with the Work.
- i. 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, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, 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.

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

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

## 11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

- I. Contractor agrees that:
  - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

- I. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

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

#### 11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - I. 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 to any other item of Work; and
  3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

### **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

#### 12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  - I. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

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

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

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, 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 Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
  - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
  - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
  - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.02 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times 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 covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors 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.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for 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.

### **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 will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

#### 13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and

testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

#### 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 Paragraph 13.04.C; 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, Contractor shall, if requested by Engineer, uncover such Work 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.

- C. If it is found that the uncovered 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.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 Owner May Stop the Work

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

#### 13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, 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).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by 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:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

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

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

E. 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 for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim

therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 13.09 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, 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 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

### **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

#### 14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

## 14.02 Progress Payments

### A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

### B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 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 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:**

- I. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

**D. Reduction in Payment:**

- I. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

**14.03 Contractor's Warranty of Title**

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

**14.04 Substantial Completion**

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider

the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - I. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  - 2. 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.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

#### 14.07 *Final Payment*

- A. *Application for Payment:*
  1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
  2. The final Application for Payment shall be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
    - b. consent of the surety, if any, to final payment;
    - c. a list of all Claims against Owner that Contractor believes are unsettled; and
    - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
  3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release

or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

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

**C. Payment Becomes Due:**

- I. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

**14.08 Final Completion Delayed**

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

**14.09 Waiver of Claims**

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

- I. 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 accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

### **15.01 Owner May Suspend Work**

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

### **15.02 Owner May Terminate for Cause**

- A. The occurrence of any one or more of the following events will justify termination for cause:
  1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
  1. 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);
  2. 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
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds 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 will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 Owner May Terminate For Convenience

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

#### 15.04 Contractor May Stop Work or Terminate

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

### ARTICLE 16 – DISPUTE RESOLUTION

#### 16.01 Methods and Procedures

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  2. agrees with the other party to submit the Claim to another dispute resolution process; or
  3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 Giving Notice**

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. 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
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### **17.02 Computation of Times**

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

### **17.03 Cumulative Remedies**

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not 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. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.04 Survival of Obligations**

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

### **17.05 Controlling Law**

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

### **17.06 Headings**

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

## **SECTION 3**

### **LOCATION, SCOPE, SPECIAL CONDITIONS, AND DESCRIPTION OF BIDS**

#### **LOCATION**

The project areas are located in rural Fayette County. These identified areas are currently underserved or unserved with high speed broadband. The County recognizes the need to address the COVID by providing free WiFi hot spots for those residents who telework, distance learn, and have access to telemedicine. It is imperative to recognize and be cognizant of the current condition of individuals who do not have access to high speed broadband during these times. The identified hot spots will be owned, maintained, and operated by the selected Contractor for five years at no cost to the residents, businesses, and/or Fayette County.

#### **SCOPE**

Fayette County, Pennsylvania desires to have high speed broadband provided in rural areas as identified (scope of services and map attached) as hot spots. The scope includes hot spots designated in municipalities with a 1,000 LF radius from the identified location. The hot spots must have a minimum speed of 1GB download and 1GB upload speed at the interconnect with capacity for future expansion to 10GB download and 10GB upload. The system must have a maximum latency of 50 milliseconds. Each hot spot shall be compatible with the latest version of Wi-Fi including Wi-Fi 6.

There are two (2) hot spot corridors / zones for which the contractor must provide broadband service. In these corridors / zones, the contractor must provide a minimum speed of 125Mb download and 25Mb upload speed to each user within the corridor. The corridors / zones shall be compatible with the latest version of Wi-Fi including Wi-Fi 6.

The County is seeking a qualified business/company to serve in capacity as contractor and who, at the end of the construction, will have an operable network which will be owned, maintained, and operated by the selected Contractor for five years from December 15, 2020. The contractor shall provide the latest version of Wi-Fi including Wi-Fi 6 with the initial install. The service provider will be required to update the system throughout the contract period as necessary to stay current with the latest Wi-Fi version at no additional cost to the County.

The selected Contractor will provide five (5) years of free WiFi at all identified hot spots maintaining the minimum speed as previously stated for the entire five years (December 15, 2025 is deadline for free WiFi).

By December 15, 2020 this Scope of Services is to be completed and operational at speed previously stated. No payment shall be made for any work not completed and operational at the speeds, conditions, and uses by December 15, 2020.

It is the responsibility of the selected Contractor to coordinate with all property owners for the hot spot location as identified. If you are unable to secure approval at the identified hot spot, Fayette County must approve the change. This request shall be provided in writing. An approval or denial will

be determined within three days of submission. The request is to be provided to McMillen Engineering, Inc. at [jstanton@mcmilleng.com](mailto:jstanton@mcmilleng.com) or dropped off at 115 Wayland Smith Drive, Uniontown, PA 15401.

## SPECIAL CONDITIONS

The following are special conditions of the Fayette County Design Build Broadband Deployment:

### 1. Contractors Coordination

It is the responsibility of the contractor to coordinate his work with other contractors at the site, with the Owner, the resident inspector, the project engineers, the general project manager, regulatory agencies, utilities, and to afford other contractors full access to the work site.

### 2. Construction Laws

The contractor and all subcontractors shall comply with all Federal, State, and Local laws pertaining to Construction Safety and Health. The contractor and all subcontractors shall meet the requirements of the Federal Register XVII, Part 1926 of Title 29, the Federal Construction Safety Act, the OSHA Regulations, and all publications that update these publications. The Owner is not responsible or liable for payment of any citations received by the contractor or subcontractor for failure to comply with the OSHA standards.

### 3. Safety

The contractor is responsible to protect the site, his work, and all persons near the site.

### 4. Weekly Meetings

There will be weekly job meetings with the selected Contractor.

### 5. Qualifications of Bidders

No proposal will be considered from any Bidder unless he is known to be skilled in work of a similar nature to that covered by this contract and has sufficient capital to meet all obligations to be incurred in carrying out the work.

### 6. Request for Information or Questions

Any and all Request for Information regarding the project shall be submitted to the engineer in writing. Only questions in writing will be answered by the engineer. Copies of the questions and answers will be forwarded to all Bidders. All requests for information must be received by 4:00pm, 5 working days prior to the bid opening. The address for submission of questions is: McMillen Engineering, Inc., 115 Wayland Smith Drive, Uniontown, PA 15401 or to James Stanton, P.E. at [jstanton@mcmilleng.com](mailto:jstanton@mcmilleng.com).

### 7. Change Orders

The contractor shall receive written approval of all change orders prior to performing any additional services. The Owner will not pay for any services provided without written approval. The Owner will respond to all requests for additional services within 3 days of notification from the contractor.

**8. Permits**

Contractor responsible to secure all required permits (local, state and/or federal) as required for the scope of work.

**9. Documents to be submitted with Bid Form**

A narrative on specifications for the type of equipment to be provided and used to understand your method of service. This will be provided for both the Base Bid and Alternate Bid.

**10. As-Built Drawing**

The successful Bidder will provide at the completion of the project, an as-built of all constructed facilities and specific location of all devise and how they receive their service.

**11. User Interface**

The successful Bidder will coordinate with Fayette County or its designated representative for the County to have control on the contents for all users using designated WiFi hot spots for five years from December 15, 2020. The successful Bidder shall be required to provide the number of users at each free WiFi hot spot quarterly to Fayette County or its designated representative.

**12. Performance Bond**

The performance bond shall be provided as stated in the Standard General Conditions Article V Bonds and Insurance and, then, amended for years two through five at ten percent (10%) of the total awarded contract.

**13. Payment**

No payment shall be made for each hot spot until the hot spot is operational for a minimum of five (5) days. The entire scope of work shall be completed by December 15, 2020.

**14. Insurance Requirements**

Prior to execution of the contract, Contractor and its subcontractors shall provide the Owner with evidence of insurance in form and substance acceptable to the Owner. Execution of a contract is conditional on receipt of such evidence; failure to obtain or maintain required coverage during the entire term of the contract is reason for the Owner to terminate the contract.

- Workers' Compensation Insurance
- Automobile Liability Insurance
- General Liability

For all coverages:

1. The policy form must be on an "Occurrence" basis
2. The insurance company must have an A.M. Best's Rating of A- or higher and VI or higher
3. The insurance company must provide (not just endeavor to provide) the Owner's project manager (Public Works Director) with at least thirty (30) days' notice of cancellation or material change.
4. The policy terms (conditions, exclusions, limitations, etc.) must be acceptable to the Owner

5. There must be no cross-insured liability exclusions.
6. The certificate of insurance must not include a “Matter of Information on” limitation
7. The Owner and its employees and officials should be included as Additional Insured as respects to this contract
8. The Owner, its agents, and its employees shall be listed as an Additional Insured under the terms of the policy

The Certificate of Insurance shall be submitted to the Owner by the successful bidder within ten (10) calendar days from the date the Notice of Intent to Award is received. Upon request from the Owner, the Contractor shall provide documentation, including a copy of the policy, that the appropriate and applicable insurance has been procured.

## DESCRIPTION OF BIDS

The work covered by these specifications is located through rural Fayette County to address the needs of residents and businesses as a result of COVID 19.

### Base Bid:

The contractor shall provide the total cost (lump sum contract) for the base bid in his proposal.

### Alternate Bid:

The contractor shall provide the total cost (lump sum contract) for the alternate bid in his proposal.

## **APPENDIX**



