



Engineering
& Design

Specifications For Washington Avenue Improvements

February 2025

Mayor Carolyn Broullon

Borough Council

Jo-Anne Olszewski, Council President
Donald Melnyk, Councilmember
Karen Chelak, Councilmember
Leo Cervantes, Councilmember

Colliers Engineering & Design

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Prepared by:

A handwritten signature in black ink, appearing to be "JR" or "J. Raftery".

Joseph Raftery, P.E., CME
New Jersey Professional Engineer
License No. GE53339

Project No. HIBC0018
State of N.J. Certificate of Authorization: 24GA27986500

BOROUGH OF HIGHLANDS
MONMOUTH COUNTY
NEW JERSEY
WASHINGTON AVENUE IMPROVEMENTS

Table of Contents

Description	Page
Table of Contents.....	i
Notice to Bidders	NTB-1
Bid Proposal	BP-1 – BP-29
Form of Contract	FC-1 - FC-24
Instructions to Bidders	IB-1 – IB-24
General Conditions	GC-1 – GC-71
Standard Specifications	S-1
Special Provisions	SP-1 – SP-29
Wage Rates.....	W-1 – W-2

Notice to Bidders

Notice is hereby given that sealed proposals will be received by the Borough of Highlands, Monmouth County, New Jersey (the “Owner”) for **Washington Avenue Improvements project** and be opened and read in public at the Borough of Highlands, 151 Navesink Avenue, Highlands, NJ 07732 on **Thursday, March 13, 2025 10:00 AM** prevailing time.

The Project consists of milling and paving the surface of Washington Avenue. In areas where the road has deteriorated, full depth repairs will be made. There will be limited concrete work that will consist of ADA compliant curb ramps and associated concrete curb. There will also be the installation of asphalt curb in select areas. **All work on this contract must be completed within 45 calendar days from issuance of a Notice to Proceed.**

Contract documents and drawings for the proposed work (the “Contract Documents”, which have been prepared by Joseph Raftery, P.E., CME, of the firm Colliers Engineering & Design Inc. (DBA Maser Consulting), are available electronically by making a request to rosie.bialoblocki@collierseng.com.

Bidders will be furnished with a copy of the Contract Documents by request upon proper notice to the above e-mail address. Electronic copies will be provided via e-mail at no charge.

The Contract Documents will be available during business hours beginning on Thursday, February 20, 2025 during normal business hours.

Please note, all Bidders must submit one (1) paper copy of the proposal documents and two (2) USB drives containing all proposal documents for consideration – NO EXCEPTIONS.

All RFIs must be submitted via email to @joseph.raftery@collierseng.com by Friday, February 28th, 2025 at 4:00 p.m. eastern time. Final Addendum will be issued on Monday, March 3rd, 2025.

Proposals must be made on the standard proposal forms included with the Contract Documents in the manner designated in the Contract Documents, must be enclosed in sealed envelopes bearing the name and address of the bidder and the name of the project on the outside and be addressed to the Borough of Highlands, and must be accompanied by a statement of consent of surety from a surety company authorized to do business in the State of New Jersey and acceptable to the Owner and either a bid bond or a certified check drawn to the order of Borough of Highlands for not less than ten percent (10%) of the amount bid, except that the check shall not exceed \$20,000.00. The successful bidder is hereby notified that a performance bond and labor and material (payment) bond for the full amount of this project is required.

The award of the Contract for this project will not be made until the necessary funds have been provided by the Owner in a lawful manner.

Proposals for this contract will only be accepted from bidders who have properly qualified in accordance with the requirements of the Contract Documents.

All Bids shall be submitted in sealed envelopes addressed to the Mayor and Council, Borough of Highlands, the envelope shall have marked conspicuously on its face on the top right-hand side in letters not less than one inch the word “Public Bid” followed immediately below those words in letters not less than one half inch high: **“Washington Avenue Improvements”** and underneath that **“To be received on Thursday March 13th, 2025 at 10:00 a.m.”**

The right is also reserved to reject any or all bids or to waive any informalities where such informality is not detrimental to the best interest of the Owner, except as to those items which are deemed mandatory and non-waivable set forth in N.J.S.A. 40A:11-23.2. Further, the Owner reserves the right to abandon the project and reject the bids entirely if any legal or state or federal administrative action is taken against the Owner which could delay or jeopardize the project from commencing. The right is also reserved to increase or decrease the quantities specified in the manner designated in the Specifications.

The successful bidder shall be required to comply with all applicable statutory and regulatory requirements, which include but are not limited to the affirmative action requirements of P.L. 1975, c. 127, N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq.

Bidders will be required to comply with the public disclosure provisions of N.J.S.A. 52:25-24.2.

By order of the Borough of Highlands Monmouth County, New Jersey

Nancy Tran, Borough Clerk

Bid Documents

Bid Document Submission Checklist

Borough of Highlands, Monmouth County, New Jersey
(Name of Local Contracting Unit)

Washington Avenue Improvements
(Name of Construction/Public Works Project)

HIBC0018
(Project or Bid Number)

A. Failure to submit the following documents shall be cause for the bid to be rejected. (N.J.S.A. 40A:11-23.2)

Required with Submission of Bid (Owners Checkmarks)	Initial Each Item Submitted with Bid (Bidder's initials)
X A guarantee to accompany the bid, pursuant to N.J.S.A. 40A:11-21.	
X A certificate from a surety company, pursuant to N.J.S.A. 40A:11-22.	
X A statement of corporate ownership, pursuant to N.J.S.A. 52:25-24.2 (must be notarized).	
X A listing of subcontractors, pursuant to N.J.S.A. 40A:11-16.	
X Bidder's acknowledgment of receipt of any notice or revisions or addenda to the advertisement or bid documents.	

B. Failure to submit the following documents may be cause for the bid to be rejected. (N.J.S.A. 40A:11-23.1(b.))

Required with Submission of Bid (Owner's checkmarks)	Initial Each Item Submitted with Bid (Bidder's initials)	Required with Submission of Bid (Owner's checkmarks)	Initial Each Item Submitted with Bid (Bidder's initials)
X Bid proposal form.		X Consent of surety as to maintenance bond, pursuant to N.J.S.A. 40A:11-16.3.	
X Consent of surety as to labor and material payment bond.		X Non-collusion affidavit (must be notarized).	
X Experience statement.		X Bidders to visit site.	
X Subcontractor experience statement(s).		X Equipment certification.	
X Notice of federally mandated anti-drug/alcohol plan.		X Disclosure of investment activities in Iran, pursuant to N.J.S.A. 40A:11-2.1. *	
X Proof of business registration (business registration certificate). *		X Proof of public works contractor registration (public works contractor registration certificate). *	
X Evidence of affirmative action compliance. *		Financial statement prepared within the last 12 months.	

***Statutorily allowed to be provided with bid OR prior to execution of contract.**

Bid Proposal

BY:

(Bidder's Name)

(Bidder's Address)

To The:

MAYOR AND COUNCIL

(Owner's Name)

Borough of Highlands, Monmouth County, New Jersey

For:

Washington Avenue Improvements

The UNDERSIGNED, as bidder, declares that the only persons or parties interested in this proposal as principals are named herein; that this proposal is in all respects complete, truthful, fair, and without collusion or fraud; that no officer or employee of the OWNER is directly or indirectly interested in this bid or the work of this contract or in any portions of the profits thereof; that he has carefully examined the annexed proposed Form(s) of Contract(s) and Instructions to Bidders, the Notice to Bidders, the Special Provisions, and the General Conditions; and that he proposes and agrees that if this proposal is accepted, he will contract with the OWNER, in the form of contract hereto annexed, and to provide the necessary machinery, tools, apparatus, and other means of construction and to furnish all the materials, equipment, and labor as specified in the contract in the manner and time therein specified, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefore the following prices to wit:

NOTE: Complete and submit the loose, unbound copy of this Bid Proposal only.

**PROPOSAL FOR
WASHINGTON AVENUE IMPROVEMENTS
BOROUGH OF HIGHLANDS
MONMOUTH COUNTY, NEW JERSEY**

THE UNDERSIGNED DECLARES THAT THEY HAVE READ AND UNDERSTAND THE PLANS AND SPECIFICATIONS AND PROPOSES TO FURNISH ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY TO COMPLETE IN EVERY DETAIL THE WORK INDICATED ON THE PLANS AND/OR OUTLINED IN THE SPECIFICATIONS, AT THE PRICE QUOTED HEREIN.

BASE BID

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENDED PRICE
1	CLEARING SITE	LS	1		
2	TRAFFIC ALLOWANCE	ALL	1		
3	*UNIFORM TRAFFIC DIRECTORS	HR	480	\$110.00	\$52,800.00
4	FUEL PRICE ADJUSTMENT	DOL	1,000	\$1.00	\$1,000.00
5	ASPHALT PRICE ADJUSTMENT	DOL	1,000	\$1.00	\$1,000.00
6	EXCAVATION, TEST PIT	CY	50		
7	HMA MILLING, 3" OR LESS	SY	1,672		
8	DENSE-GRADED AGGREGATE BASE COURSE, 6" THICK	SY	195		
9	HOT MIX ASPHALT 19M64 BASE COURSE, 4" THICK	TON	50		
10	HOT MIX ASPHALT 9.5M64 SURFACE COURSE, 2" THICK	TON	225		
11	TACK COAT	GAL	190		
12	RESET EXISTING CASTING	UN	1		
13	RESET MANHOLE, SANITARY SEWER, USING EXISTING CASTING	UN	2		
14	CONCRETE SIDEWALK, 4" THICK	SY	20		
15	DETECTABLE WARNING SURFACE	SY	5		
16	ASPHALT CURB	LF	325		
17	COMBINATION CONCRETE CURB AND GUTTER	LF	30		
18	TRAFFIC MARKINGS LINES, 6"	LF	70		

TOTAL BASE BID PRICE

\$

WRITE TOTAL AMOUNT OF BASE BID

\$

INITIAL:
COMPANY SUBMITTING BID:

PROPOSAL FOR
WASHINGTON AVENUE IMPROVEMENTS
BOROUGH OF HIGHLANDS
MONMOUTH COUNTY, NEW JERSEY

THE UNDERSIGNED DECLARES THAT THEY HAVE READ AND UNDERSTAND THE PLANS AND SPECIFICATIONS AND PROPOSES TO FURNISH ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY TO COMPLETE IN EVERY DETAIL THE WORK INDICATED ON THE PLANS AND/OR OUTLINED IN THE SPECIFICATIONS, AT THE PRICE QUOTED HEREIN.

ALTERNATE 1

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENDED PRICE
1	HMA MILLING, 3" OR LESS	SY	856		
2	DENSE-GRADED AGGREGATE BASE COURSE, 6" THICK	SY	85		
3	HOT MIX ASPHALT 19M64 BASE COURSE, 4" THICK	TON	25		
4	HOT MIX ASPHALT 9.5M64 SURFACE COURSE, 2" THICK	TON	105		
5	TACK COAT	GAL	90		
6	TRAFFIC STRIPES, 4"	LF	330		
7	TRAFFIC MARKINGS LINES, 4"	LF	310		
8	TRAFFIC MARKINGS LINES, 6"	LF	65		
9	TRAFFIC MARKINGS LINES, 24"	LF	15		

TOTAL ALTERNATE 1 PRICE

\$

WRITE TOTAL AMOUNT OF ALTERNATE 1

\$

INITIAL:
COMPANY SUBMITTING BID:

PROPOSAL FOR
WASHINGTON AVENUE IMPROVEMENTS
BOROUGH OF HIGHLANDS
MONMOUTH COUNTY, NEW JERSEY

THE UNDERSIGNED DECLARES THAT THEY HAVE READ AND UNDERSTAND THE PLANS AND SPECIFICATIONS AND PROPOSES TO FURNISH ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY TO COMPLETE IN EVERY DETAIL THE WORK INDICATED ON THE PLANS AND/OR OUTLINED IN THE SPECIFICATIONS, AT THE PRICE QUOTED HEREIN.

ALTERNATE 2

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENDED PRICE
1	HMA MILLING, 3" OR LESS	SY	1,387		
2	DENSE-GRADED AGGREGATE BASE COURSE, 6" THICK	SY	140		
3	HOT MIX ASPHALT 19M64 BASE COURSE, 4" THICK	TON	35		
4	HOT MIX ASPHALT 9.5M64 SURFACE COURSE, 2" THICK	TON	170		
5	TACK COAT	GAL	140		
6	TRAFFIC STRIPES, 4"	LF	980		
7	TRAFFIC MARKINGS LINES, 24"	LF	90		
8	TRAFFIC MARKINGS SYMBOLS	SF	130		

TOTAL ALTERNATE 2 PRICE

\$

WRITE TOTAL AMOUNT OF ALTERNATE 2

\$

INITIAL:
COMPANY SUBMITTING BID:

PROPOSAL FOR
WASHINGTON AVENUE IMPROVEMENTS
BOROUGH OF HIGHLANDS
MONMOUTH COUNTY, NEW JERSEY

THE UNDERSIGNED DECLARES THAT THEY HAVE READ AND UNDERSTAND THE PLANS AND SPECIFICATIONS AND PROPOSES TO FURNISH ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY TO COMPLETE IN EVERY DETAIL THE WORK INDICATED ON THE PLANS AND/OR OUTLINED IN THE SPECIFICATIONS, AT THE PRICE QUOTED HEREIN.

TOTAL BASE BID PRICE	\$
WRITE TOTAL AMOUNT OF BASE BID	\$
TOTAL BASE BID + ALTERNATE 1 PRICE	\$
WRITE TOTAL AMOUNT OF BASE BID + ALTERNATE 1	\$
TOTAL BASE BID + ALTERNATE 1 + ALTERNATE 2 PRICE	\$
WRITE TOTAL AMOUNT OF BASE BID + ALTERNATE 1 + ALTERNATE 2	\$

COMPANY NAME SUBMITTING BID

AUTHORIZED OFFICIAL PRINT NAME

AUTHORIZED OFFICIAL SIGNATURE

INITIAL:
COMPANY SUBMITTING BID:

Basis of Award

Borough of Highlands, Monmouth County, New Jersey
(Name of Local Contracting Unit)

Washington Avenue Improvements
(Name of Construction/Public Works Project)

HIBC0018
(Project or Bid Number)

Refer to "Instructions to Bidders – Section VIII. Method of Contract Award" for further information.

Accompanying this Proposal is a Consent of Surety and a Bid Guarantee, in the form of a Bid Bond (), a Certified or Cashier's Check (), payable to the order of the

in the sum of _____

Dollars (\$ _____),
which the undersigned agrees is to be forfeited as liquidated damages, and not as a penalty, if the Contract is awarded to the undersigned and the undersigned shall fail to execute the Contract for the project or to furnish the Bond required within the stipulated time, otherwise, the check will be returned to the undersigned.

The undersigned is an individual (), a corporation (), a partnership (), a limited liability company (),
under the laws of the State of _____,

having principal offices at _____

Telephone Number: _____

Trade Name of Bidder: _____

1. Signed By: _____

Signature _____

Title: _____

2. Signed By: _____

Signature _____

Title: _____

Signed this _____ day of _____, 20____.

NOTE: Bids by partnerships and limited liability companies must furnish the full name of all partners or members and must be signed in the partnership or limited liability company name by one of the members of the partnership or limited liability company or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary, or other person authorized to bind the corporation in the matter. Bids by sole proprietorships must be signed by the proprietor. When requested, satisfactory evidence of the authority of the officer signing must be furnished. Proposals signed by an agent must be accompanied by a power-of-attorney for the principal or principals involved. Attach additional signature sheets in the above form, if necessary.

Acknowledgement of Receipt of Changes to Bid Documents Form

Borough of Highlands, Monmouth County, New Jersey
(Name of Local Contracting Unit)

Washington Avenue Improvements
(Name of Construction/Public Works Project)

HIBC0018
(Project or Bid Number)

This form must be submitted whether or not addenda were issued.

Pursuant to N.J.S.A. 40A:11-23.1(a), the undersigned bidder hereby acknowledges receipt of the following notices, revisions, or addenda to the bid advertisement, specifications, or bid documents. By indicating date of receipt, the bidder acknowledges the submitted bid takes into account the provisions of the notice, revision, or addendum. Note that the local unit's record of notice to bidders shall take precedence and that failure to include provisions of changes in a bid proposal may be subject for rejection of the bid.

Local Unit Reference Number (or Title of Addendum/Revision)	How Received (mail, fax, pick-up, etc.)	Date Received

Acknowledgement by bidder:

Name of Bidder: _____

By Authorized Representative: _____

Signature: _____

Printed Name and Title: _____

Date: _____

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____,
as Principal, and _____, as Surety, is hereby held and firmly bound unto
Borough of Highlands, Monmouth County, New Jersey, 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 _____, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to Borough
of Highlands, Monmouth County, New Jersey a certain bid, attached hereto and hereby made a part
of hereof, to enter into a contract in writing for Washington Avenue Improvements.

NOW, THEREFORE,

- A. If said bid shall be rejected or in the alternative,
- B. If said bid shall be accepted and the Principal shall execute and deliver a contract properly
completed in accordance with said bid and shall furnish a bond for his faithful performance of
said contract, and for the payment of all persons performing labor or furnishing materials in the
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 full force and effect; it being
expressly understood and agreed that the liability of 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 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

By: _____
Witness

Surety
Attorney-in-fact

By: _____
Witness

Consent of Surety

In consideration of the premises and of One Dollar (\$1.00), lawful money of the United States, it is in hand paid by the CONTRACTOR, the receipt whereof is hereby acknowledged, the undersigned surety consents and agrees that if the contract, for which the preceding estimate and proposal is made, be awarded to the person or persons submitting the same as contracted, it will become bound as surety and guarantor for its faithful performance, in an amount equal to one hundred percent (100%) of the contract price, and will execute it as party of the third part thereto when required to do so by the OWNER, and if the said CONTRACTOR shall omit or refuse to execute such contract, if so awarded, it will pay without proof of notice and on demand to the OWNER any increase between the sum to which the said CONTRACTOR would have been entitled upon the completion of the said contract and the sum which the said OWNER may be obligated to pay to another contractor to whom the contract may be afterwards awarded, the amount in such case to be determined by the bids plus the cost, if any, of re-advertising for bids for this work, less the amount of any certified check or bid bond payable and received.

In witness whereof, said surety has caused these presents to be signed and attested by a duly authorized officer and its corporate seal to be hereto affixed this

_____ day of _____, 20____.

(A corporate acknowledgement and statement of authority is hereby attached by the surety company.)

Surety Company

By:

Surety Company
Attorney-in-Fact

Attest: _____

(Surety may substitute a similar statement subject to the OWNER'S approval.)

Statement of Ownership Disclosure

(N.J.S.A. 52:25-24.2)

This statement shall be included with all bid and proposal submissions.

Name of Business: _____

Address of Business: _____

Name of Person Completing This Form: _____

N.J.S.A. 52:25-24.2:

"No corporation , partnership, or limited liability company shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary or agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said corporation , said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed.

To comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest."

The Attorney General has advised that the provisions of N.J.S.A. 52:25-24.2, which refer to corporations and partnerships, apply to limited partnerships, limited liability partnerships, and Subchapter S corporations.

This Ownership Disclosure Certification form shall be completed, signed, and notarized.

Failure of the bidder/proposer to submit the required information is cause for automatic rejection of the bid or proposal

Part I

Check the box that represents the type of business organization:

- ☐ Sole Proprietorship (skip Parts II and III, sign and notarize at the end)
- ☐ Non-Profit Corporation (skip Parts II and III, sign and notarize at the end)
- ☐ Partnership ☐ Limited Partnership ☐ Limited Liability Partnership
- ☐ Limited Liability Company
- ☐ For-profit Corporation (including Subchapters C and S or Professional Corporation)
- ☐ Other (be specific): _____

Part II

- ☐ I certify that the list below contains the names and addresses of all stockholders in the corporation who own ten (10) percent or more of its stock, of any class, or of all individual partners in the partnership who own a ten (10) percent or greater interest therein, or of all members in the limited liability company who own a ten (10) percent or greater interest therein, as the case may be.

Or

- ☐ I certify that no one stockholder in the corporation owns ten (10) percent or more of its stock, of any class, or no individual partner in the partnership owns a ten (10) percent or greater interest therein, or that no member in the limited liability company owns a ten (10) percent or greater interest therein, as the case may be.

Sign and notarize the form below and, if necessary, complete the list below.

(Please attach additional sheets if more space is needed.):

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

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Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

Part III – Any Direct or Indirect Parent Entity which is Publicly Traded:

“To comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest.”

- ☐ Pages attached with name and address of each publicly traded entity as well as the name and address of each person that holds a ten (10) percent or greater beneficial interest.

Or

- ☐ Submit here the links to the Websites (URLs) containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent.

And

- ☐ Submit here the relevant page numbers of the filings containing the information on each person holding a ten (10) percent or greater beneficial interest.

Part IV – Certification

I, being duly sworn upon my oath, hereby represent that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge: that I am authorized to execute this certification on behalf of the bidder/proposer; that the OWNER is relying on the information contained herein; and that I am under a continuing obligation from the date of this certification through the completion of any contracts with the OWNER to notify the OWNER in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I am subject to criminal prosecution under the law and that it will constitute a material breach of my agreement(s) with the OWNER, permitting the OWNER to declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____ Title: _____

Signature: _____ Date: _____

Subscribed and sworn to
before me this ____ day of
_____, 20__.

Notary Public of New Jersey
My Commission Expires

_____, 20__.

[illegible]

I am _____ of the firm of _____,
the bidder making the proposal for the bid entitled Washington Avenue Improvements, and that I
executed the said proposal with full authority so to do; that said bidder has not, directly or indirectly,
entered into any agreement, participated in any collusion, or otherwise taken any action in restraint
of free, competitive bidding in connection with the above named project; and that all statements
contained in said proposal and in this affidavit are true and correct, and made with full knowledge
that the Borough of Highlands, Monmouth County, New Jersey relies upon the truth of the
statements contained in said proposal and in the statements contained in this affidavit in awarding
the contract for the said project.

Full Name (Print): _____ Title: _____

Signature: _____ Date: _____

Notary Public of New Jersey
My Commission Expires _____ 20__.

Experience Statement

The Bidder shall furnish with the proposal a recent listing of similar type projects on which he has performed work (5 minimum).

Approximate
Value

1. Project Name/Owner: _____ \$ _____
Address: _____

Contact Person: _____
Phone Number: _____
Scope: _____

2. Project Name/Owner: _____ \$ _____
Address: _____

Contact Person: _____
Phone Number: _____
Scope: _____

3. Project Name/Owner: _____ \$ _____
Address: _____

Contact Person: _____
Phone Number: _____
Scope: _____

4. Project Name/Owner: _____ \$ _____
Address: _____

Contact Person: _____
Phone Number: _____
Scope: _____

Experience Statement

5. Project Name/Owner:

\$

Address:

Contact Person:

Phone Number:

Scope:

6. Project Name/Owner:

\$

Address:

Contact Person:

Phone Number:

Scope:

7. Project Name/Owner:

\$

Address:

Contact Person:

Phone Number:

Scope:

8. Project Name/Owner:

\$

Address:

Contact Person:

Phone Number:

Scope:

Attach additional sheets in this format if necessary or contractor supplied forms containing substantially similar information.

Bidders to Visit Site

All bidders or their representative(s) are strongly encouraged to visit the site of the work of this contract and examine the means of access to the site. Bidders are strongly encouraged to thoroughly investigate the site of the proposed work in order to become informed as to the magnitude and character of all work necessary for the complete execution of the contract, including facilities for delivery and handling of materials, plant(s), if any at the site, and conditions and difficulties that may be encountered in the performance of the work specified herein.

The Bidder shall attest by signing below that he has read and understands the above prior to the submission of this proposal.

Date

Signature of Representative

Title

Bidder's Name

Proposed Subcontractors

Bidders must set forth the names of all proposed subcontractors to whom Bidder will subcontract work.

Proposed Subcontractors	Address
1. _____	_____ _____
2. _____	_____ _____
3. _____	_____ _____
4. _____	_____ _____
5. _____	_____ _____
6. _____	_____ _____
7. _____	_____ _____
8. _____	_____ _____

Subcontractor Experience Statement

The Bidder shall furnish with the proposal a recent listing of similar type projects on which his proposed subcontractors have performed work (4 minimum).

Name of Subcontractor:	Approximate Value
1. Project Name/Owner: _____ Address: _____ Contact Person: _____ Phone Number: _____ Scope: _____ _____ _____	\$ _____
2. Project Name/Owner: _____ Address: _____ Contact Person: _____ Phone Number: _____ Scope: _____ _____ _____	\$ _____
3. Project Name/Owner: _____ Address: _____ Contact Person: _____ Phone Number: _____ Scope: _____ _____ _____	\$ _____
4. Project Name/Owner: _____ Address: _____ Contact Person: _____ Phone Number: _____ Scope: _____ _____ _____	\$ _____

Subcontractor Experience Statement

Name of Subcontractor:	Approximate Value
5. Project Name/Owner: _____	\$ _____
Address: _____	

Contact Person: _____	
Phone Number: _____	
Scope: _____	

6. Project Name/Owner: _____	\$ _____
Address: _____	

Contact Person: _____	
Phone Number: _____	
Scope: _____	

7. Project Name/Owner: _____	\$ _____
Address: _____	

Contact Person: _____	
Phone Number: _____	
Scope: _____	

8. Project Name/Owner: _____	\$ _____
Address: _____	

Contact Person: _____	
Phone Number: _____	
Scope: _____	

Attach additional sheets in this format if necessary or contractor supplied forms containing substantially similar information.

Equipment Certification

Instructions For Completing The Equipment Certification

If the Bidder owns, leases, or controls all the necessary equipment required, he shall complete Parts 1 and 3. Should the Bidder not own, lease, or control all the necessary equipment required, he shall complete Parts 2 and 3. This certification must be attached to and submitted with the proposal.

Part 1

"This is to certify that I, the Bidder signing the attached proposal, own, lease, or control all the necessary equipment required to accomplish the work shown and described on the Contract Drawings and in the Contract Specifications."

Date

Signature of Bidder

Part 2

"This is to certify that I, the undersigned, own or control the equipment required and noted below and definitely grant or will grant the Bidder named below the control of said equipment during such time as may be required for that portion of the work described on the Contract Drawings and in the Contract Specifications for which said equipment is necessary."

Date

Signature of Bidder
Controller of Equipment

Date

Business address of Above

Part 3

LIST OF EQUIPMENT

Notice of Federally Mandated Anti-Drug/Alcohol Plan

The Contractor is advised that a Federal Mandate, effective January 1, 1996, requires all businesses having employees with a commercial driver's license to have a program of random drug and alcohol testing in accordance with 49 CFR Parts 40, 199 and 391.

The successful bidder shall submit evidence that it is participating in a random drug and alcohol testing program. Failure to show evidence of meeting these requirements shall be grounds to render said bid as informal and cause its rejection.

Bidder's Name: _____

Bidder's Signature: _____

Date: _____

Disclosure of Investment Activities in Iran

PART 1 – Certification

BIDDERS ARE TO COMPLETE PART 1 BY CHECKING **EITHER BOX**.

Pursuant to N.J.S.A. 52:32-55 et seq., any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must, prior to the time a contract is awarded and at the time the contract is renewed, complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf. Bidders must review this list prior to completing the below certification. Failure to complete the certification may render a bidder's proposal nonresponsive. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

CHECK THE APPROPRIATE BOX:

- ☐ I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.

OR

- ☐ I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as nonresponsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

Part 2 – Additional Information

PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN. You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran on additional sheets provided by you.

Part 3 – Certification

I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments there to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I

acknowledge that the OWNER is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the OWNER to notify the OWNER in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the OWNER and that the OWNER at its option may declare any contract(s) resulting from this certification void and unenforceable.

Bidder's Name: _____

Bidder's Signature: _____

Date: _____

Notice of Award

Description of Work _____

To: _____

The Owner, represented by the undersigned, has considered the Proposal submitted by you for the above-described work in response to its Notice and Instructions to Bidders dated _____.

Since you are the apparent successful bidder, said Owner agrees to accept your Proposal in the amount of _____.

You are hereby notified that your Proposal has been accepted for items:

As specified in the Contract Documents, _____.

You are required by the Notice and Instruction to Bidders to execute the formal contract with the undersigned Owner and to furnish the required Contractor's Performance and Payment Bond within twenty-one (21) calendar days from the date of this Notice to Award.

If you fail to execute said Contract and to furnish said bond in writing twenty-one (21) calendar days from the date of this Notice of Award, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Proposal as abandoned and to award the work covered by your Proposal to another, or to re-advertise the work, or otherwise dispose thereof as the Owner may see fit.

Dated this _____ day of _____, 20____.

Owner

By _____
Title: Mayor

Notice to Proceed

To: _____ Date: _____

_____ Project _____

You are hereby notified to commence work in accordance with the Agreement dated _____, 20____, on or before _____, 20____, and you are to complete the work within XXX (XX) consecutive calendar days thereafter. The date of completion of all work is therefore _____, 20____.

Also, before you may start any work at the site, you must:

Owner

By _____
Title: Mayor

ACCEPTANCE TO NOTICE

Receipt of the above NOTICE TO
PROCEED is hereby acknowledged by

Contractor

This the ____ day of
_____, 20____.

BY: _____

TITLE: _____

Form of Contract

Form of Contract

Contractor

And

Borough of Highlands Monmouth County of New Jersey

CONTRACT (This "Contract") made as of the ____ day of _____ in the year of 20____.

between

the OWNER:

Borough

of Highlands

151 Navesink Avenue, Highlands, NJ 07732

and the CONTRACTOR

the PROJECT:

Washington Avenue Improvements

the ENGINEER:

Joseph Raftery, P.E., CME
of COLLIERS ENGINEERING & DESIGN INC.
(DBA MASER CONSULTING)

The Owner and the Contractor agree as set forth below.

Article 1

The Contract Documents

1.1 The Contract Documents consist of this Contract, the Specifications and Contract Documents prepared by Joseph Raftery, P.E., CME, Engineer, annexed hereto, the Drawings, the Bid Specifications, and all addenda issued prior to and all modifications issued after execution of this Contract. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. In case of a conflict in terms, the terms of this Contract shall apply over the terms of any other Contract Documents.

1.2 The Contractor agrees to furnish its best skill, judgment and efficient business administration in performing its obligations under the Contract, and, further, agrees to maintain an adequate supply of workmen and proper materials on the job site at all times, to perform the Work in the best and most sound way, and to cooperate with the Engineer, in order to complete the Work expeditiously in accordance with the Contract Documents.

1.3 The Contractor shall provide competent supervision of all phases of the Work and shall cause the Work to be performed in strict and complete compliance with the Drawings and Specifications and all things indicated and implied therefrom. The Contractor shall designate a representative as project manager who shall be satisfactory to the Owner and the Engineer. Such project manager shall not be changed unless his performance is unsatisfactory to the Owner or the Contractor or unless he ceases to be in the employ of the Contractor. The project manager designated by the Contractor shall attend all job meetings with the Owner and the Engineer at such reasonable times as shall be requested by the Owner or the Engineer and shall periodically render reports to the Owner and the Engineer on the progress of the work.

1.4 The Contractor shall furnish to the Owner and the Engineer, prior to commencement of work and within thirty (30) days from date hereof, a Construction Progress Schedule broken down by stages and, after the issuance of any Change Order, shall furnish to the Owner a revision of such Schedule. The Progress Schedule shall indicate the dates for the starting and completion of the various stages of construction (and shall be revised as required by the conditions of the Work, subject to the Owner's approval). The Contractor shall maintain the progress of the Work in accordance with the Construction Progress Schedule, as same may be revised. In order to comply with the Construction Progress Schedule, the Contractor will ensure that all subcontracts clearly state that the requirements of the Construction Progress Schedule must be met.

1.5 The Contractor shall perform its obligations hereunder in strict compliance with all applicable laws, ordinances, rules, regulations, orders, statutes, codes and requirements of the Board of Fire Underwriters and of all Federal, State, City, and other governmental entities having jurisdiction over the Project, and the Contractor shall apply for and obtain all licenses and permits required in connection with the Work. The Contractor warrants that, when completed, the Project shall be in compliance with all laws in effect at the time of completion. Changes in costs reasonably incurred by the Contractor resulting from changes in any governmental requirements effective after the date of this Agreement (including interpretation by governmental officials which increase or decrease cost) shall be covered by a Change Order.

1.6 The Contractor covenants to maintain complete and accurate books of account showing the costs of the Project, which books shall, at all reasonable times, be open to inspection by the Owner and the Engineer.

Article 2

The Work

2.1 The Contractor shall perform all the Work required by the Contract Documents for the Washington Avenue Improvements and finish work shown in the Contract Documents.

2.2 The Contractor represents and warrants to the Owner that the Contractor has (a) examined the Contract Documents, the job site, the surroundings and local conditions, (b) made all

investigations it deems necessary or appropriate for a full understanding of the scope of the Work to be performed and (c) examined all other documents and data which it deems necessary or appropriate to establish the Contract Sum. The Contractor acknowledges that it considers the foregoing factors sufficient and is not relying upon any representations or warranties of the Owner except as expressly herein set forth.

Article 3

Time of Commencement and Substantial Completion

3.1 Within ten (10) calendar days from the delivery of a notice from the Owner to the Contractor to proceed (the "Notice to Proceed") the Contractor shall commence performance of the Work and, subject to authorized adjustments, achieve Substantial Completion no later than **45** calendar days from the commencement date indicated in the Notice to Proceed.

Article 4

Contract Sum

4.1 The Owner shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the total Contract Sum of \$_____. Such Contract Sum includes, without limitation, all labor, materials, tools, equipment, water, heat, power, transportation, facilities (temporary or otherwise), equipment rental costs and all other services necessary for the proper construction and completion of the Project in accordance with the Contract Documents.

4.2 The Contract Sum is determined based upon a stipulated sum.

4.3 Attached to this Contract are the Bid Specifications upon which the Contractor was the successful lowest responsible bidder. Any questions which arise as to the work to be performed under this Contract shall be determined by the Engineer with reference to such Bid Specifications.

Article 5

Progress Payments

5.1 Based upon Applications for Payment submitted to the Engineer by the Contractor and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents.

5.2 Payments to the Contractor shall be based upon Work actually performed, installed and approved by the Engineer and materials stored off-site, provided however, that with respect to materials stored off-site, the following conditions shall have been satisfied: (a) the Owner shall be furnished with an original invoice from the material supplier certifying that the price of such materials has been paid in full by the Contractor, (b) the Owner shall receive a warranty bill of sale for such materials, (c) the Owner shall have received a certificate evidencing that such materials are insured against loss on an all risk basis with the Owner listed as the named insured, (d) such materials shall be clearly and visibly marked and tagged so as to indicate that title thereto is vested

in the Owner, (e) the Engineer shall have inspected and approved such materials for incorporation into the Project, (f) the Owner shall have received an effective waiver of all liens and rights to assert liens from the Owner and lessor of the property upon which such materials are stored, (g) the Owner shall have received an Affidavit from the Contractor certifying that such materials will be incorporated into the work, (h) on the first One Hundred Thousand Dollars (\$100,000) due to the Contractor under this Contract a retainage of ten percent (10%) shall be withheld from each payment for stored materials, in addition to the normal retainage withheld from each payment so that a total of twenty percent (20%) retainage shall be withheld for stored materials. On progress payments due to the Contractor over One Hundred Thousand Dollars (\$100,000) the total retainage shall be two percent (2%). On progress payments where the contract value is less than One Hundred Thousand Dollars (\$100,000) the total contract retainage shall be twenty percent (20%). In addition, the Owner reserves the right to withhold twenty percent (20%) contract retainage for all asphalt improvements until testing is completed by the Owner, this would be in addition to the contract and stored materials retainage.

5.3 At least fourteen (14) days before each payment falls due, the Contractor shall furnish to the Engineer an itemized Application for Payment showing the value of Work performed through the end of the previous calendar month. Each pay request must be submitted to the Engineer using AIA formatted payment certificate, the certificate must clearly state the Work and quantities completed and quantities paid to date. In addition, the certificate must clearly identify the period in which the Work was preformed, i.e., week beginning and week ending date. Also, the Contractor must provide two (2) original sealed and signed certified payrolls for the period for themselves and any subcontractors. If any items of the payment request are omitted or not properly formatted, the Owner and the Engineer will not review the payment until the pay request is deemed acceptable and complete. Certified payrolls must be submitted for periods of no work and indicate no work was completed during such period.

5.4 Upon each parent to subcontractors and material suppliers, the Contractor shall obtain Partial Waiver of Lien from each such subcontractor and material supplier and shall deliver such instruments to the Owner prior to the next Application for Payment.

5.5 The Contractor agrees that each Application for Payment shall be made by a duly authorized representative of the Contractor and properly notarized, that it shall set forth the names and addresses of each person, firm or corporation furnishing materials or labor for the Work, the exact dollar amount of liability which has been contracted for with each person, firm or corporation and/or incurred with each such person, firm or corporation, the total disbursements made prior to the date of such Application for Payment to each such person, firm or corporation and the amounts requested by each such person, firm or corporation in that month's request for payment. Each such affidavit shall be accompanied by evidence satisfactory to the Owner, that there are no liens against the Work, the Project, the property and improvements on which the Project is located, or on any funds or property owned or possessed by the Owner. Failure of the Contractor to list the name of any person who subsequently files a lien against the Project or any other property of the Owner in any Application for Payment furnished to the Owner under this Article 5 or the failure of the Contractor to obtain a release of lien rights from any person, firm or corporation listed in any affidavit furnished to the Owner under this Article 5 (which person subsequently files a lien), or otherwise to protect the Owner against the same, shall not absolve the Contractor of its responsibilities to the Owner under this Article. In lieu of the requirements of the Contractor under

this section, the Contractor may satisfy these requirements by a certification under oath of the Contractor that no person, firm or corporation has filed a lien against the project.

5.6 If any subcontractor refuses to furnish such evidence required by the Owner, the Contractor may be required to either withhold payment from such subcontractor or furnish a bond, as approved by the Owner, in a form satisfactory to the Owner, to indemnify them against any such lien. In the event a subcontractor or materialman files a lien against the Project, the Contractor shall promptly cause such lien to be formally released, bonded against or satisfied, and shall reimburse the Owner for all costs and expenses, including, but not limited to, attorneys' fees, and bonding and title indemnity expenses incurred by it in contesting, discharging, releasing or satisfying such lien or defending or otherwise participating in such suit. The Owner shall have the right to retain out of any payment then or thereafter to become due to the Contractor 150% of the amount claimed, or such other amount as the Owner shall determine, to indemnify the Owner against any lien that may appear in favor of any person claiming by, through, or under the Contractor, which amount shall include reasonable allowances for the estimated costs, including, but not limited to, attorneys' fees to defend any action in connection therewith or deposits which need to be made to have such lien released against the Project. The Contractor shall similarly indemnify and protect and defend the Owner in respect of any lien in favor of any person claiming by, through, or under it, including, among others, its subcontractors or its and their material suppliers may appear after final payment is made.

5.7 Once the Contractor's Application for Payment has been certified by the Owner following approval by the Engineer, the Owner shall authorize payment to the Contractor at the next scheduled public meeting and issue payment during the Owner's next payment cycle following the meeting at which payment was authorized.

5.8 The Owner shall withhold two percent (2%) of each progress payment due to the Contractor until Final Completion of the Work for contracts with a total Contract Sum greater than One Hundred Thousand Dollars (\$100,000). The Owner shall withhold ten percent (10%) of each progress payment due to the Contractor until Final Completion of the Work for contracts with a total Contract Sum equal to or less than One Hundred Thousand Dollars (\$100,000). All amounts retained by the Owner shall be retained until Final Completion of the Work and the Contractor has signed its General Release and Final Waiver of Lien; provided, however, that the Owner may, at its option, reduce or release retention for those subcontractors mutually agreed to by the Owner and the Contractor who have completed their portion of the Work provided that (i) such work has been approved by the Engineer; (ii) each such subcontractor has signed a General Release and Final Lien Waiver; (iii) the Work is progressing satisfactorily in accordance with the Construction Progress Schedule; and (iv) such reduction or release does not, in the Owner's opinion, increase the Owner's financial risk on the Project. As a condition of the release of any retention to a subcontractor before the completion of the Project, the subcontractor shall agree that the period of duration of any warranties made by it will not commence until the completion of all the Work. Additionally, the Owner will hold twenty percent (20%) retainage for asphalt pavement materials until testing is complete.

5.9 “Final Completion” shall be defined as such time as the Contractor obtains a final Certificate of Completion from the Engineer, and the Contractor submits to the Owner and the Owner approves (a) General Release and Final Lien Waivers and releases from Contractor and all subcontractors, materialmen, suppliers and sureties, in form and substance satisfactory to the Owner, (b) the Contractor’s affidavit that all payrolls, bills for materials and equipment, and other indebtedness incurred by, through or under the Contractor in connection with the Work (excluding Work pursuant to warranties and guaranties), have been paid or otherwise satisfied or, if not so paid or satisfied, that amounts satisfactory to the Owner, in the Owner’s sole discretion, have been withheld to protect itself from any claims resulting therefrom, including, but not limited to, attorney fees, (c) all the Contractor’s as built drawings, records and related data have been delivered to the Owner, (d) all guarantees and warranties to which the Owner is entitled hereunder are delivered in a form satisfactory to the municipal attorney, (e) all other customary permits, licenses, approvals, certificates and authorizations required by any authority having jurisdiction have been issued, and (f) all other documentation reasonably required by the Owner has been supplied.

5.10 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

Article 6

Subcontracts

6.1 Prior to awarding any subcontract, the Contractor shall notify the Owner and the Engineer of the name of each proposed subcontractor and the amount of the subcontract price and shall provide the Owner with copies of each bid. The Owner shall have the right to reject any subcontractor who does not establish to the satisfaction of the Owner his experience, competence and financial ability to perform the Work. The Owner agrees to act diligently upon receipt from the Contractor of the names of proposed subcontractors and shall not delay the award of any subcontract to a subcontractor deemed acceptable to the Owner.

6.2 If the Owner disapproves of a proposed subcontractor, it may direct the Contractor to award such work to an alternate subcontractor of the Owner’s choosing provided that if an increase in the cost of performing the Work or furnishing the materials caused by the award of such subcontract to the alternate subcontractor shall result, the Owner shall have the option to permit the original subcontractor to work or approve a Change Order in accordance with Article 7 and an appropriate adjustment of the Contract Sum.

6.3 Upon execution of any subcontract or material purchase contract, each contract will provide that such subcontract or purchase contract, and all rights of the Contractor thereunder, shall be assignable to the Owner, or to another Contractor designated by the Owner, without consent of the subcontractor; that upon such an assignment becoming effective such subcontractor will be bound to the Owner or such Contractor designated by the Owner as fully and in the same manner as such subcontractor is bound to the Contractor under such subcontract; and that upon such assignment becoming effective all sureties of the obligations of such subcontractor shall be bound to the Owner or such contractor designated by the Owner as fully and in the same manner as such sureties are bound to the Contractor. The assignment of such subcontracts shall not become effective unless an event of default has occurred hereunder and the Owner has terminated this Contract.

Article 7

Changes in the Work

7.1 No one other than the Owner shall have the right to require or instruct the Contractor to make any changes, deletions or addition to the Work that will result in a Change Order (as that term is defined in the General Conditions) or will result in a change to the Contract Sum. Any such changes, deletions or additions authorized by the Owner must be in writing and signed by a duly authorized representative of the Owner which change order shall first be approved by a resolution of the governing body of the Owner.

7.2 The Owner reserves the right, from time to time, whether the Work or any part thereof shall have been completed, to make changes, additions, revisions or omissions in the Work as the Owner may deem advisable. The value of the Work to be changed, added or omitted shall be stated in the Change Order and shall be added or deducted, as the case may be, from the Contract Sum.

7.3 In the event the value of the Change Order cannot be determined by reference to the unit prices, the value shall be equal to the actual cost of performing such Change Order, plus fifteen percent (15%) overhead and profit.

7.4 The Owner reserves the right to award separate contracts for the performance of any work not included in the Work described in the Contract Documents.

Article 8

Additional Obligations of Contractor

8.1 The Contractor shall comply with all applicable New Jersey State Statutes, Administrative Regulations and Proclamations, including the payment of any prevailing wage rates required by law, which are annexed hereto as Appendix A.

8.2 The Contractor shall comply with the mandatory requirements referenced in the following appendices:

- (a) **Appendix B** – Equal Employment Opportunity Language for Construction Contracts;
- (b) **Appendix C** – New Jersey Anti-Discrimination Provisions;
- (c) **Appendix D** – Equal Opportunity Provisions for Individuals with Disabilities; and
- (d) **Appendix E** – Changed Conditions Contract Provisions.

8.3 The Contractor shall maintain all documentation related to products, transactions or services under this Contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

Article 9

Contractor's Warranties and Guaranty

9.1 Unless a longer period of time is designated in the Contract Documents, or required by existing law or judicial determination, the Contractor hereby guarantees all Work performed under the Contract Documents against defects due to faulty or defective materials or workmanship, or failure of the Work to conform to the Contract Documents, as shall appear within a period of two (2) years from the date of Final Completion of the Project. The Contractor shall require a similar warranty in all subcontracts, including the requirement that the Owner be reimbursed for any damage or loss to the Work resulting from such defects. The Contractor agrees to repair or remove or replace as directed by the Owner all Work which is defective or which fails to conform to the Contract Documents; to repair, remove and replace as directed by the Owner all damaged portions of the Work resulting from or which is incidental to defects in the Work as stated above in this Article 9, or failure of the Work to conform to the Contract Documents. All repairs, removals and replacements must be commenced after written notice from the Owner as soon as reasonably practicable having due regard to the circumstances and the nature of the defect and workmen and materials sufficient in the opinion of the Owner, in the Owner's sole discretion, must be furnished to ensure prompt completion thereof. Should the Contractor fail to proceed in accordance with the provisions of this Article 9, the Owner without further notice to the Contractor may furnish all labor and material necessary for said repairs, or removals and replacements. The Contractor agrees that the repair, replacement or removal of such faulty or defective material or workmanship shall be at no cost to the Owner and further that the Owner shall be reimbursed for any damage or loss to the Work resulting from such defects sustained by the Owner.

9.2 The Contractor shall deliver to the Owner all warranties and guarantees, together with appropriate assignments, as provided in the Contract Documents, at the time and in the manner that may be prescribed therein. Notwithstanding anything to the contrary in the General Conditions, the warranties and guarantees of the Contractor and all subcontractors and suppliers under this Article 9 shall extend to all materials purchased by the Contractor pursuant to the provisions thereof and shall be for the benefit of the Owner.

9.3 It is understood that the provisions of this Article 9 generally limiting the Contractor's warranties to a two (2) year period shall not apply with respect to the Contractor's warranty that the Work is in compliance with the laws as set forth in Paragraph 1.5 hereof.

Article 10

Assignment

10.1 The Owner and the Contractor each bind themselves, their successors, assigns and legal representatives to the other party hereto, and to the successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. However, the obligations of the Contractor arising hereunder may not be assigned or hypothecated without the Owner's prior written consent. The Contractor further agrees to insert in all subcontracts the requirement that the subcontract shall not be assigned other than to

the Owner or to another Contractor designated by the Owner, and shall not be hypothecated or transferred in any manner, without the Owner's prior written consent.

Article 11

Notices

11.1 Any notices or demands to be given by one party to the other as required by this Contract, or otherwise, shall be in writing and may be delivered by the deposit thereof in the United States Mail, postage prepaid, registered or certified with return receipt requested to both parties at the addresses set forth below. Any such notices shall be deemed to be delivered and given three (3) days after the postmark thereof.

If to the Owner:

ATTN:

If to the Contractor:

ATTN:

Article 12

Insurance

12.1 The Contractor shall maintain with insurers licensed to do business in the State of New Jersey and which are satisfactory to the Attorney for the Owner the following insurance:

- (a) Comprehensive general public liability insurance against claims for bodily injury, death and property damage occurring on, in or about the Project and the adjoining streets, sidewalks and passageways, including contractual liability coverage pursuant to Article 15 of this Agreement, to combined single limit amount of not less than \$1,000,000.00;
- (b) The Owner and the Contractor Protective Liability Insurance in combined single limit amount of not less than \$1,000,000.00;

- (c) Workers' Compensation Insurance coverage of the full statutory liability of the Contractor;
- (d) Employer's Liability Insurance in the full statutory amount required by New Jersey law;
- (e) Products and Completed Operations Liability Insurance in the amount of \$100,000.00;
- (f) Comprehensive Automotive Liability Insurance against claims for bodily injury, death or property damage in combined single limit amount of not less than \$500,000.00.
- (g) Pollution Liability Insurance in a single occurrence limit amount not less than \$1,000,000.00.

12.2 In the event the Contractor shall fail to maintain any insurance required hereunder, the Owner may (but shall not be obligated to) procure such insurance on behalf of the Contractor. The Contractor agrees to reimburse the Owner for any such payment immediately upon demand. The procurement of insurance by the Owner on behalf of the Contractor shall not be deemed to be a waiver of the requirements of this Article 12, and shall not prevent the Owner from exercising its rights under the Contract Documents on account of a breach.

Article 13

Governing Law

13.1 This Contract and the other Contract Documents shall be construed and enforced in accordance with the laws of the State of New Jersey.

Article 14

Entire Contract

14.1 The Contract Documents constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations or discussions of the parties, whether oral or written. The invalidity of any one of the covenants, agreements, conditions or provisions of the Contract Documents or any portion thereof shall not affect the remaining portions thereof, and the Contract Documents shall be construed as if such invalid covenant, agreement, condition, or portion had not been inserted herein. This Contract can only be amended by a writing signed by both parties.

Article 15

Safety

15.1 In accordance with generally accepted construction practices, the Contractor shall be solely and completely responsible for conditions at the job site, including safety of all persons and property affected directly or indirectly by the Contractor's operations during the performance of the

work. This requirement shall apply continuously 24 hours per day until acceptance of the work by the Owner. The Owner's responsibility to observe the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the job site.

Article 16

Indemnification

16.1 The Contractor assumes all risk for, and agrees to indemnify and hold the Owner and its agents, servants, officers and employees harmless from and against all liabilities, losses claims, demands, costs, expenses (including attorneys' fees and disbursements) and any judgments of any nature arising or alleged to arise from or in connection with (a) the performance of the Work under the Contract Documents, (b) the violation by the Contractor of any provision of the Contract Documents, (c) any injury to or death of, any person or loss or damage to property arising from or connected with the Work and (d) any violation of any applicable legal or insurance requirements.

Article 17

Owner's Right to Terminate Contract and Complete Work

17.1 The Owner shall have the right to terminate this Contract after giving ten (10) days written notice of termination to the Contractor in the event of any default by the Contractor.

17.2 It shall be considered a default by the Contractor whenever the Contractor shall:

- (a) declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors;
- (b) disregard or violate provisions of the Contract Documents or fail to prosecute the work according to the agreed Schedule of Completion, including extensions thereof; or
- (c) fail to provide a qualified superintendent, competent workmen or subcontractors, or proper materials, or fail to make prompt payment therefor.

17.3 In the event of termination of the Contract by the Owner because of default by the Contractor, the Owner may take possession of the work and of all materials and equipment thereon and may finish the work by whatever method and means it may select.

17.4 Upon termination of the Contract by the Owner, no further payments shall be due the Contractor until the work is completed. If the unpaid balance of the contract price shall exceed the cost of completing the work including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the work shall exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The cost incurred by the Owner, as herein provided, and the damage incurred through the Contractor's default shall be certified by the Owner.

Article 18

Use of Completed Work

18.1 The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted work, or causes refinishing of completed work, the Contractor shall be entitled to such extra compensation or extension of time, or both, as agreed by the Owner.

Article 19

Limitation of Engineer's Responsibility

19.1 Neither the Engineer's authority to act under this Contract, nor any decision made by the Engineer in good faith either to exercise or not exercise authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any subcontractor, manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the work under the Contract.

19.2 The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the Engineer will not be responsible for the Contractor's failure to perform the work in accordance with the Contract.

19.3 The Engineer will not be responsible for the acts or omissions of the Contractor or of any of its subcontractors, or of the agents or employees of the Contractor or its subcontractors, or of any other persons at the site or otherwise performing any of the work under the Contract.

Article 20

Bonds

20.1 Contractor shall furnish to the Owner prior to the commencement of Work a labor and material payment bond and a performance bond each in the full amount of the Contract Sum executed by a surety company reasonably satisfactory to the Owner's attorney.

20.2 Upon acceptance of the Work by the Owner, the Contractor shall submit a maintenance bond (N.J.S.A. 40A:11-16.3) in an amount equal to fifteen percent (15%) of the final adjusted contract amount guaranteeing against defective quality of Work or materials for the period of two (2) years from the date of acceptance of the bond by the Owner. The maintenance bond shall be furnished by a surety company authorized to do business in the State of New Jersey and shall be acceptable, as to form, substance and execution by the Owner's Attorney and the Engineer (refer to Article 9 of this Contract).

Article 21

Definitions

21.1 Terms used in this Contract which are defined in the General Conditions of the Contract shall have the meanings designated in those General Conditions.

Article 22

Dispute Resolution Procedures

22.1 All claims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this Contract or any breach thereof, except for claims which have been waived by the acceptance of Final Payment, shall be submitted to mediation within thirty (30) days after a final determination is made by either the Project Engineer or the Owner with regard to the claim, dispute or matter. The mediator shall be selected by mutual agreement between the parties or by the American Arbitration Association, if agreement cannot be reached among the parties. The mediation shall be scheduled within fourteen (14) days of the selection of the mediator. The Work on the Project shall not be interrupted, delayed or hindered during the mediation process, unless agreed to in writing by the Owner. The hearing date shall not be cancelled or adjourned by either party without the mediator's consent. The mediation shall be conducted at the Town Hall. The cost of the mediation shall be borne equally among the parties. The mediation shall be attended by an executive officer of the Contractor who shall have full authority to act for and bind the Contractor, and with duly authorized representatives of the Owner. Mediation shall be a condition precedent to arbitration.

22.2 Any claims not settled in accordance with Paragraph 22.1 shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and applicable State Statutes then in effect, unless the parties mutually agree otherwise. The scope of the authority of the arbitrators in issuing any award shall be limited by any statute or regulation which governs the liability or damages from the Owner. The award rendered by the arbitrators in any such arbitration proceeding shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

22.3 Notice of the demand for arbitration shall be filed in writing with the other party to this agreement, the Engineer (if an Engineer other than the Engineer was engaged for the project [an "Outside Engineer"]), and the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen and in no event shall it be made before the mediation has been requested or after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Unless otherwise mutually agreed, arbitration shall not go forward until thirty (30) days after the mediator was selected and the mediation process was given a good faith effort.

22.4 Unless otherwise agreed to in writing, the Contractor shall carry on the Work and maintain its progress during any mediation and/or arbitration proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the applicable provisions of this Contract.

22.5 The Outside Engineer and Subcontractors of the Contractor may be joined in the arbitration proceeding between the Owner and the Contractor as necessary parties. Any arbitration between the Owner and the Outside Engineer may be consolidated, at the option of the Owner or the Outside Engineer with any arbitration between the Owner and the Contractor which has a common subject matter or issue.

22.6 The mediation and arbitration process shall not affect the Owner's right to (1) order a Stop Work, (2) terminate the Contractor's Work, in whole or part, whether for the Owner's convenience or due to the Contractor's default; and/or (3) otherwise act in the public interest.

IN WITNESS WHEREOF, this Contract was executed and delivered as of the day and year first written above.

OWNER:

CONTRACTOR:

Borough of Highlands

BY:

BY:

Carolyn Broullon, Mayor

BY:

BY:

Nancy Tran, Borough, Clerk

APPENDIX A

Prevailing Wage Rate Determination

(To be appended to execution version of contract.)

APPENDIX B

Mandatory Equal Employment Opportunity Language

N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq.

Construction Contracts

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Department of Labor and Workforce Development, Construction Contract Compliance Unit (the "Department"), may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B, and C, as long as the Department is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Department, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with

N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Department, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and nondiscrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Department. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Department, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Department.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Department and submitted promptly to the Department upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Department an initial project workforce report (Form AA-201) electronically provided to the public agency by the Department, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Department, and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Department as may be requested by the Department from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Department for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

APPENDIX C

New Jersey Anti-Discrimination Provisions

N.J.S.A. 10:2-1 et seq.

Pursuant to N.J.S.A. 10:2-1, if awarded a contract, the contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

APPENDIX D

Americans With Disabilities Act Of 1990

Equal Opportunity for Individuals with Disability

The contractor and the owner do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. S121 01 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, if any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

APPENDIX E

Changed Conditions Contract Provisions

Differing Site Conditions Provisions

(1) If the contractor encounters differing site conditions during the progress of the work of the contract, the contractor shall promptly notify the contracting unit in writing of the specific differing site conditions encountered before the site is further disturbed and before any additional work is performed in the impacted area.

(2) Upon receipt of a differing site conditions notice in accordance with paragraph (1) of this subsection, or upon the contracting unit otherwise learning of differing site conditions, the contracting unit shall promptly undertake an investigation to determine whether differing site conditions are present.

(3) If the contracting unit determines different site conditions that may result in additional costs or delays exist, the contracting unit shall provide prompt written notice to the contractor containing directions on how to proceed.

(4) (a) The contracting unit shall make a fair and equitable adjustment to the contract price and contract completion date for increased costs and delays resulting from the agreed upon differing site conditions encountered by the contractor.

(b) If both parties agree that the contracting unit's investigation and directions decrease the contractor's costs or time of performance, the contracting unit shall be entitled to a fair and equitable downward adjustment of the contract price or time of performance.

(c) If the contracting unit determines that there are no differing site conditions present that would result in additional costs or delays, the contracting unit shall so advise the contractor, in writing, and the contractor shall resume performance of the contract, and shall be entitled to pursue a differing site conditions claim against the contracting unit for additional compensation or time attributable to the alleged differing site conditions.

(5) Execution of the contract by the contractor shall constitute a representation that the contractor has visited the site and has become generally familiar with the local conditions under which the work is to be performed.

(6) As used in this subsection, "differing site conditions" mean physical conditions at the contract work site that are subsurface or otherwise concealed and which differ materially from those indicated in the contract documents or are of such an unusual nature that the conditions differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract.

Suspension of Work Provisions

(1) The contracting unit shall provide written notice to the contractor in advance of any suspension of work lasting more than 10 calendar days of the performance of all or any portion of the work of the contract.

(2) If the performance of all or any portion of the work of the contract is suspended by the contracting unit for more than 10 calendar days due to no fault of the contractor or as a consequence of an occurrence beyond the contracting unit's control, the contractor shall be entitled to compensation for any resultant delay to the project completion or additional contractor expenses, and to an extension of time, provided that, to the extent feasible, the contractor, within 10 calendar days following the conclusion of the suspension, notifies the contracting unit, in writing, of the nature and extent of the suspension of work. The notice shall include available supporting information, which information may thereafter be supplemented by the contractor as needed and as may be reasonably requested by the contracting unit. Whenever a work suspension exceeds 60 days, upon seven days' written notice, either party shall have the option to terminate the contract for cause and to be fairly and equitably compensated therefor.

(3) Upon receipt of the contractor's suspension of work notice in accordance with paragraph (2) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(4) (a) If the contracting unit determines that the contractor is entitled to additional compensation or time, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall proceed with the performance of the contract work, and shall be entitled to pursue a suspension of work claim against the contracting unit for additional compensation or time attributable to the suspension.

(5) Failure of the contractor to provide timely notice of a suspension of work shall result in a waiver of a claim if the contracting unit can prove by clear and convincing evidence that the lack of notice or delayed notice by the contractor actually prejudiced the contracting unit's ability to adequately investigate and defend against the claim.

Change in Character of Work Provisions

(1) If the contractor believes that a change directive by the contracting unit results in a material change to the contract work, the contractor shall so notify the contracting unit in writing. The contractor shall continue to perform all work on the project that is not the subject of the notice.

(2) Upon receipt of the contractor's change in character notice in accordance with paragraph (1) of this subsection, the contracting unit shall promptly evaluate the contractor's notice and promptly advise the contractor of its determination on how to proceed in writing.

(3) (a) If the contracting unit determines that a change to the contractor's work caused or directed by the contracting unit materially changes the character of any aspect of the contract work, the contracting unit shall make a fair and equitable upward adjustment to the contract price and contract completion date. The basis for any such price adjustment shall be the difference between the cost of performance of the work as planned at the time of contracting and the actual cost of such work as a result of its change in character, or as otherwise mutually agreed upon by the contractor and the contracting unit prior to the contractor performing the subject work.

(b) If the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor shall continue the performance of all contract work, and shall

be entitled to pursue a claim against the contracting unit for additional compensation or time attributable to the alleged material change.

(4) As used in this subsection, “material change” means a character change which increases or decreases the contractor's cost of performing the work, increases or decreases the amount of time by which the contractor completes the work in relation to the contractually required completion date, or both.

Change in Quantity Provisions

(1) The contracting unit may increase or decrease the quantity of work to be performed by the contractor.

(2) (a) If the quantity of a pay item is cumulatively increased or decreased by 20 percent or less from the bid proposal quantity, the quantity change shall be considered a minor change in quantity.

(b) If the quantity of a pay item is increased or decreased by more than 20 percent from the bid proposal quantity, the quantity change shall be considered a major change in quantity.

(3) For any minor change in quantity, the contracting unit shall make payment for the quantity of the pay item performed at the bid price for the pay item.

(4) (a) For a major increase in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity in excess of 120 percent of the bid proposal quantity. If a mutual agreement cannot be reached on a negotiated price for a major quantity increase, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid.

(b) For a major decrease in quantity, the contracting unit or contractor may request to renegotiate the price for the quantity of work performed. If a mutual agreement cannot be reached on a negotiated price for a major quantity decrease, the contracting unit shall pay the actual costs plus an additional 10 percent for overhead and an additional 10 percent for profit, unless otherwise specified in the original bid; provided, however, that the contracting unit shall not make a payment in an amount that exceeds 80 percent of the value of the bid price multiplied by the bid proposal quantity.

(5) As used in this subsection, the term “bid proposal quantity” means the quantity indicated in the bid proposal less the quantities designated in the project plans as “if and where directed.”

Instructions to Bidders

Instructions to Bidders and Statutory Requirements

I. Submission of Bids

- A. Sealed bids shall be received by the contracting unit, hereinafter referred to as "Owner," in accordance with public advertisement as required by law, with a copy of said notice being attached hereto and made a part of these specifications.
- B. Sealed bids will be received by the designated representative at the time and location designated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.
- C. The bid shall be submitted in a sealed envelope: (1) addressed to the Owner, (2) bearing the name and address of the bidder written on the face of the envelope, and (3) clearly marked "BID" with the contract title and/or bid # of the contract being bid. The bidder shall include one original, two copies of its proposal, and one USB drive containing all proposal documents in its bid submission.
- D. It is the bidder's responsibility that bids are presented to the Owner at the time and at the place designated. Bids may be hand delivered or mailed; however, the Owner disclaims any responsibility for bids forwarded by regular or overnight mail. If the bid is sent by express mail service, the designation in sub-section C, above, must also appear on the outside of the express mail envelope. Bids received after the designated time and date will be returned unopened.
- E. Sealed bids forwarded to the Owner before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they shall remain firm for a period of sixty (60) calendar days.
- F. More than one bid from an individual, a firm or partnership, a corporation or association under the same names shall not be considered.
- G. All prices and amounts must be written in ink or preferably machine-printed. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the Owner. Any changes, whiteouts, strikeouts, etc. in the bid must be initialed in ink by the person signing the bid.
- H. Each bid proposal form must give the full business address, business phone, fax, e-mail if available, the contact person of the bidder, and be signed by an authorized representative as follows:
 - Bids by partnerships and limited liability companies must furnish the full name of all partners or members and must be signed in the partnership or limited liability company name by one of the members of the partnership or limited liability company or by an authorized representative, followed by the signature and designation of the person signing.

- Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter.
 - Bids by sole-proprietorship shall be signed by the proprietor.
 - When requested, satisfactory evidence of the authority of the officer signing shall be furnished.
- I. Bidder should be aware of the following statutes that represent “Truth in Contracting” laws:
- N.J.S.A. 2C:21-34, et seq. governs false claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false claim and/or knowingly make material misrepresentation.
 - N.J.S.A. 2C:27-10 provides that a public servant commits a crime if said public servant directly or indirectly solicits or receives a benefit for an official act performed or to be performed by a public servant, which is a violation of official duty.
 - N.J.S.A. 2C:27-11 provides that a bidder commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.
 - Bidder should consult the statutes or legal counsel for further information.
- J. Pay-to-Play Disclosure – Business entities are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public entities in a calendar year. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.
- K. Bid packages are available as specified in the Notice to Bidders. Potential respondents are cautioned that they are responding at their own risk if a third party supplied the specifications that may or may not be complete. The Owner is not responsible for third party supplied documents.

II. Bid Security and Bonding Requirements

The following provisions, if indicated by an (X), shall be applicable to this bid and be made a part of the bid documents:

(X) A. Bid Guarantee

Bidder shall submit with the bid a certified check, cashier's check or bid bond in the amount of ten percent (10%) of the total price bid, but not in excess of \$20,000, payable unconditionally to the Owner. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the Owner. The check or bond of the unsuccessful bidder(s) shall be returned

pursuant to N.J.S.A. 40A:11-24a. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

The Bid Bond shall include a valid Power of Attorney authorizing the Attorney-in-Fact to execute the documents. Failure to submit a bid guarantee shall result in rejection of the bid.

(X) B. Consent of Surety

Bidder shall submit with the bid a Certificate (Consent of Surety) with Power of Attorney for full amount of bid price from a Surety Company authorized to do business in the State of New Jersey and acceptable to the Owner stating that it will provide said bidder with a Performance Bond in the full amount of the bid. This certificate shall be obtained in order to confirm that the bidder to whom the contract is awarded will furnish Performance and Payment Bonds from an acceptable surety company on behalf of said bidder, any or all subcontractors or by each respective subcontractor or by any combination thereof which results in performance security equal to the total amount of the contract, pursuant to N.J.S.A. 40A:11-22.

The Consent of Surety shall include a valid Power of Attorney authorizing the Attorney-in-Fact to execute the documents. Failure to submit a Consent of Surety Form shall result in rejection of the bid.

(X) C. Performance Bond

The successful bidder shall simultaneously with the delivery of the executed contract, submit an executed Surety Corporation Bond in the amount of one hundred percent (100%) of the final contract price as security for the faithful performance of this contract.

The performance bond provided shall not be released until the final acceptance of the whole work and then only if any liens or claims have been satisfied. The surety on such bond or bonds shall be a duly authorized surety company authorized to do business in the State of New Jersey pursuant to N.J.S.A. 17:31-5. For multi-year contracts, the performance bond may be resubmitted each year on the contract anniversary date for the amount remaining on the contract.

Failure to submit this with the executed contract shall be cause for declaring the contract null and void pursuant to N.J.S.A. 40A:11-22.

(X) D. Labor and Material (Payment) Bond

The successful bidder shall with the delivery of the performance bond submit an executed payment bond to guarantee payment to laborers and suppliers for the labor and material used in the work performed under the contract.

Failure to submit a labor and material bond with the performance bond shall be cause for declaring the contract null and void.

(X) E. Maintenance Bond

Upon acceptance of the work by the Owner, the contractor shall submit a maintenance bond (N.J.S.A. 40A:11-16.3) in an amount not to exceed fifteen percent (15%) of the project costs guaranteeing against defective quality of work or materials for the period of: Two (2) Years.

III. Interpretation and Addenda

- A. The bidder understands and agrees that its bid is submitted on the basis of the specifications prepared by the Owner. The bidder accepts the obligation to become familiar with these specifications.
- B. Bidders are expected to examine the specifications and related bid documents with care and observe all their requirements. Ambiguities, errors or omissions noted by bidders should be promptly reported in writing to the appropriate official. Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the Owner no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract pursuant to N.J.S.A. 40A:11-13. In the event the bidder fails to notify the Owner of such ambiguities, errors or omissions, the bidder shall be bound by the requirements of the specifications and the bidder's submitted bid.
- C. No oral interpretation and or clarification of the meaning of the specifications for any goods and services or construction will be made to any bidder. Such request shall be in writing, addressed to the Owner's representative stipulated in the specification. In order to be given consideration, a written request must be received at least seven (7) business days prior to the date fixed for the opening of the bid.

All interpretations, clarifications and any supplemental instructions will be in the form of written addenda to the specifications and will be distributed to all persons who had submitted a bid or who had received a bid package. All addenda so issued shall become part of the specification and bid documents and shall be acknowledged by the bidder in the bid by completing the Acknowledgement of Receipt of Addenda form. The Owner's interpretations or corrections thereof shall be final.

Pursuant to N.J.S.A. 40A:11-23(c)(2), when issuing addenda, the Owner shall provide required notice prior to the official receipt of bids to any person who has submitted a bid or who has received a bid package.

- D. Discrepancies in Bids
 - 1. If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.
 - 2. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall prevail. In the event there is an error of the summation of the extended totals, the computation by the Owner of the extended totals shall govern.

E. Optional Pre-Bid Conference

If stated in the Notice to Bidders and checked below:

☒ A Pre-Bid-Conference will not be held.

IV. Brand Names, Standards of Quality and Performance

- A. Brand names and/or descriptions used in these specifications are to acquaint bidders with the types of goods and services or materials and items desired and will be used as a standard by which goods and services or materials and items offered as equivalent will be evaluated.
- B. Variations between the goods and services or materials and items described and the goods and services or materials and items offered are to be fully identified and described by the bidder on a separate sheet and submitted with the bid proposal form. Vendor literature WILL NOT suffice in explaining exceptions to these specifications. In the absence of any exceptions by the bidder, it will be presumed and required that the goods and services or materials and items as described in the bid specification be provided or performed.
- C. When a specification uses "brand name or equivalent," the listed brand name shall serve as a reference or point of comparison for the functional or operational characteristic desired for the material being requested. Where a bidder submits an equivalent, it is the responsibility of the bidder to document and/or demonstrate the equivalency of the goods and services offered. Failure to submit such documentation shall be grounds for rejection of the claim of equivalence. The Owner reserves the right to evaluate the equivalency of the goods and services.
- D. In submitting its bid, the bidder certifies that the goods and services or materials and items to be furnished will not infringe upon any valid patent or trademark and that the successful bidder shall, at its own expense, defend any and all actions or suits charging such infringement, and will save the Owner harmless from any damages resulting from such infringement.
- E. Only manufactured and farm products of the United States, wherever available, shall be used pursuant to N.J.S.A. 40A:11-18.
- F. The contractor shall guarantee any or all goods and services or materials and items supplied under these specifications. Defective or inferior goods, materials, or items shall be replaced at the expense of the contractor. The contractor will be responsible for return freight or restocking charges.

V. Insurance and Indemnification

The insurance documents indicated by an (X) shall include but are not limited to the following coverages. The successful bidder shall provide coverage so that all insurance coverage must be in effect no later than 12:01 A.M. EST at the start of the day of the contract and remain in effect for the duration of the contract, including any extensions.

A. Insurance Requirements

(X) 1. General Liability Insurance

Comprehensive general public liability insurance shall be maintained with a combined single limit amount of not less than \$1,000,000.00 against claims for bodily injury, death, and property damage, and shall be maintained in full force during the life of the contract.

(X) 2. Owner and Contractor Protective Liability Insurance

Owner and contractor protective liability insurance shall be maintained with a combined single limit amount of not less than \$1,000,000.00 and shall be maintained in full force during the life of the contract.

(X) 3. Worker's Compensation Insurance

Worker's Compensation insurance shall be maintained in full force during the life of the contract, covering all employees engaged in performance of the contract pursuant to N.J.S.A. 34:15-12(a) and N.J.A.C. 12:235-1.6.

(X) 4. Employer's Liability Insurance

Employer's liability insurance in the full statutory amount required by New Jersey law shall be maintained in full force during the life of the contract.

(X) 5. Products and Completed Operations Liability Insurance

Products and completed operations liability insurance in the amount of \$100,000.00 shall be maintained in full force during the life of the contract.

(X) 6. Automotive Liability Insurance

Comprehensive automotive liability insurance shall be maintained with a combined single limit of not less than \$500,000.00 against claims for bodily injury, death, or property damage, and shall be maintained in full force during the life of the contract.

(X) 7. Pollution Liability Insurance

Pollution liability insurance with a single occurrence limit amount of not less than \$1,000,000.00 shall be maintained in full force during the life of the contract.

(X) 8. Other Forms of Insurance Required

The Borough of Highlands
and Colliers Engineering & Design, Inc. (DBA Maser Consulting)
shall be named as additional insureds on all insurance certificates issued for the project.

B. Certificates of the Required Insurance

Certificates of Insurance for those policies required above shall be submitted with the contract. Such coverage shall be with an insurance company authorized to do business in the State of New Jersey and shall name the Owner as an additional insured.

Self-insured contractors shall submit an affidavit attesting to their self-insured coverage and shall name the Owner as an additional insured.

C. Indemnification

The successful bidder shall indemnify and hold harmless the Owner and its officers, agents, servants, and employees from all claims, suits or actions, and damages or costs of every name and description to which the Owner may be subjected or put by reason of injury to the person or property of another, or the property of the Owner, resulting from (a) negligent acts or omissions on the part of the contractor, the contractor's agents, servants or subcontractors in the delivery of goods and services or materials and items, or in the performance of the work under the contract; and (b) the use of any copyrighted or copyrighted composition, valid trademark, secret process, patented or unpatented invention or article furnished or used in the performance of this contract.

VI. Pricing Information for Preparation of Bids

- A. The Owner is exempt from any local, state or federal sales, use or excise tax.
- B. Estimated Quantities (Open-End Contracts): The Owner has attempted to identify the item(s) and the estimated amounts of each item bid to cover its requirements; however, past experience shows that the amount ordered may be different than that submitted for bidding. The right is reserved to decrease or increase the quantities specified in the specifications pursuant to N.J.A.C. 5:30-11.2 and 11.10. NO MINIMUM PURCHASE IS IMPLIED OR GUARANTEED.
- C. Contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids submitted shall have included this cost.
- D. Bidders shall insert prices for furnishing goods and services or materials and items required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination and placement at locations specified by the Owner. As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.
- E. In the event of a public emergency declared at the local, state or federal level prior to the expiration of the contract, if the Owner opts to extend terms and conditions of the contract, the contractor agrees to extend the terms and conditions of this specification, whether existing or expiring for no longer than six months, for the performance of work for the duration of the emergency.

VII. Statutory and Other Requirements

The following are mandatory requirements of this bid and contract.

A. Mandatory Affirmative Action Certification

No firm may be issued a contract unless it complies with the affirmative action provisions of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1 et seq. The following information summarizes the full, required regulatory text, which is included as Exhibit A of this bid specification. Forms referenced below can be obtained from https://www.nj.gov/treasury/contract_compliance/.

1. Goods and Services (including professional services) Contracts

Each contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- i. A photocopy of a valid letter that the contractor is operating under an existing federally approved or sanctioned affirmative action program (good for one year from the date of the letter); or
- ii. A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4; or
- iii. A photocopy of an Employee Information Report (Form AA-302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

2. Maintenance/Construction Contracts

1. After notification of award, but prior to signing the contract, the contractor shall submit to the public agency compliance officer and the Department of Labor and Workforce Development, Construction Contract Compliance Unit (the "Department") an initial project workforce report (Form AA-201) electronically provided to the public agency by the Department for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.
2. The contractor shall also submit a copy of the monthly project workforce report (Form AA-202) once a month thereafter for the duration of the contract to the Division and to the public agency compliance officer. The contractor shall also cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the job and/or off-the-job programs for outreach and training of minorities and women.
3. During the performance of this contract, the contractor agrees as follows:
 - i. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the

contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

- ii. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex;
- iii. The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- iv. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time. However, if a subcontractor has a total workforce of four or fewer employees or if a contractor or subcontractor is performing under an existing Federally approved or sanctioned affirmative action program, the contract shall contain only the mandatory language required in (a) above, except for the language contained in the first sentence of this subparagraph.

B. New Jersey Anti-Discrimination

The contract for this bid shall require that the contractor agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including but not limited to N.J.S.A. 10:2-1 as included in Exhibit B of this document.

C. Americans with Disabilities Act of 1990

Discrimination on the basis of disability in contracting for the purchase of goods and services is prohibited. Bidders are required to read, and the successful bidder is required to comply with, the Americans With Disabilities Act as included in Exhibit C of this document, and agree that the

provisions of Title II of the Act are made a part of the contract. The contractor is obligated to comply with the Act and to hold the Owner harmless.

D. Statement of Ownership

N.J.S.A. 52:25-24.2 provides that no corporation, partnership, or limited liability company shall be awarded any contract nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, unless, prior to the receipt of the bid or accompanying the bid of said corporation, partnership, or limited liability company, bidders shall submit a statement setting forth the names and addresses of all stockholders in the corporation who own ten percent or more of its stock, of any class, or of all individual partners in the partnership who own a ten percent or greater interest therein, or of all members in the limited liability company who own a ten percent or greater interest therein, as the case may be. The included Statement of Ownership shall be completed and attached to the bid proposal. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding ten percent or more of that corporation's stock, or the individual partners owning ten percent or greater interest in that partnership, or the members owning ten percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the ten percent ownership criteria has been listed.

A bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a ten percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a ten percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a ten percent or greater beneficial interest.

The included Statement of Ownership shall be completed and attached to the bid proposal. This requirement applies to all forms of corporations and partnerships, including, but not limited to, limited partnerships, limited liability corporations, limited liability partnerships and Subchapter S corporations. Failure to submit a stockholder disclosure document shall result in rejection of the bid.

E. Proof of Business Registration

N.J.S.A. 52:32-44 requires that the successful bidder submit proof of its business registration and that of any named subcontractors prior to contract award or authorization. Proof of registration shall be a copy of the bidder's Business Registration Certificate (BRC). A BRC is obtained from the New Jersey Division of Revenue and Enterprise Services within the Department of the Treasury. N.J.S.A. 52:32-44 imposes the following requirements on contractors and all subcontractors that knowingly provide goods or perform services for a contractor fulfilling this contract:

1. The contractor shall provide written notice to its subcontractors and suppliers to submit proof of business registration to the contractor;
2. Subcontractors through all tiers of a project must provide written notice to their subcontractors and suppliers to submit proof of business registration and subcontractors shall collect such proofs of business registration and maintain them on file;
3. Prior to receipt of final payment from a contracting agency, a contractor must submit to the contracting agency an accurate list of all subcontractors or attest that none was used;
4. During the term of this contract, the contractor and its affiliates shall collect and remit, and shall notify all subcontractors and their affiliates, that they must collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into this State.

Before final payment is made under the contract, the contractor shall submit to the contracting agency a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a contractor, subcontractor or supplier who fails to provide proof of business registration or provides false business registration information shall be liable to a penalty of \$25 for each day of violation, not to exceed \$50,000, for each business registration not properly provided or maintained under a contract with a contracting agency.

Emergency Purchases or Contracts

For purchases of an emergent nature, the contractor shall provide its Business Registration Certificate within two weeks from the date of purchase or execution of the contract or prior to payment for work performed or to be performed, whichever is earlier.

F. Disclosure of Investment Activities in Iran

N.J.S.A. 52:32-55 prohibits State and local public contracts with persons or entities engaging in certain investment activities in energy or finance sectors of Iran. The successful bidder must indicate if they comply with the law by certifying the form. Pursuant to N.J.S.A. 40A:11-2.1 the owner is required to notify the New Jersey Attorney General if it determines a false certification has been submitted.

G. American Goods and Products to be used where possible

Only manufactured and farm products of the United States, wherever available, shall be used pursuant to N.J.S.A. 40A:11-18.

If boxes of the following items are checked, they are mandatory requirements of the bid proposal and contract.

(X) H. Document Checklist

Bidder shall complete and sign the Bid Submission Document Checklist and include it in the bid submission. For construction bids, failure to submit the checklist is a fatal defect and the bid will be rejected. This document serves as a guide to bidders of the documents that are required to be submitted with the bid.

(X) I. New Jersey Worker and Community Right To Know Act

The manufacturer or supplier of chemical substances or mixtures shall label them in accordance with the N.J. Worker and Community Right to Know Law (N.J.S.A. 34:5A-1 et seq., and N.J.A.C 8:59-1.1 et seq.,). All direct use containers shall bear a label indicating the chemical name(s) and Chemical Abstracts Service number(s) of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or their trade secret registry number(s) pursuant to N.J.A.C. 8:59-5. "Container" means a receptacle used to hold a liquid, solid or gaseous substance such as bottles, bags, barrels, cans, cylinders, drums and cartons. (N.J.A.C. 8:59-1.3). Further, all applicable Material Safety Data Sheets (MSDS) - hazardous substance fact sheet - must be furnished. All containers which are stored at an owner's facilities by the contractor or subcontractors shall display RTK labeling. Vendors with questions concerning labeling should contact the New Jersey Department of Health and Senior Services Right to Know Program for assistance in developing proper labels.

www.nj.gov/health/workplacehealthandsafety/right-to-know/

(X) J. Prevailing Wage Act

Pursuant to N.J.S.A. 34:11-56.25 et seq., contractors on projects for public work shall adhere to all requirements of the New Jersey Prevailing Wage Act. The contractor shall be required to submit a certified payroll record to the Owner within ten (10) days of the payment of the wages. In the event it is found that any worker, employed by the contractor or any subcontractor has been paid a rate of wages less than the prevailing wage required to be paid, the owner may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and the contractor and subcontractor then be required to continue the work to completion or otherwise. The contractor is also responsible for obtaining and submitting all subcontractors' certified payroll records within the aforementioned time period. The contractor shall submit said certified payrolls in the form set forth in N.J.A.C. 12:60-6.1(c). It is the contractor's responsibility to obtain any additional copies of the certified payroll form to be submitted by contacting the New Jersey Department of Labor and Workforce Development, Division of Workplace Standards. Additional information is available at https://www.nj.gov/labor/wagehour/wagerate/pwr_construction.html.

(X) K. The Public Works Contractor Registration Act

N.J.S.A. 34:11-56.48 et seq. requires that a general or prime contractor and any listed subcontractors named in the contractor's bid proposal shall possess a certificate at the time the bid proposal is submitted. After bid proposals are received and prior to award of contract, the successful contractor shall submit a copy of the contractor's certification along with those of all listed subcontractors. All non-listed subcontractors and lower tier sub-subcontractors shall be registered prior to starting work on the project. It is the general contractor's responsibility that all non-listed sub-contractors at any tier have their certificate prior to starting work on the job.

Under the law a "contractor" is "a person, partnership, association, joint stock company, trust, corporation or other legal business entity or successor thereof who enters into a contract" which is subject to the provisions of the New Jersey Prevailing Wage Act [N.J.S.A. 34:11-56.25, et seq.] It applies to contractors based in New Jersey or in another state.

The law defines "public works projects" as contracts for "public work" as defined in the Prevailing Wage statute [N.J.S.A. 34:11-56.26(5)]. The term means:

- "Construction, reconstruction, demolition, alteration, custom fabrication or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program."
- "Public work" shall also mean construction, reconstruction, demolition, alteration, custom fabrication or repair work, done on any property or premises, whether or not the work is paid for from public funds..."
- "Maintenance work" means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased. While "maintenance" includes painting and decorating and is covered under the law, it does not include work such as routine landscape maintenance or janitorial services.

To register, a contractor must provide the State Department of Labor with a full and accurately completed application form. The application form is available online at:

http://lwd.dol.state.nj.us/labor/wagehour/regperm/pw_cont_reg.html.

N.J.S.A. 34:11-56.55 specifically prohibits accepting applications for registration as a substitute for a certificate of registration.

(X) L. Non-Collusion Affidavit

The Affidavit shall be properly executed and submitted with the bid proposal.

(X) M. Pay To Play

Prospective bidders are advised of their responsibility to file an annual disclosure statement of political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 if they receive contracts in excess of \$50,000 from public

entities in a calendar year. **You, the prospective bidder are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.**

(X) N. Prompt Payment Law Disclosure

The New Jersey Law on Prompt Payment of Construction Contracts provides, at N.J.S.A. 2A:30A-2(a), that if a prime contractor has performed in accordance with contract provisions and the billing has been approved and certified by the Owner (or the Owner's agent), then the Owner is required to pay the amount due to the prime contractor not more than thirty (30) days after the billing date. However, in accordance with N.J.S.A. 2A:30A-2(a), that subsection shall not be applicable to the subject project where the governing body is required to vote on authorizations for each periodic payment, final payment or retainage monies, in which event the amount due may be approved and certified at the next scheduled public meeting of the governing body.

(X) O. Equipment Certification

Bidder shall certify on the Equipment Certification form that they control or have access to equipment necessary to do the required work if awarded the contract. If the bidder does not own or lease the equipment, a certification from the owner of the equipment that the bidder will have access to the equipment is required with the bid. (N.J.S.A. 40:11-20.)

VIII. Method of Contract Award

- A. The length of the contract shall be stated in the specifications. Pursuant to requirements of N.J.A.C. 5:30-5.1 et seq., any contract resulting from this bid shall be subject to the availability and appropriation of sufficient funds annually. Please see Section X, Termination of Contract, Sub-section E, for additional information.
- B. If the award is to be made on the basis of base bids only, it shall be made to that responsible bidder submitting the lowest base bid.
- C. If the award is to be made on the basis of a combination of base bids with selected options, it shall be made to that responsible bidder submitting the lowest net bid as per the below schedule:
 - 1. The lowest total Base Bid proposal will determine the basis of award.**
 - 2. Should the Borough have sufficient funding, the lowest total Base Bid Proposal + Alternate 1 will determine the basis of award.**
 - 3. Should the Borough have sufficient funding, the lowest total Bas Bid Proposal + Alternate 1 + Alternate 2 will determine the basis of award.**
- D. The Owner may also elect to award the contract on the basis of unit prices.
- E. The form of contract shall be submitted by the Owner to the successful bidder. Terms of the specifications/bid package prevail. Bidder exceptions must be formally accepted by the Owner.

- F. The successful bidder shall complete Form W-9 and submit to the Owner prior to contract award.

IX. Causes for Rejecting Bids

Bids may be rejected for any of the following reasons:

- A. All bids pursuant to N.J.S.A. 40A:11-13.2;
- B. If more than one bid is received from an individual, firm or partnership, corporation or association under the same name;
- C. Multiple bids from an agent representing competing bidders;
- D. The bid is inappropriately unbalanced;
- E. The bidder is determined to possess, pursuant to N.J.S.A. 40A:11-4b, Prior Negative Experience; or,
- F. If the successful bidder fails to enter into a contract within 21 days, Sundays and holidays excepted, or as otherwise agreed upon by the parties to the contract. In this case at its option, the Owner may accept the bid of the next lowest responsible bidder. (N.J.S.A. 40A:11-24b).

X. Termination of Contract

- A. If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the contract or if the contractor shall violate any of the requirements of the contract, the Owner shall there upon have the right to terminate the contract by giving written notice to the contractor of such termination and specifying the effective date of termination. Such termination shall relieve the Owner of any obligation for balances to the contractor of any sum or sums set forth in the contract. The Owner will pay only for goods and services accepted prior to termination.
- B. Notwithstanding the above, the contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the contractor and the Owner may withhold any payments to the contractor for the purpose of compensation until such time as the exact amount of the damage due the Owner from the contractor is determined.
- C. The contractor agrees to indemnify and hold the Owner harmless from any liability to subcontractors/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the Owner under this provision.
- D. In case of default by the contractor, the Owner may procure the goods or services from other sources and hold the contractor responsible for any excess cost.
- E. Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the Owner reserves the right to cancel the contract.
- F. ACQUISITION, MERGER, SALE AND/OR TRANSFER OF BUSINESS, ETC.

It is understood by all parties that if, during the life of the contract, the contractor disposes of his/her business concern by acquisition, merger, sale and or/transfer or by any means convey his/her interest(s) to another party, all obligations are transferred to that new party. In this event, the new party or parties will be required to submit all documentation/legal instruments that were required in the original bid/contract. Any change shall be approved by the Owner.

- G. The contractor will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the Owner.
- H. The Owner may terminate the contract for convenience by providing sixty (60) calendar days advanced notice to the contractor.
- I. The contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
- J. For contracts that exceed one year, each fiscal year payment obligation of the Owner is conditioned upon the availability of Owner funds appropriated or allocated for the payment of such an obligation. If funds are not allocated and available for the continuance of any services performed by the bidder awarded the contract (contractor) hereunder, whether in whole or in part, the Owner at the end of any particular fiscal year may terminate such services. The Owner will notify the contractor in writing immediately of any services that will be affected by a shortage of appropriated funds. This provision shall not be construed so as to permit the Owner to terminate the contract during the term, or any service hereunder, merely in order to acquire identical services from another contractor.
- K. Neither party shall be responsible for any resulting loss or obligation to fulfill duties as specified in any of the terms or provisions of a contract if the fulfillment of any term or provision of the contract is delayed or prevented by any revolutions, insurrections, riots, wars, acts of enemies, national emergencies, strikes, floods, fires, acts of God, or by any cause not within the control of the party whose performance is interfered with which by the exercise of reasonable diligence such party is unable to prevent. Additionally, if the fulfillment of any of the terms and provisions of the contract is delayed or prevented by any court order, or action or injunction or other such agreement, the contract shall become voidable by the owner by notice to the parties.

XI. Payment

- A. No payment will be made unless duly authorized by the Owner's authorized representative and accompanied by proper documentation.
- B. Payment will be made in accordance with the Owner's policy and procedures. Invoices shall specify, in detail, the period for which payment is claimed, the services performed during the prescribed period, the amount claimed and correlation between the services claimed and this proposal.
- C. The owner may withhold all or partial payments on account of subsequently discovered evidence including but not limited to the following:

1. Deliverables not complying with the project specification;
2. Claims filed or responsible evidence indicating probability of filing claims;
3. A reasonable doubt that the contract can be completed for the balance then unpaid.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

- D. Public funds may be used to pay only for items delivered or work performed. The Owner shall not pay penalties and/or interest on overdue bills unless otherwise required by law. No employee is authorized to sign a letter of credit or any other document that represents a legal commitment on the part of the Owner to pay additional fees.

XII. Liquidated Damages

A. Damages for Cause

The Contractor shall be liable to the Owner for all expenses, losses, damages, as determined by the Engineer, incurred in consequence of any defect, omission or mistake of the Contractor, his subcontractors, agents or employees, or for the making good thereof.

B. Costs of Engineering and Inspection

There will be deducted from any payments due the Contractor and retained by the Owner an amount to defray the cost of wages and overhead paid by the Owner to any Project Manager, Resident Engineer and/or Observer(s) employed on the work for any time in excess of the completion time stipulated, in excess of eight (8) hours per day or on Saturdays, Sundays or legal holidays. This amount shall be determined at the rate of One Hundred Eighty Dollars (\$180.00) per man hour for each Project Manager and One Hundred Fifty Dollars (\$150.00) for each Observer or Resident Project Representative.

C. Damages for Non-Completion

If the Contractor is permitted to finish the work after the specified period of completion, the Owner shall have full authority to and may deduct and retain from any payments due the Contractor the sum of One Thousand Dollars (\$1000) for each calendar day thereafter that the contract remains uncompleted, as a liquidated damage, and not as a penalty, to defray reasonable loss to the Owner due to failure to complete the work in the stipulated time.

XIII. Other Provisions

- A. Both parties agree to comply with all requirements of the Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as maybe amended from time to time, and the corresponding HIPAA regulations for the confidentiality and security of medical information. If awarded the bid, the contractor shall:
1. Not use or disclose protected health information other than as permitted or required by law
 2. Use appropriate safeguards to protect the confidentiality of the information
 3. Report any use or disclosure not permitted

The contractor, by execution of the contract, shall thereby indemnify and hold the owner harmless from any and all liabilities, claims, actions, costs and penalties which may be incurred as the result of the failure of the contractor to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) or any other statute or case law protecting the privacy of persons using its services.

- B. The Owner shall retain all of its rights and interest in any and all documents and property both hard copy and digital furnished by the Owner to the successful bidder (contractor) for the purpose of assisting the contractor in the performance of this contract. None of the documents and/or property shall, without the written consent of the Owner, be disclosed to others or used by the contractor or permitted by the contractor to be used by their parties at any time except in the performance of the resulting contract.

The contractor shall not have the right to use, sell, or disclose the total of the interim or final work products, or make available to third parties, without the prior written consent of the owner. Any information supplied to the Owner may be required to be supplied on CD/DVD or USB flash drive media compatible with Microsoft Windows, and Microsoft Office Suite 2010 or greater.

- C. Under state and federal statutes, certain government records are protected from public disclosure. The Owner, the contractor and any subcontractors have a responsibility and an obligation to safeguard from public access an employee's personal information with which it has been entrusted when disclosure thereof would violate the employee's reasonable expectation of privacy. All payroll, personnel and health insurance related files are confidential. Additionally, the contractor and any subcontractors may be privy to sensitive law enforcement information or investigations during their review which must remain confidential. The Owner retains the right to make any public disclosure under the law. Also, among government records deemed confidential are administrative or technical information regarding computer hardware, software and networks that, if disclosed, would jeopardize computer security. The contractor and any subcontractor(s) are prohibited from the sale or distribution of all supplied information to any third party.
- D. Proof of licensure for any activity regulated by the State of New Jersey and required to do the work required under this specification, for either the firm or the person responsible for the work, shall be provided as required by the Owner.

EXHIBIT A

Mandatory Equal Employment Opportunity Language

N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq.

Construction Contracts

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Department of Labor and Workforce Development, Construction Contract Compliance Unit (the "Department"), may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B, and C, as long as the Department is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the

Department, that its percentage of active “card carrying” members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor’s or subcontractor’s prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Department, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity

and nondiscrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Department. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Department, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Department.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Department and submitted promptly to the Department upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority

advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Department an initial project workforce report (Form AA-201) electronically provided to the public agency by the Department, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Department, and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Department as may be requested by the Department from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Department for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT B

New Jersey Anti-Discrimination Provisions

N.J.S.A. 10:2-1 et seq.

Pursuant to N.J.S.A. 10:2-1, if awarded a contract, the contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

EXHIBIT C

Americans with Disabilities Act of 1990

Equal Opportunity for Individuals with Disability

The contractor and the owner do hereby agree that the provisions of Title 11 of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decision of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim, if any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

GENERAL CONDITIONS

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

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

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

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

11.11	Applicability of New Jersey Department of Community Affairs Regulations.....	50
Article 12—Claims		50
12.01	Claims	50
Article 13—Cost of the Work; Allowances; Unit Price Work		52
13.01	Cost of the Work.....	52
13.02	Allowances.....	55
13.03	Unit Price Work.....	55
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work.....		56
14.01	Access to Work	56
14.02	Tests, Inspections, and Approvals.....	56
14.03	Defective Work	57
14.04	Acceptance of Defective Work	58
14.05	Uncovering Work	58
14.06	Owner May Stop the Work	59
14.07	Owner May Correct Defective Work	59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period.....		59
15.01	Progress Payments	59
15.02	Contractor’s Warranty of Title.....	63
15.03	Substantial Completion.....	63
15.04	Partial Use or Occupancy	64
15.05	Final Inspection	64
15.06	Final Payment	64
15.07	Waiver of Claims	66
15.08	Correction Period.....	66
Article 16—Suspension of Work and Termination		67
16.01	Owner May Suspend Work	67
16.02	Owner May Terminate for Cause.....	67
16.03	Owner May Terminate for Convenience	68
16.04	Contractor May Stop Work or Terminate	68
Article 17—Final Resolution of Disputes		69
17.01	Methods and Procedures	69
Article 18—Miscellaneous.....		70
18.01	Giving Notice.....	70

18.02	Computation of Times	70
18.03	Cumulative Remedies	70
18.04	Limitation of Damages	70
18.05	No Waiver	70
18.06	Survival of Obligations	70
18.07	Controlling Law	71
18.08	Assignment of Contract	71
18.09	Successors and Assigns	71
18.10	Headings	71

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents. Notice of Addenda shall be provided in accordance with N.J.S.A. 40A:11-23(c)(2).
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract

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

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

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

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

Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

- 43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.
- 44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
- 45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 46. *Technical Data*
 - a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
- 47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
- 48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

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

“furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

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

ARTICLE 2—PRELIMINARY MATTERS

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

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

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

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

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the

recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

3.02 *Reference Standards*

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

to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

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

possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

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

3.05 *Reuse of Documents*

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

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

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

4.05 *Delays in Contractor's Progress*

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

adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and

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

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

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

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

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.
- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 - 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or

4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

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

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

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

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

5.05 *Underground Facilities*

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

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

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

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

5.06 *Hazardous Environmental Conditions at Site*

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

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

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

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

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

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

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

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

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

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

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

6.02 *Insurance—General Provisions*

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

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

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

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

6.03 *Contractor's Insurance*

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

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

6.04 *Builder's Risk and Other Property Insurance*

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

6.05 *Property Losses; Subrogation*

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

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

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

6.06 *Receipt and Application of Property Insurance Proceeds*

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

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

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

7.02 *Supervision and Superintendence*

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

7.03 *Labor; Working Hours*

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

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

7.04 *Services, Materials, and Equipment*

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

7.05 *"Or Equals"*

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

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

7.06 Substitutes

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

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

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

7.07 *Concerning Subcontractors and Suppliers*

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

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

7.08 *Patent Fees and Royalties*

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

7.09 *Permits*

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

7.10 *Taxes*

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

7.11 *Laws and Regulations*

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

7.12 *Record Documents*

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

7.13 *Safety and Protection*

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

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

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

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

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

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

D. Resubmittal Procedures for Shop Drawings and Samples

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

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

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

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

7.17 Contractor's General Warranty and Guarantee

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

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

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 Delegation of Professional Design Services

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

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

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

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

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

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

8.03 *Legal Relationships*

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

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

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).
- 9.12 *Safety Programs*
- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
 - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

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

10.03 *Resident Project Representative*

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

10.04 *Engineer's Authority*

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

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

10.05 *Determinations for Unit Price Work*

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

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

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

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

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

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

11.02 *Change Orders*

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

11.03 *Work Change Directives*

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

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

11.04 *Field Orders*

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

11.05 *Owner-Authorized Changes in the Work*

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

11.06 *Unauthorized Changes in the Work*

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

11.07 *Change of Contract Price*

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

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

11.08 *Change of Contract Times*

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

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
 - 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
 - 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

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

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

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

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

11.10 *Notification to Surety*

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

11.11 *Applicability of New Jersey Department of Community Affairs Regulations*

- A. Other than for minor field (site) modifications in the Work, all changes in quantities, work performed, services rendered, materials, supplies, or equipment delivered or provided shall be submitted to the Owner for authorization.
- B. All Change Orders and Field Orders shall be authorized, permitted, or accepted in accordance with the applicable regulations of the New Jersey Department of Community Affairs, in general, and, in particular, N.J.A.C. 5:30-11.3; 5:30-11.4; 5:30-11.5; 5:30-11.7; 5:30-11.8; and 5:30-11.9.

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

- b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

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

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
 - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
 - 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
 - 3. Adjusted unit prices will apply to all units of that item.

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required

by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

- E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

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

14.07 *Owner May Correct Defective Work*

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

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

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement and N.J.S.A. 40A:11-16.3.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. 30 calendar days after the billing date, which shall be the first calendar day of the month, and presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become

due, and when due will be paid by Owner to Contractor in accordance with N.J.S.A. 2A:30A-2.

E. Reductions in Payment by Owner

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

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

- 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record

documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

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

Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the

Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

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

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2)

Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.
- C. All claims and disputes shall be resolved in accordance with the process of alternative dispute resolution set forth in N.J.S.A. 2A: 30A-2. The process of alternative dispute resolution required in connection with this Project shall be non-binding and shall be a condition

precedent to the institution of litigation to adjudicate the matter in dispute by either the Owner or the Contractor.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

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

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

**BOROUGH OF HIGHLANDS
SUPPLEMENTAL CONDITIONS**

BOROUGH OF HIGHLANDS
SUPPLEMENTARY CONDITIONS

- BSC-1 The following outline of the scope of work for this project is intended as a supplement to the General Instructions and Conditions. The work contemplated includes, but is not limited to the following:
1. Milling and Paving Operations
 2. Curb Ramps and Detectable Warning Surface
 3. Concrete Curb and Gutter Installation
 4. Asphalt Curb Installation
 5. Pavement Repair Strip
 6. Pavement Markings
 7. Restoration of the Project Area
- BSC-2 A pre-construction conference shall be held prior to the start of work at a time and place designated by the Engineer.
- BSC-3 The Engineer shall be duly authorized to represent the OWNER in the execution of the work covered by the Specification and Contract.
- BSC-4 The successful bidder shall be in a position to mobilize immediately and shall start construction at the direction of the Engineer upon execution of all contract documents.
- BSC-5 The OWNER shall have the authority to limit or postpone any work being performed under this contract if such limitations or postponements are in the best interest of the OWNER. The Contractor shall make no claims for any delays resulting from the limitations or postponements of work by the OWNER.
- BSC-6 Site Conditions: The Contractor, by the submission of a bid, acknowledges as follows: that he has satisfied himself as to the nature and location of the work, the general conditions, including, but not limited to, those bearing on accessibility, transportation, disposal, handling and storage of materials; the availability of labor, water supplies, materials, power, roads, ground conditions and obstacles; and the character of the equipment and facilities needed prior to and during prosecution of the work. Any failure of the contractor to acquaint himself with any and all factors bearing on the project will not relieve him from the responsibility of estimating properly the difficulty and cost of successfully performing the work under the terms of the contract, and at the unit, or lump sum prices bid in the Proposal.
- BSC-7 Increase, Decrease or Delete Quantities: The Owner reserves the right to increase, decrease, or delete the quantities or items specified in the Proposal prior to and/or after contract award, if such changes will be in the best interest of the Owner. The Contractor shall accept payment for the actual total quantity of work completed under each item, at the unit price or lump sum price bid for such item in the Proposal, and shall make no claim for any anticipate profits, costs, or charges which may have varied due to any changes made in the quantities as state in the Proposal.
- BSC-8 The Contractor shall not initiate work on the project until such time as authorization is given by the OWNER or Engineer. Written notice shall be provided by the Contractor to the affected residents no less than 48 hours prior to the start of construction activities in those areas.
- BSC-9 All quantity adjustments, contract changes, and change orders shall be prepared in accordance with N.J.A.C. 5:34-4.1 et. seq.
- BSC-10 If, in the sole opinion of the Engineer, weather conditions are not suitable for any or all items of work under this contract to be performed, the Contractor shall not perform such work until weather conditions are suitable. The Contractor is warned that this may cause items of work to be delayed for extended periods of time. No extra payments shall be made for such delays and the Contractor shall make no claims for damages caused by such delays.

- BSC-11 The Contractor shall understand that time is of the essence on this project. The Contractor shall expedite the work within the Contract time limit. The Contractor is required to submit a schedule satisfactory to the Engineer showing, in general, the times intended to commence and construct the contract items.
- BSC-12 The Contractor shall coordinate the limits of work and any storage areas required with the OWNER and Engineer. All work must be scheduled in such a manner to permit continued operation of the appropriate streets adjacent to the project.
- BSC-13 The OWNER and the Engineer shall be notified at least 72 hours prior to the commencement of construction. No work shall commence until such time as the Contractor has received permission from the Engineer.
- BSC-14 In the event it is found that any workman, employed by the Contractor or any subcontractor on this project has been paid a rate of wages less than the prevailing wage required, the OWNER may terminate the Contractor's or subcontractor's right to proceed with the work or such part of the work as to which there has been failure to pay required wages and to prosecute the work to completion or otherwise, the Contractor and his surety(ies) shall be liable to the OWNER for any excess costs associated thereby.
- Prior to final payment, the Contractor shall be required to execute and deliver an AFFIDAVIT OF COMPLIANCE in a form provided by the OWNER as required by the New Jersey Prevailing Wage Act.
- BSC-15 The Contractor shall take reasonable care and caution to preserve and protect all existing pavements, curbs, grassed and landscaped areas, trees, sidewalks, roof drains, storm and sanitary sewers, utility lines, fences, driveways, building structures, and private and public property beyond the limits of work. Damage to any of the above caused by careless construction procedures in the opinion of the Engineer shall be replaced at the Contractor's expense.
- BSC-16 The Contractor shall be responsible for the disposal of all materials and debris that will not be reused. Said materials and debris must be removed during site clearing including but not limited to concrete, grass, existing drainage components, fill, and any other unusable material. There shall be no separate payment for disposal and all costs required for and incidental to the completion of work herein as shown on the drawings or as directed by the Engineer shall be included in the unit price for the Item "Clearing Site".
- BSC-18 The Contractor shall be responsible for the disposal of all materials and debris that will not be reused. Said materials and debris must be removed during site clearing including but not limited to concrete, grass, existing drainage components, fill, and any other unusable material. There shall be no separate payment for disposal and all costs required for and incidental to the completion of work herein as shown on the drawings or as directed by the Engineer shall be included in the unit price for the Item "Clearing Site".
- BSC-19 All permits, including dewatering permits, needed must be obtained by the Contractor. Contractor responsible for all permit fees.
- BSC-20 The Contractor shall remove and dispose of all excess unusable soil from the site as per NJDOT section 202.03.07. Payment shall be made through Clearing Site.

STANDARD SPECIFICATIONS

(SECTION S)

STANDARD SPECIFICATIONS

The Standard Specifications for Road and Bridge Construction of New Jersey Department of Transportation, 2019 Edition; is added to and/or amended elsewhere herein by the Notice to Contractors (Advertisement), Proposal, Information for Bidders, General Conditions, Supplemental Conditions, Project Plans, and Supplementary Specifications; shall, insofar as technical requirements are involved, govern in the execution of this project.

Such Standard Specifications are made a part of these Specifications by this reference and will not be repeated herein. It is the responsibility of prospective bidders to familiarize themselves with these Standard Specifications, copies of which may be examined at the office of the Engineer and may be obtained, upon payment of the cost thereof, from:

Department of Transportation
State of New Jersey
1035 Parkway Avenue
Trenton, New Jersey 08625

The Notice to Contractors (Advertisement), Proposal, General Conditions, Special Provisions, Project Plans and/or Supplementary Specifications shall govern and prevail in the case of conflict between them and the Standard Specifications.

In these Standard Specifications the words "COMMISSIONER" or "DEPARTMENT" shall refer to and mean the person, persons, body, board or agent legally empowered to enter into contracts and otherwise legally act for the Owner. The word "STATE" shall refer to and mean the professional engineering representative of the Owner as hereinbefore defined and the word "ENGINEER" shall refer to and mean the professional engineering representative of the Owner as hereinbefore defined and the word "INSPECTOR" shall mean the authorized project representative of the Engineer with the authority as hereinbefore defined. The word "LABORATORY" shall mean and refer to the Engineer who may, at his discretion, and with the consent of the Owner, employ qualified technical personnel or testing laboratories to assist him in fulfilling the duties normally assigned to the "LABORATORY" in these Standard Specifications.

When reference is made herein to the bulletins, standards, specifications, publications or requirements of the American Association of State Highway Officials (AASHTO), the American Concrete Institute (ACI), the American Society of Civil Engineers (ASCE) or similar national or regional societies, associations, institutes or organizations; the requirements of the bulletins, specifications, publications or requirements referred to shall be considered a part of these Specifications by such reference and shall not be repeated herein but shall have the same import and be as binding as if herein set forth in full.

The Contractor is made aware that regular text denotes the Supplementary changes made by the NJDOT. Paragraphs and Pay Items in bold text denote revisions and additions made by the Engineer to be project specific.

WAGE RATES

The contractor shall pay the minimum wage rates determined by the New Jersey Department of Labor.

State wage rates may be obtained from the New Jersey Department of Labor (Telephone: 609-292-2259) or by accessing the Department of Labor's web site at http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevaling_wage_determinations.html The State wage rates in effect at the time of award will be made a part of this Contract, pursuant to Chapter 150, Laws of 1963 (NJSA 34:11-56.25, *et seq.*).

In the event it is found that any employee of the contractor or any subcontractor covered by the contract, has been paid a rate of wages less than the minimum wage required to be paid by the contract, the contracting agency may terminate the contractor's or subcontractor's right to proceed with the work, or such part of the work, as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The contractor and his sureties shall be liable to the contracting agency for any excess costs occasioned thereby.

GENERAL

All awards shall be made subject to the approval of the New Jersey Department of Transportation. No construction shall start before approval of said award by the New Jersey Department of Transportation. Prior to the start of construction the contractor must submit a Material Questionnaire (SA-11) listing all sources of materials. Any materials used on the project from a non-approved New Jersey Department of Transportation source will be considered non-participating. The contractor is also notified that the District Office, Division of Local Aid and Economic Development must be notified of the construction commencement date at least five (5) calendar days prior to the start of construction.

Award of contract and subletting will not be permitted to, materials will not be permitted from, and use of equipment will not be permitted that is owned and/or operated by, firms and individuals included in the report of suspensions, debarments and disqualifications of firms and individuals as maintained by the Department of the Treasury, General Services Administration, CN-039, Trenton NJ 08625 (609-633-3990).

Payment for a pay item in the proposal includes all the compensation that will be made for the work of that item as described in the contract documents unless the "basis of payment" clause provides that certain work essential to that item will be paid for under another pay item.

Whenever any section, subsection, subpart or subheading is amended by such terms as changed to, deleted or added it is construed to mean that it amends that section, subsection, subpart or subheading of the 2019 Standard Specifications unless otherwise noted.

Whenever reference to page number is made, it is construed to refer to the 2019 Standard Specifications unless otherwise noted.

Henceforth in this supplementary specification whenever reference to the State, Commissioner, Department, Engineer or Inspector is made, it is construed to mean the particular municipality or county executing this contract.

Whenever reference to Title 27 is made, it is construed to mean Title 40.

SPECIAL PROVISIONS

AUTHORIZATION OF CONTRACT

The Contract is authorized by the provisions of Title 27 of the Revised Statutes of New Jersey and supplements thereto, and Title 23 of the United States Code - Highways.

The Contract is authorized by the provisions of Title 27 of the Revised Statutes of New Jersey and supplements thereto.

SPECIFICATIONS TO BE USED

The 2019 Standard Specifications for Road and Bridge Construction, of the New Jersey Department of Transportation (Department) as amended herein will govern the construction of this Project and the execution of the Contract.

These Special Provisions consist of the following:

Pages SP1 to SP29 inclusive.

General wage determinations issued under Davis-Bacon and related acts, published by US Department of Labor, may be obtained from the Wage Determinations online website at sam.gov. Select state, county and construction type heading: HIGHWAY where the Project is to be performed then click Search.

Pay the prevailing wage rates determined by the United States Secretary of Labor and the New Jersey Department of Labor and Workforce Development. If the prevailing wage rate prescribed for any craft by the United States Secretary of Labor is not the same as the prevailing wage rate prescribed for that craft by the New Jersey Department of Labor and Workforce Development, pay the higher rate.

State wage rates may be obtained from the New Jersey Department of Labor & Workforce Development (Telephone: 609-292-2259) or by accessing the Department of Labor & Workforce Development's website at https://www.nj.gov/labor/wagehour/wagerate/prevailing_wage_determinations.html. The State wage rates in effect at the time of award are part of this Contract, pursuant to Chapter 150, Laws of 1963 (N.J.S.A. 34:11-56.25 et seq.)

If an employee of the Contractor or subcontractor has been paid a rate of wages less than the prevailing wage, the Department may suspend the Work, and declare the Contractor in default.

The NJDOT must report all suspected or reported violations to the federal agency providing the funding for the project.

Contractor's compliance is required with the Copeland "Anti-Kickback" Act, (40 U.S.C. 3145), as supplemented by the Department of Labor regulations (29 CFR Part 3, "Contractors and subcontractors on Public Building or Public Work Financed in Whole or In Part by Loans or Grants from the United States"). Each contractor or subcontractor is prohibited from inducing by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The NJDOT must report all suspected or reported violations to the federal agency providing the funding for the project.

DIVISION 100 – GENERAL PROVISIONS

SECTION 101 – GENERAL INFORMATION

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 103 – AWARD AND EXECUTION OF CONTRACT

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 104 – SCOPE OF WORK

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 105 – CONTROL OF WORK

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 106 – CONTROL OF MATERIAL

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 107 – LEGAL RELATIONS

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 108 – PROSECUTION AND COMPLETION

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 109 – MEASUREMENT AND PAYMENT

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

DIVISION 150 – CONTRACT REQUIREMENTS

SECTION 151 – PERFORMANCE BOND AND PAYMENT BOND

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 152 – INSURANCE

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 153 – PROGRESS SCHEDULE

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 154 – MOBILIZATION

154.01 DESCRIPTION

THE FOLLOWING IS ADDED:

MOBILIZATION shall include the cost of initiating the Contract, and such portions of the following that are required for the Project: setting up the Contractor's general plant, offices, shops, storage areas, sanitary and other facilities as required; providing access to the project sites; obtaining necessary permits and licenses, and payment of fees; protecting existing utilities; lighting work areas; providing working drawings; sampling and testing of materials; providing required insurance and bonds.

154.02 MATERIALS

THE FOLLOWING IS ADDED:

Materials shall include, but not be limited to, all items necessary to prevent public entry to the site of work. These items shall include: snow fence, lights, barricades, or other means necessary to prevent entry of the public to the site of work.

Any such equipment that is necessary to clean and prepare roads, including graders, shovels, picks, and mechanical sweepers. Mechanical sweepers shall be of the enclosed type and shall be provided with a suitable dust control apparatus. Sweepers which raise dust will not be acceptable.

154.03 PROCEDURE

THE FOLLOWING IS ADDED:

Prior to the start of work, it is the responsibility of the CONTRACTOR to notify the owners of the overhead and underground utilities that may be encountered during all construction operations.

Prior to any excavation, the CONTRACTOR shall have all utilities marked out. If applicable, the CONTRACTOR shall arrange for any necessary utility work and shall reschedule his operations appropriately.

The CONTRACTOR shall take care and caution to preserve and protect all existing pavements, curbs, landscape areas, sidewalk, private and public property along and adjacent to the lines of work. Any destruction to any of the above, beyond the limits of work, or caused by careless construction procedures shall be replaced by the CONTRACTOR at no additional cost to the OWNER.

The CONTRACTOR shall notify all property owners affected by the proposed work at least seventy-two (72) hours prior to the commencement of construction. This notification shall be done by door-hangers or letters and should indicate the anticipated starting and completion dates.

CONTRACTOR shall provide barricades to protect the public from injury from the CONTRACTOR's work. Barricades shall be placed so as to prevent unauthorized persons from entering the work area. Barricades shall consist of snow fence, lights, or other means necessary to prevent entry to the work area.

154.04 MEASUREMENT & PAYMENT
THE FOLLOWING IS ADDED:

MOBILIZATION WILL NOT BE MEASURED FOR PAYMENT. NO SEPARATE PAYMENT WILL BE MADE FOR MOBILIZATION. THE CONTRACTOR SHALL PERFORM ALL WORK DESCRIBED IN THIS SECTION AND INCLUDE COSTS UNDER THE PAY ITEM "CLEARING SITE".

SECTION 155 – CONSTRUCTION FIELD OFFICE

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 156 – MATERIALS FIELD LABORATORY AND CURING FACILITY

THIS SECTION IS NOT APPLICABLE TO THIS CONTRACT

SECTION 157 – CONSTRUCTION LAYOUT AND MONUMENTS

THE SECTION IS RENAMED TO:

SECTION 158 – SOIL EROSION AND SEDIMENT CONTROL AND WATER QUALITY CONTROL

158.04 MEASUREMENT AND PAYMENT

SOIL EROSION AND SEDIMENT CONTROL AND WATER QUALITY CONTROL WILL NOT BE MEASURED FOR PAYMENT. NO SEPARATE PAYMENT WILL BE MADE FOR SOIL EROSION AND SEDIMENT CONTROL AND WATER QUALITY CONTROL. THE CONTRACTOR SHALL PERFORM ALL WORK DESCRIBED IN THIS SECTION AND INCLUDE COSTS UNDER THE VARIOUS PAY ITEMS IN THE PROPOSAL.

SECTION 159 – TRAFFIC CONTROL

159.01 Description.

THE FOLLOWING IS ADDED AFTER THE FIRST SENTENCE:

The Contractor shall be responsible for the proper notification of residences, businesses, emergency services, busing services and all other parties affected by the traffic control implemented on the project.

All Local, County and State police coordination needed to maintain, restrict or detour traffic is to be included in the work of this section. The CONTRACTOR shall develop a traffic control plan and schedule for approval by the Engineer and the Borough of Highlands Police Department. All lane and road closures are subject to approval by the Borough of Highlands Police Department.

159.04 MEASUREMENT AND PAYMENT

THE ENTIRE TEXT IS CHANGED TO:

No separate payment will be made for Traffic Control items other than breakaway barricades, drums, traffic cones, construction signs, and uniformed traffic directors. All costs for additional traffic control items shall be included in the prices bid for the various items in the Proposal including the creation of traffic control plans, flaggers, traffic devices, safety fences, variable message signs, detouring, and all other work and material described in this section.

UNIFORMED TRAFFIC DIRECTORS, IF REQUIRED, SHALL BE HIRED BY THE CONTRACTOR. THE CONTRACTOR SHALL PAY THE POLICE DEPARTMENT FOR UNIFORMED TRAFFIC DIRECTORS, WHICH COSTS SHALL BE PAID FOR UNDER THE TRAFFIC DIRECTOR, FLAGGER PAY ITEM. THE COSTS SHALL BE DIRECTLY REIMBURSED TO THE CONTRACTOR AT THE CURRENT SET HOURLY RATE WITHOUT MARKUP OF THE PRICE.

Contractor shall submit invoices submitted to the Police Department to the Engineer as part of his pay application back up.

There shall be no separate payment for any material or effort for the Contractor to provide the proper notification of residences, businesses, emergency services, busing services and all other parties affected by the construction activities implemented on the project.

THE FOLLOWING IS ADDED TO THE PAY ITEMS:

Pay Item

UNIFORMED TRAFFIC DIRECTORS

Pay Item

ALLOWANCE

SECTION 161 – FINAL CLEANUP

THE FOLLOWING IS ADDED:

161.03.02 Restoration

Restoration not specifically called out with construction notes, such as grading, concrete and paver walks, lawn, fencing, railings, curb, driveway restoration, pavement restoration, trench restoration, signage, survey monuments, water and gas valves, cleanouts, roof leaders or similar piping, benches, and any other items disturbed or removed during construction shall be restored and reset to their original condition and location. The Contractor shall reset items at their preconstruction locations, unless otherwise directed by the Engineer. Amenities which are anchored to the ground shall be reset utilizing footing sizes, anchoring methods and materials as specified by the product's manufacturer or as approved by the Engineer. Survey monuments shall be reset by a professional land surveyor licensed in the state of New Jersey. All costs associated with site restoration shall be included in the various pay items scheduled in the proposal.

All fences, decorative landscaping, signposts, street marking posts, receptacles, benches, and all other features that interfere with construction operations shall be removed and reset in order to perform work. Any material damaged during construction shall be replaced and installed in its original location. All costs associated with site restoration shall be included in the various pay items scheduled in the proposal.

In areas where existing paver walkways are to be removed and replaced with concrete sidewalk, the Contractor shall reset pavers at the limits of construction to meet the location and grades of the new sidewalk. If a paver soldier course surrounds the existing pavers, the Contractor shall reset the existing paver soldier course, supplementing with additional pavers, at the limits of concrete sidewalk construction. All costs associated with resetting paver sidewalks at the limits of concrete sidewalk construction shall be included in the various pay items scheduled in the proposal.

161.04 MEASUREMENT AND PAYMENT

Restoration will not be measured for payment. No separate payment will be made for restoration. The contractor shall perform all work described in this section and include costs under the various pay items in the proposal.

DIVISION 200 – EARTHWORK

SECTION 201 – CLEARING SITE

201.03.01 Clearing Site

THE FOLLOWING IS ADDED:

Work for **CLEARING SITE** shall include but is not limited to the removal and disposal of existing miscellaneous roadway material, castings, drainage structures, pipe, endwalls, foundations, fencing, driveways, miscellaneous debris, lawn, removal and/or relocation of signs, relocation of mailboxes, tree trimming, restoration, and any other work required to prepare the site for construction.

The **CONTRACTOR** is responsible to clear any and all items required to build the project as shown on the plans. The notes shown on the plans may not be all-inclusive. Any items not specifically shown for removal on the plans, but required to build the proposed improvements shall be removed and disposed of under **CLEARING SITE**.

Before any clearing site work or mobilization is performed at the project site, the Contractor is to film a pre-construction video of the entire existing site. The video should be common DVD standard formatting found in any home. One copy should be given to the Owner and the other copy to the Engineer at the Pre-Construction Meeting or soon thereafter. The notice to proceed will not be issued until the **ENGINEER** has received the pre-con video. All existing driveways, aprons, sidewalks and other private property shall be specifically included in the video. Special attention shall be taken to these items to ensure accurate restoration.

Restoration not specifically called out with construction notes, such as grading, concrete and paver walks, lawn, fencing, walks, curb, driveway restoration, pavement restoration, signage, and any other items disturbed or removed during construction shall be restored and reset to their original condition and location. All costs associated with site restoration shall be paid for under the **CLEARING SITE** pay item in the proposal.

All fences, decorative landscaping, signposts, street marking posts, asphalt, concrete, inlets, and all other features that interfere with construction operations shall be removed and reset in order to perform work. Any damaged material shall be replaced and installed in its original location. Include all costs associated with work in the **CLEARING SITE** pay item in the Proposal.

Any items to remain including but not limited to pavers, stairs, amenities, or any other items removed, replaced or disturbed, shall be restored, and reset to their original condition and location.

Unless otherwise directed, all excess material shall be removed from the site and disposed of by the **CONTRACTOR**. Should the **OWNER** wish to retain portions of the excess material, the **CONTRACTOR** shall deliver said material to the required location within the Borough at no additional cost to the **OWNER**.

CONTRACTOR shall also remove and dispose of all construction debris. All debris shall be cleaned up on a daily basis and placed in containers or trucks. The materials shall be removed from the site of work and disposed of by the **CONTRACTOR** at no additional cost to the **OWNER**.

The **CONTRACTOR**, during the construction of the project, shall not stockpile materials or his equipment on any private property; except in areas designated on the plans or as directed by the **ENGINEER**. Areas for stockpiling and staging shall be approved by the **ENGINEER** prior to the commencement of construction.

All dust, dirt, debris and other foreign materials including vegetation shall be removed from the surface of the road which is being repaired. All material, of whatever nature, resulting from the preparation of roads, shall be removed from the site of work and disposed of by the **CONTRACTOR** at no additional cost to the **OWNER**.

Contractor shall be made aware that there are various utilities, above or below ground, that will need to be relocated, raised, or lowered that are currently within the project limits. All utility items including but not limited

to utility boxes, valves, meters, etc. that need to be adjusted and/or relocated to complete the project must be completed. All material, labor, and coordination with the relevant utilities shall be paid for through the lump sum item Clearing Site. No separate payment shall be made for any additional material, labor, and utility coordination to adjust or replace any utility entity to conform with the proposed improvements. Any utility entity that is in existing pavement, curb, sidewalk, or grass will need to be set in concrete in a manner that conforms with the Contract Documents. Contractor shall have no claim for delays due to utility companies needing to reset features.

This includes any materials required by the Borough and various utilities to establish the utility entities in a manner that allow them to be accessible and operable. All materials needed to set utility entities in the sidewalk, including but not limited to risers, C-4 boxes, rings, etc., shall be paid for through Clearing Site. This note accounts for any entity for any utility, above or below ground, which may pose as a conflict to the construction of the proposed improvements. The Contractor shall take notice that they should visit the site and inspect the level of effort, material, and coordination needed to adjust these utility entities to complete the project and include that fee in Clearing Site.

BASED ON THE HISTORICAL PERFORMANCE OF THE EXISTING BULKHEAD ALONG WASHINGTON AVENUE, THE FOLLOWING MEASURES MUST BE CONDUCTED DURING THE PROPOSED PAVEMENT PROJECT OF WASHINGTON AVENUE:

- 1. THE CONTRACTOR SHALL INCLUDE PRE- AND POST-CONSTRUCTION VIDEO DOCUMENTATION AND SURVEY AS PART OF THE BID.**
- 2. THE CONTRACTOR SHALL CONDUCT DETAILED MONITORING OF THE BULKHEAD THROUGHOUT THE PROJECT. IF ANY MOVEMENT, DEFLECTION, OR CHANGES ARE OBSERVED, THE CONTRACTOR MUST IMMEDIATELY STOP WORK, REMOVE ALL LIVE LOAD SURCHARGING FROM THE ROAD AND ADJACENT AREAS, AND NOTIFY THE ENGINEER WITHOUT DELAY.**
- 3. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PREVENT DAMAGE OR EXCESSIVE LOADING ON THE BULKHEAD. MEASURES SUCH AS USING SMALLER COMPACTION EQUIPMENT SHALL BE IMPLEMENTED TO MINIMIZE LIVE LOADING ON THE ROAD. THESE PRECAUTIONS ARE CLEARLY NOTED IN THE PROJECT SPECIFICATIONS AND PLANS THROUGH THIS ADDENDUM.**
- 4. THE FOLLOWING NOTES SHALL BE EXPLICITLY INCLUDED IN THE PLANS AND SPECIFICATIONS:**
 - a. THE OWNER/ENGINEER MAKES NO REPRESENTATION REGARDING THE STABILITY OR SUITABILITY OF ADJACENT AREAS OR STRUCTURES DURING CONSTRUCTION.**
 - b. THE CONTRACTOR IS RESPONSIBLE FOR FIELD-VERIFYING THE LOAD-BEARING CAPACITY OF ALL AREAS AND PROVIDING THE NECESSARY MEANS OF SUPPORT.**

201.04 MEASUREMENT AND PAYMENT

THE FOLLOWING IS ADDED:

The Department will not make payment for the Item CLEARING SITE in excess of \$20,000 until Completion.

THE FOLLOWING IS ADDED TO THE END OF THE SECTION:

Payment for CLEARING SITE shall include but is not limited to the removal and disposal of existing miscellaneous roadway material, castings, drainage structures, pipe, driveways, miscellaneous debris, lawn, removal and/or relocation of signs, relocation of mailboxes, tree trimming, and any other work required to prepare the site for construction.

The CONTRACTOR is responsible to clear any and all items required to build the project as shown on the plans. The notes shown on the plans may not be all-inclusive. Any items not specifically shown for removal on the plans, but required to build the proposed improvements shall be removed and disposed of under CLEARING SITE.

CLEARING SITE shall also include a preconstruction video record of existing conditions made by the Contractor and provided to the Engineer prior to start of construction.

BASED ON THE HISTORICAL PERFORMANCE OF THE EXISTING BULKHEAD ALONG WASHINGTON AVENUE, THE FOLLOWING MEASURES MUST BE CONDUCTED DURING THE PROPOSED PAVEMENT PROJECT OF WASHINGTON AVENUE:

- 1. THE CONTRACTOR SHALL INCLUDE PRE- AND POST-CONSTRUCTION VIDEO DOCUMENTATION AND SURVEY AS PART OF THE BID.**
- 2. THE CONTRACTOR SHALL CONDUCT DETAILED MONITORING OF THE BULKHEAD THROUGHOUT THE PROJECT. IF ANY MOVEMENT, DEFLECTION, OR CHANGES ARE OBSERVED, THE CONTRACTOR MUST IMMEDIATELY STOP WORK, REMOVE ALL LIVE LOAD SURCHARGING FROM THE ROAD AND ADJACENT AREAS, AND NOTIFY THE ENGINEER WITHOUT DELAY.**
- 3. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO PREVENT DAMAGE OR EXCESSIVE LOADING ON THE BULKHEAD. MEASURES SUCH AS USING SMALLER COMPACTION EQUIPMENT SHALL BE IMPLEMENTED TO MINIMIZE LIVE LOADING ON THE ROAD. THESE PRECAUTIONS ARE CLEARLY NOTED IN THE PROJECT SPECIFICATIONS AND PLANS THROUGH THIS ADDENDUM.**
- 4. THE FOLLOWING NOTES SHALL BE EXPLICITLY INCLUDED IN THE PLANS AND SPECIFICATIONS:**
 - a. THE OWNER/ENGINEER MAKES NO REPRESENTATION REGARDING THE STABILITY OR SUITABILITY OF ADJACENT AREAS OR STRUCTURES DURING CONSTRUCTION.**
 - b. THE CONTRACTOR IS RESPONSIBLE FOR FIELD-VERIFYING THE LOAD-BEARING CAPACITY OF ALL AREAS AND PROVIDING THE NECESSARY MEANS OF SUPPORT.**

ANY AND ALL COSTS ASSOCIATED WITH THESE MEASURES SHALL BE INCLUDED IN CLEARING SITE.

SECTION 202 – EXCAVATION

202.04 MEASUREMENT AND PAYMENT

THE FOLLOWING IS ADDED TO THIS SUBSECTION:

Payment for Excavation, Test Pit, shall be made at the cubic yard price bid in the Proposal, which price shall include sawcutting, excavation, removal and disposal of existing roadway and subbase material, compaction, supply and installation of Dense-Graded Aggregate Base Course, 6" Thick, Hot Mix Asphalt 19M64 Base Course, 6" Thick required to repair the test pit, and all other work and materials required to dig and restore the test pit as shown on the plans and as specified herein.

Test Pit work shall be coordinated with the Highlands Department of Public Works.

DIVISION 400 – PAVEMENTS

SECTION 401 – HOT MIX ASPHALT (HMA) COURSES

401.02.01 Materials

THE FIRST ITEM IS CHANGED TO:

Tack Coat 64-22, PG 64S-22 902.01.01

401.03.01 Milling

401.03.03 HMA Pavement Repair

THE TITLE AND ENTIRE SUBSECTION IS CHANGED TO:

401.03.03 HMA Repair

- A. HMA Pavement Repair.** Arrange a project site meeting with the RE to establish the limits of HMA pavement repair. Additional repairs, not delineated on the Plans or by the RE during the project site meeting, may be required if the need is established by the RE.

If potholes are discovered, notify the RE immediately. The RE may immediately direct repairs of small areas. The RE may require further evaluation of a large area to determine the need for additional milling and paving.

Perform HMA repairs as a separate operation before milling, paving, and other surface treatments. The Contractor may request approval of the RE to perform the repair work as one operation with the paving or surface treatment.

HMA repairs may be performed on full depth HMA pavement or on composite pavement (HMA over concrete pavement). For full depth HMA pavement, sawcut existing HMA pavement to a depth of 8 inches. For composite pavement, sawcut existing HMA to a depth of 8 inches or up to the top of concrete, whichever is less. Sawcut lines parallel and perpendicular to the roadway baseline and 3 inches away, at the closest point, from the damaged area to be repaired.

Remove damaged and loose material within the boundary of the sawcuts to form rectangular openings with vertical sides to a depth of 8 inches for HMA pavement, or to the top of concrete for composite pavement. A milling machine may be used to remove damaged pavement to form the repair areas if approved by the RE.

After the existing damaged HMA and loose material has been removed, the RE will examine underlying material to determine its condition.

If the base of the repair area is unbound material, then shape and compact the unbound material to produce a firm and level base.

If water exists in the area, remove the underlying material to the depth as directed by the RE. Place geotextile, then place and compact coarse aggregate to required grade to provide for a minimum 8 inch thick HMA pavement repair. Compact coarse aggregate as specified in 203.03.02.B.3.

If the base of the repair is HMA or concrete pavement, then ensure that the remaining pavement is cleaned and dry prior to applying tack coat.

Apply tack coat at an application rate of 0.15 gallons per square yard to the vertical surfaces and base of the opening. Spread and grade HMA surface course mix in the opening as specified for the roadway surface or a HMA surface course mix approved by the RE. Ensure that the temperature of the HMA when placed is at least 250 °F, and compact as specified in 401.03.07.F. Compact areas not accessible to rollers with a flat face compactor. Compact until the top of the patch is flush with, or 1/8 inch higher than, the adjacent pavement surface.

Reuse removed material as specified in 202.03.03.C.1.

- B. HMA Longitudinal Joint Repair.** Arrange a project site meeting with the RE to establish the limits of HMA longitudinal repair areas. Additional repairs, not delineated on the Plans or by the RE during the project site meeting, may be required if the need is established by the RE.

Mill 2 feet wide, unless directed otherwise by the RE, centered over the HMA longitudinal joint, rumble strip, longitudinal distress areas or any combination of the three, as shown on the Plans and as directed by the RE. Mill to a minimum 2 inches in depth, or as required to remove the damaged pavement. For distress areas wider than 4 feet, the RE may direct the use of HMA pavement repair as specified in 401.03.03.A.

Clean the milled area as specified in 401.03.01.A. Obtain RE approval of the repair area before proceeding with the repair.

Apply polymerized joint adhesive to the vertical surfaces of the repair area as specified in 401.03.04. Apply tack coat as specified in 401.03.05 at an application rate of 0.15 gallons per square yard to the bottom surface of the repair area. Obtain RE approval of the repair area before proceeding with the repair. Spread and grade Hot Mix Asphalt 9.5M64 Surface Course in the repair area as specified in 401.03.07.E. Ensure that the temperature of the HMA when placed and compacted is at least 250 °F. Compact as specified in 401.03.07.F, ensuring that the top of the compacted HMA is flush with, or not greater than 1/8 inch higher than, the adjacent pavement surface.

Reuse removed material as specified in 202.03.03.C.1.

401.03.07 HMA Courses

A. Paving Plan.

PART (4) IS CHANGED TO:

4. Lighting plan for night operations as specified in 108.06.

C. Test Strip

REPLACE THE FIRST PARAGRAPH OF THIS SECTION WITH THE FOLLOWING:

Test Strip. Construct a test strip for each HMA mix for contracts with more than a total of 5,500 tons of HMA. For HMA HIGH RAP, construct the test strip at least 14 days prior to production. Test strips are not necessary for temporary pavement. Ensure that the tack coat or prime coat has been placed as specified in [401.03.05](#) and [401.03.06](#), before placing HMA. Transport and deliver, spread and grade, and compact as specified in [401.03.07.D](#), [401.03.07.E](#), and [401.03.07.F](#), respectively, and according to the approved paving plan. Construct a test strip for the first 700 to 1,200 square yards placed for each job mix formula. If the paving lot area is less than 700 square yards, the District Local Aid Office may waive the coring requirements. While constructing the test strip, record the following information and submit to the RE:

D. Transportation and Delivery of HMA.

THE SECOND SENTENCE OF THE FIRST PARAGRAPH IS CHANGED TO:

Do not allow trucks to leave the plant within 1 hour of sunset unless lighting for night operations is provided as specified in 108.06.

E. Spreading and Grading.

G. Opening to Traffic.

THE FOLLOWING IS ADDED AFTER THE LAST PARAGRAPH:

Ensure that RPMs are installed and rumble strips are constructed within 14 days of opening each day's surface paving to traffic.

H. Air Void Requirements

FOR LOCAL AID PROJECTS, THIS SUBSECTION IS REPLACED BY THE FOLLOWING.

Pavement lots are defined as approximately 15,000 square yards of pavement in Surface area. If pavement lot area is less than 5000 square yards, the Local Aid District Office may waive the air voids requirements.

The RE will designate an independent testing agency (Laboratory) to perform the quality assurance sampling, testing and analysis. The Laboratory is required to be accredited by the AASHTO Accreditation Program (www.amrl.net). The Laboratory's accreditation must include AASHTO T 166 and AASHTO T 209.

The Laboratory Technician who performs the quality assurance sampling shall be certified by the Society of Asphalt Technologists of New Jersey as an Asphalt Plant Technologist, Level 2.

The Laboratory will determine air voids from 5 (Five) 6 inch diameter cores taken from each lot in random locations within the traveled way and at least one core in each travel lane. The HMA Core Sampling Plan form provided on the [Local Aid Website](#) must be utilized by the Laboratory to determine the random locations of the cores. The Laboratory may rerun the random location functions on the HMA Core Sampling Plan form to resolve any conflicts generated by the HMA Core Sampling Plan form and physical limitations of the HMA lot, such as utility conflicts, or the specifications defined herein. The coring locations must be designated by a station and offset, and offsets are taken from the left edge of the pavement in the direction of travel within the lane lines. The Laboratory must disclose the contents of the HMA Core Sampling Plan with the Contractor to assist in the schedule of construction.

The Laboratory will determine air voids of cores from the values for the maximum specific gravity of the mix and the bulk specific gravity of the core. The Laboratory will determine the maximum specific gravity of the mix according to NJDOT B-3 and AASHTO T 209, except that minimum sample size may be waived in order to use a 6-inch diameter core sample. The Laboratory will determine the bulk specific gravity of the compacted mixture by testing each core according to AASHTO T 166.

The Laboratory will calculate the percent defective (PD) as the percentage of the lot outside the acceptable range of 2 percent air voids to 8 percent air voids. The acceptable quality limit is 15 percent defective. For lots in which PD > 15, the Department will assess a negative pay adjustment.

The Laboratory will use and submit to the RE the DS8S-PD form provided on the [Local Aid Website](#) and verify manually the PD calculation.

The Laboratory will calculate pay adjustments based on the following:

1. Sample Mean (\bar{X}) and Standard Deviation (S) of the N Test Results (X_1, X_2, \dots, X_N).

$$\bar{X} = \frac{(X_1 + X_2 + \dots + X_N)}{N}$$

$$S = \sqrt{\frac{(X_1 - \bar{X})^2 + (X_2 - \bar{X})^2 + \dots + (X_N - \bar{X})^2}{N - 1}}$$

2. Quality Index (Q).

$$Q_L = \frac{(\bar{X} - 2.0)}{S}$$

$$Q_U = \frac{(8.0 - \bar{X})}{S}$$

3. **Percent Defective (PD).** Using NJDOT ST for the appropriate sample size, the Laboratory will determine PD_L and PD_U associated with Q_L and Q_U , respectively. $PD = PD_L + PD_U$
4. **Reduction Per Lot.** Calculate the reduction per lot as specified in Table 401.03.07-3:

Table 401.03.07-3	
Reduction in Payment for Nonconformance to Air Void Requirements	
Percent Defective (PD) Per Lot	Reduction Per Lot (%)
$0 < PD \leq 15$	0
$15 < PD \leq 30$	0.5
$30 < PD \leq 35$	2
$35 < PD \leq 40$	10
$40 < PD \leq 45$	15
$45 < PD \leq 50$	20
$50 < PD \leq 60$	30
$60 < PD \leq 75$	45
$PD > 75$	Remove & Replace

5. **Outlier Detection.** If $PD < 10$, the Laboratory will not screen for outliers. If $PD \geq 10$, the Laboratory will screen acceptance cores for outliers using a statistically valid procedure. The following procedure applies only for a sample size of 5 or 10.
 1. The Laboratory will arrange the core results in ascending order, in which X_1 represents the smallest value and X_N represents the largest value.
 2. If X_N is suspected of being an outlier, the Laboratory will calculate:

$$R = \frac{X_N - X_{(N-1)}}{X_N - X_1}$$

3. If X_1 is suspected of being an outlier, the Laboratory will calculate:

$$R = \frac{X_2 - X_1}{X_N - X_1}$$

4. For $N = 5$ if $R > 0.642$, the value is judged to be statistically significant and the core is excluded.
For $N = 10$ if $R > 0.412$, the value is judged to be statistically significant and the core is excluded.

If an outlier is detected for $N = 5$ and no retest is warranted, the Contractor may replace that core by taking an additional core at the same offset and within 5 feet of the original station. If an outlier is detected and a retest is justified, take a replacement core for the outlier at the same time as the 5 additional retest cores are taken. If the outlier replacement core is not taken within 15 days, the Laboratory will use the initial core results to determine reduction per lot.

If an outlier is detected for $N = 10$, the Contractor may replace that core by taking an additional core at the same offset and within 5 feet of the original station. If the outlier replacement core is not taken within 15 days, the Laboratory will use the initial core results to determine the reduction per lot.

6. **Retest.** If the initial series of 5 cores produces a percent defective value of $PD \geq 30$ for mainline or ramp lots, or $PD \geq 50$ for other pavement lots, the Contractor may elect to take an additional set of 5 cores at random locations chosen by the HMA Core Sampling Plan form. Take the additional cores within 15 days of receipt of the initial core results. If the additional cores are not taken within the 15 days, the Laboratory will use the initial core results to determine the PPA. If the additional cores are taken, the Laboratory will recalculate the reduction per lot using the combined results from the 10 cores.
7. **Removal and Replacement.** If the final lot $PD \geq 75$ (based on the combined set of 10 cores or 5 cores if the Contractor does not take additional cores), remove and replace the lot and all overlying work. The replacement work is subject to the same requirements as the initial work.

For shoulder lots, the Department will assess the calculated reduction per lot instead of removal and replacement. Fog seal the lot as specified in 422.03.01.

I. Thickness Requirements

DELETE THIS SUBSECTION AND REPLACE THIS SUBSECTION'S CONTENTS WITH THE FOLLOWING:
This subsection is deleted. In no instance will a compacted average thickness of less than 1.25 inches be acceptable.

DELETE THIS SUBSECTION AND REPLACE THIS SUBSECTION'S CONTENTS WITH THE FOLLOWING:

Thickness requirements will apply when full-depth, uniform-thickness HMA pavement construction is shown.

Pavement lots are defined as approximately 15,000 square yards of pavement area. The Engineer will not include areas consisting of different HMA mixtures or thicknesses in the same lot. If thickness lot area is less than 5000 square yards, the District Local Aid Office may waive the thickness requirements.

The RE will designate an independent testing agency (Laboratory) to perform the quality assurance sampling, testing and analysis. The Laboratory is required to be accredited by the AASHTO Accreditation Program (www.amrl.net). The Laboratory's accreditation must include AASHTO T 166 and AASHTO T 209.

The Laboratory Technician who performs the quality assurance sampling shall be certified by the Society of Asphalt Technologists of New Jersey as an Asphalt Plant Technologist, Level 2.

The Laboratory will test for thickness using the full-depth cores taken for surface course air voids, evaluated according to NJDOT B-4. The Laboratory will base acceptance on total thickness and thickness of the surface course.

1. **Total Thickness.** The Laboratory will calculate the percent defective (PD) as the percentage of the lot that is less than the design thickness. The Laboratory will consider 25 percent defective as the acceptable quality limit. For lots where $PD < 25$, the Department will award a positive pay adjustment. For lots where $PD > 25$, the Department will assess a negative pay adjustment.

The Department will base total thickness acceptance on the percentage of the lot estimated to fall below the specified thickness as follows

- a. **Sample Mean (\bar{X}) and Standard Deviation (S) of the N Test Results (X_1, X_2, \dots, X_N).** Calculate as specified in 401.03.07.H.1.

$$\bar{X} = \frac{(X_1 + X_2 + \dots + X_N)}{N}$$

$$S = \sqrt{\frac{(X_1 - \bar{X})^2 + (X_2 - \bar{X})^2 + \dots + (X_N - \bar{X})^2}{N - 1}}$$

b. **Quality Index (Q_i)**

$$Q_L = \frac{(\bar{X} - T_{des})}{S}$$

Where T_{des} = design thickness.

- c. **Percent Defective (PD).** Using NJDOT ST for the appropriate sample size, determine the percentage of material (PD) falling below the design thickness associated with Q_L (lower limit).
- d. **Reduction in Payment.** The Department will determine the reduction in payment based on the quantity of the surface course multiplied by the percent reduction in payment from Table 401.03.07-5.

Table 401.03.07-5 Reduction in Payment for Nonconformance to Requirements for Total Thickness	
Percent Defective	Percent Reduction
0 to 25.0	0
25.1 to 30.0	2
30.1 to 35.0	5
35.1 to 40.0	10
40.1 to 45.0	20
Over 45.0	Remove & Replace

- e. **Retest.** If the initial series of 5 cores produces a percent defective value of $PD \geq 30$, the Contractor may elect to take an additional set of 5 cores at random locations chosen by the RE. Notify the RE within 15 days of receipt of the initial core results to take the additional cores. If the RE is not notified within the 15 days, the Laboratory will use the initial core results to determine the reduction in payment for nonconformance requirements. If the additional cores are taken, the ME will recalculate the reduction in payment for nonconformance requirements using the combined results from the 10 cores.
- f. **Removal and Replacement.** If the lot $PD \geq 45$, remove and replace, or mill and overlay, the lot. The replacement work is subject to the same requirements as the initial work.
2. **Surface Course Thickness.** The Laboratory will evaluate the surface course solely to determine whether a remove- and-replace or an overlay condition exists, not for pay adjustment. The Laboratory will calculate the percent defective (PD) as the percentage of the lot that is less than the allowable thickness for the nominal maximum aggregate used in the surface course. The Laboratory will accept pavement lots with $PD \leq 30$ and will reject pavement lots with $PD > 30$.

The Laboratory will base surface thickness acceptance on the percentage of the lot estimated to fall below the allowable thickness as follows:

- a. **Sample Mean (X) and Standard Deviation (S) of the N Test Results (X₁, X₂,..., X_N).** Calculate using the formula as specified in 401.03.03.I.1.
- b. **Quality Index (Q).**

$$Q_L = (X - T_{all})/S, \text{ where } T_{all} \text{ is the minimum allowable thickness from Table 401.03.07-6.}$$

Table 401.03.07-6 Surface Course Thickness Requirements	
HMA Mix Design Size Designation	Minimum Allowable Compacted Lift Thickness (T_{all})
4.75 MM	0.50 inch
9.5 MM	1.00 inch
12.5 MM	1.25 inches
19 MM	2.00 inches

- c. **Percent Defective.** Using NJDOT ST - Statistical Tables (NJDOT Standard Specs for Roads and Bridges 2019-NJDOT TEST METHODS) for the appropriate sample size, determine the percentage of material (PD) falling below the allowable thickness associated with Q_L (lower limit).
- d. **Retest.** If the initial series of 5 cores produces a percent defective value of $PD > 30$, the Contractor may take an additional 5 cores at random locations determined by the Laboratory. Notify the RE within 15 days of receipt of the initial core results to take the additional cores. If the RE is not notified within the 15 days, the Laboratory will use the initial core results to determine the PPA. When the additional cores are taken, the Laboratory will recalculate the reduction in payment for nonconformance requirements using the combined results from the 10 cores to obtain the total PD.
- e. **Removal and Replacement.** If the surface course fails to meet the acceptance requirement with a $PD \leq 45$, the Department will require removal and replacement of the lot. The replacement work is subject to the same requirements as the initial work.

J. Ride Quality Requirements.

The Department will evaluate the ride quality of the final riding surface of all constructed pavement on the project, for routes designated as National Highway System (NHS) and routes under NJDOT jurisdiction, using the International Roughness Index (IRI) according to ASTM E 1926. All NHS roadways are listed on the Department's website [here](#). The Department may evaluate ride quality of other routes not designated as NHS or under NJDOT jurisdiction. The final riding surface is defined as the last lift of the pavement structure where traffic will be allowed. The pavement will be evaluated using the current average IRI (C) to select the target IRI (T) from Table 401.03.07-8. The current average IRI (C) is defined as the preconstruction ride quality measured not more than two years from the start of the project pavement construction.

The RE will designate an independent testing agency to perform the ride quality testing and analysis. The testing agency is required to comply with testing and certification requirements according to NJDOT R-1. If the current average IRI (C) is not available, then the testing agency will test, analyze and report ride quality before pavement construction to measure current average IRI (C). The testing agency will use and submit to the RE the [IRI Testing Summary Report form](#) provided from The Local Aid District Office and verify manually the pay adjustment calculation.

Current IRI data for paving routes designated NHS or NJDOT jurisdiction can be made available by request by contacting Shahid Haji and Peter Brzostowski at Shahid.Haji@dot.nj.gov and Peter.Brzostowski@dot.nj.gov. Municipal or county officials may request IRI information through this process. Contractors, consultants, and bidding parties shall not request IRI values through this process for their own benefit.

For projects paving routes designated NHS or NJDOT jurisdiction on mainline travel lanes equal to or greater than 2,500 feet length and any lane within the project of at least 1,000 feet length, the Department will evaluate the ride quality of the final riding surface of the mainline travel lanes using IRI. The Department will use the measured IRI to calculate the pay adjustment (PA) using pay adjustment equation (PAE) type PA1 as specified in Table 401.03.07-7. PA will be based on lots of 0.01 mile length. The PA will be zero for acceptable quality and negative for inferior quality work.

For projects paving routes designated NHS or NJDOT jurisdiction on mainline travel lanes of less than 2,500 feet length, the RE will visually inspect the final riding surface. Based on visual inspection, if the RE determines that the

work may not conform to the ride quality requirements, then the Department will evaluate the ride quality of the final riding surface using IRI. Visual inspection by the RE is considered sufficient grounds for such evaluation. The Department will use the measured IRI to calculate the PA using pay equation type PA1 as specified in Table 401.03.07-7.

For paving on ramps and shoulders, the RE will visually inspect the final riding surface. Based on visual inspection, if the RE determines that the work may not conform to the ride quality requirements, then the Department will evaluate the ride quality of the final riding surface using IRI. Visual inspection by the RE is considered sufficient grounds for such evaluation. The Department will use the measured IRI to calculate the pay adjustment using pay equation type PA2 as specified in Table 401.03.07-7.

When paving over bridge structures on NHS or NJDOT jurisdiction roadways, the Department will use the measured IRI to calculate the pay adjustment using pay equation type PA3 as specified in Table 401.03.07-7.

For paving on Local roadways other than NHS and NJDOT jurisdiction on mainline travel lanes equal to or greater than 2,500 feet length and any lane within the project of at least 1,000 feet length, the Department may evaluate the ride quality of the final riding surface of the mainline travel lanes using IRI. Local roadways are defined as municipal and county roads that are not designated as part of the NHS. The Department will use the measured IRI to calculate the pay adjustment (PA) using pay adjustment equation (PAE) type PA4 as specified in Table 401.03.07-7.

1. **Smoothness Measurement.** The Department will test the longitudinal profile of the final riding surface for ride quality with a Class 1 Inertial Profiling System according to NJDOT R-1. If project conditions preclude the use of the Class 1 Inertial Profiling System, the Department will use a Class 1 Walking Profiler or lightweight profiler.
2. **Quality Control Testing.** Perform quality control testing during lift placement to ensure compliance with the ride quality requirements specified in Table 401.03.07-8.
3. **Preparation for IRI Testing.** Notify the RE when all paving is complete and the RE will request IRI testing by independent testing agency. Provide traffic control when the independent testing agency performs IRI testing. Perform mechanical sweeping of the surface before IRI testing. To facilitate auto triggering on laser profilers, place a single line of temporary pavement marking tape perpendicular to the roadway baseline at the beginning and end of each lane, shoulder, and ramp to be tested or as per direction of the independent testing agency. Submit the actual stationing for each temporary pavement marking tape location to the RE.
4. **Quality Acceptance.** The Department will determine acceptance and provide PA based on the following:
 - a. **Pay Adjustment.** The acceptable IRI for the roadway pavement will be the target IRI (T) from Table 401.03.07-8 rounded to the nearest whole number for which full payment will be made and will be determined using the latest available current average IRI (C) data. The number of lots for final pay adjustment will be reduced by the number of lots excluded for each segment shown in Table 401.03.07-7. Lots excluded from final PA will be those with the highest recorded IRI numbers for respective roadway and bridge deck segments. A single average IRI value and the corresponding PA for each 0.01 mile lot will be reported. IRI units are in inches per mile.

Table 401.03.07-7 Pay Adjustment Equations (PAE) for Ride Quality			
Pay Equation Type	Exclusions	Pay Equations	
PA1	As shown in the Special Provisions Table 401.03.07-7A	IRI<T	PA1=PAE (see note 2)
		$T \leq \text{IRI} \leq 170$	PA1=PAE
		IRI>170	PA1= -A or Corrective action
PA2	Will include, if tested	$\text{IRI} \leq 120$	PA2 =0
		$120 < \text{IRI} \leq 170$	PA2 = (IRI – 120) x (–\$5.00)
		IRI>170	Maximum Negative Pay or Corrective action
PA3	Will include, if tested	$\text{IRI} \leq 120$	PA3=0
		$120 < \text{IRI} \leq 170$	PA3=PAE
		IRI>170	PA3= -A or Corrective action

PA4	Will include, if tested	IRI ≤ T	PA4=0
		T < IRI ≤ T+80 or 170 whichever is higher	PA4 = (IRI - T) x (-\$1.25)
		IRI > T+80 or 170 whichever is higher	Maximum Negative Pay or Corrective action

$$PAE = \frac{A}{-37.75347 \times \log_e(T) + 194.87} - \frac{A}{-37.75347 \times \log_e(IRI) + 194.87}$$

$$A = 1267.2 \left[\frac{M}{9} + \frac{PD}{150} \right]$$

P = Bid price of last lift of the pavement structure to be evaluated or price listed in table 401.03.07-7B, whichever is higher, per Ton

D¹ = Design thickness of last lift to be evaluated, Inch

M = Bid price of Milling, per Square Yard

T = Target IRI

- For various design thicknesses of last lift to be evaluated within a segment, calculate the thickness using the following equation:

$$\text{Design thickness of last lift to be evaluated (D)} = \frac{D_1 N_1 + D_2 N_2 + \dots + D_N N_N}{N_1 + N_2 + N_3 + \dots + N_N}$$

Where:

D_N = Design thickness of the last lift to be evaluated of N sections having same mix, Inch

N_N = Number of lots of N section with design thickness D_N of last lift to be evaluated

- Positive pay adjustment will be used to offset negative pay adjustment. Total pay adjustment for each lane will not be greater than zero, but may result in a negative pay adjustment.

THE FOLLOWING IS ADDED:

Table 401.03.07-7A Exclusions for Resurfacing or Reconstruction

Roadway	Lane Number	Exclusions
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Lane designation is by increasing numbers from left to right in the direction of traffic with left lane being Lane 1.

Table 401.03.07-7B Minimum Value of P

Surface Course Mix	P
Hot Mix Asphalt (Dense Graded) with PG 64-22 binder	\$60.00
Hot Mix Asphalt (Dense Graded) with PG 64E-22 binder	\$70.00
Stone Matrix Asphalt, High Performance Thin Overlay, Ultra-Thin Friction Course, Open Graded or Gap Graded Mixes not specified in this table	\$80.00
Bridge Deck Waterproof Surface Course	\$250.00

Table 401.03.07-8 Target IRI for Resurfacing or Reconstruction (T)³

Roadway Type	Current average IRI (C)	New Construction or Reconstruction	Number of Operation for other than New Construction or Reconstruction ⁵			
			One ⁴	Two ⁴	Three ⁴	Four or More ⁴
Target IRI (T)						
NHS & NJDOT Freeways or Limited Access Highways	≤ 60	50	50	50	50	50
	61 to ≤95		53	50	50	50
	96 to ≤170		55	53	50	50
	171 to ≤200		0.64C ⁷	55	53	50
	201 to ≤285			58	55	50
	>286 ⁸			60	58	53
NHS & NJDOT Roadways other than Freeways or Limited Access Highways with speed limit > 35 MPH	≤ 60	60	60	60	60	60
	61 to ≤95		63	60	60	60
	96 to ≤170		66	63	60	60
	171 to ≤200		0.64C ⁷	66	63	60
	201 to ≤285			69	66	60
	>286 ⁸			72	69	63
NHS & NJDOT Roadways other than Freeways or Limited Access Highways with speed limit ≤ 35 MPH	≤ 60	70	70	70	70	70
	61 to ≤95		74	70	70	70
	96 to ≤170		77	74	70	70
	171 to ≤200		0.64C ⁷	77	74	70
	201 to ≤285			81	77	70
	>286 ⁸			84	81	74
Local Roadway with Posted Speed ≥45 MPH	C	80	0.7C or 80 whichever is higher	0.49C or 80 whichever is higher	0.34C or 80 whichever is higher	0.24C or 80 whichever is higher
Local Roadway with Posted Speed <45 MPH	C	100	0.84C or 100 whichever is higher	0.59C or 100 whichever is higher	0.41C or 100 whichever is higher	0.29C or 100 whichever is higher

1. The Department will determine target IRI (T) of roadways containing multiple speed limits of greater than 35 MPH and less than or equal to 35 MPH based on the following equation:

$$\text{Target IRI of a roadway consists of N Roadway type (T)} = \frac{T_1 L_1 + T_2 L_2 + \dots + T_N L_N}{L_1 + L_2 + L_3 + \dots + L_N}$$

Where T_N is the Target IRI of N section and L_N is the length of N section in miles to the nearest 0.01 mile

- Current average IRI (C) is the average of the latest available preconstruction IRI data.
- The target IRI (T) is selected or calculated from the table and rounded to the nearest whole number.
- Multiply T with 1.05 for HMA over Concrete, if total HMA after proposed treatment is less than 8 inch thick.
- Milling is one operation. Paving each layer of asphalt mix is an individual operation unless plans specify paving a mix in two lifts. In such case, each lift is considered as an operation.
- Construction or reconstruction of full pavement box on subgrade is new construction or reconstruction.
- Use Pay Equation as below:

$$\text{IRI} \leq T \quad \text{PA} = \text{PAE}^*$$

$$\text{IRI} > T \quad \text{PA} = \text{PAE}$$

*Positive Pay adjustment will be used to offset negative pay adjustment. Total pay adjustment for each lane will not be greater than zero, but may result in a negative pay adjustment.

- For paving over rubblized concrete, use C >286 to determine target IRI, then multiply T with 1.05 if total HMA after proposed treatment is less than 8-inch thick.

- 9 Paving in one lift with no corrective work such as milling, grinding or pre-levelling of at least 25 percent of surface area of existing pavement is one operation.
-

- b. **Corrective Action.** The Department may require corrective action or assess the maximum negative pay adjustment as computed in Table 401.03.07-7, if the average IRI after testing is performed of NHS or NJDOT jurisdiction roadway is greater than 170 inches per mile, or average IRI local roadway is greater than T+80 or 170 whichever is higher. If the Department requires corrective action submit a plan for corrective action. If the plan for corrective action is approved and the lot is corrected, the Department will retest and evaluate the corrected area as a new lot that must meet the same requirements as the initial work. If the plan for corrective action is not approved, the Department may require removal and replacement. The replacement work is subject to the same requirements as the initial work.

401.03.08 Core Samples

REPLACE THIS SUBSECTION WITH THE FOLLOWING:

The LPA will designate an independent testing agency (Laboratory) to perform the quality assurance sampling, testing and analysis. The Laboratory is required to be accredited by the AASHTO Accreditation Program (www.amrl.net). The Laboratory's accreditation must include AASHTO T 166 and AASHTO T 209. The Laboratory Technician who performs the quality assurance sampling shall be certified by the Society of Asphalt Technologists of New Jersey as an Asphalt Plant Technologist, Level 2.

Upon completion of an HMA lot, the Laboratory shall drill cores at random locations at least 12 hours after paving. Take cores in the presence of the RE. The Laboratory will determine air voids from 5 (Five) 6 inch diameter cores taken from each lot in random locations within the traveled way and at least one core in each travel lane. The HMA Coring Layout Sheet provided on the [Local Aid Website](#) must be utilized by the Laboratory to determine the random locations of the cores. The Laboratory may rerun the random location functions on the HMA Coring Layout Sheet to resolve any conflicts generated by the HMA Core Sampling Plan form and physical limitations of the HMA lot, such as utility conflicts, or the specifications defined herein. The Laboratory must disclose the contents of the HMA Core Sampling Plan with the Contractor to assist in the schedule of construction.

The Laboratory shall use drilling equipment with a water-cooled, diamond-tipped masonry drill bit that produces 6 inch nominal diameter cores for the full depth of the pavement. The Laboratory shall remove the core from the pavement without damaging it. After the Laboratory removes the core, the Laboratory shall remove all water from the hole. The Laboratory shall apply an even coating of tack coat to sides of the hole. The Laboratory shall place cold patching material or HMA in maximum lifts of 4 inches in the hole and compact each lift. If cold patching material is utilized to fill the coring hole, then it is not necessary to apply tack coat to the sides of the hole. The Laboratory shall ensure that the final surface is 1/4 inch above the surrounding pavement surface.

HMA cores are to be taken from the HMA lot for quality assurance sampling, testing and analysis within seven (7) days of completing the HMA lot. For test strip lots and the first traveled way lot, the Laboratory shall deliver cores from the field to the testing Laboratory within 48 hours of completing the lot. The Laboratory shall deliver all other acceptance cores within 7 days of completing the lot.

After each air void lot is placed, the Laboratory shall drill cores so that the full depth of the course is recovered for air void acceptance testing. If thickness acceptance testing is required as specified in 401.03.07.I, the Laboratory shall drill the surface course air void cores for the full depth of pavement.

The Laboratory shall utilize a tamper proof core sample box for core storage and transportation. The Laboratory shall ensure that the core sample box can be locked and sealed and is tamper proof in such a manner that it cannot be opened without removing the seals. The Laboratory shall ensure that the core sample box provides protection for the cores from being disturbed or damaged during transit. The Laboratory shall mark the assigned core number on the side of the sample. The Laboratory shall place core samples in the core sample box. The Laboratory shall transport the sealed core sample boxes to the testing Laboratory.

The Laboratory will not accept damaged core samples for testing. If the core sample box exhibits indications of tampering, the core samples will be rejected. If any core samples are rejected, drill a replacement core at the same offset and within 5 feet of the original station and deliver to the Laboratory as specified above within 48 hours.

If the project is utilizing quality control cores, the Laboratory shall provide the results of the quality control core testing to the Contractor in a timely manner which will not unnecessarily impede construction.

401.04 Measurement and Payment

REPLACE THIS SUBSECTION WITH THE FOLLOWING:

The Department will measure and make payment for Items as follows:

<u>Pay Item</u>	<u>Pay Unit</u>
HMA MILLING, 3" OR LESS	SQUARE YARD
DENSE-GRADED AGGREGATE BASE COURSE, 6" THICK	SQUARE YARD
TACK COAT	GALLON
HOT MIX ASPHALT <u>9.5M64</u> SURFACE COURSE, 2" THICK	TON
HOT MIX ASPHALT <u>19M64</u> BASE COURSE, 4" THICK	TON

The specified depth of the milling is measured from the original surface to the top of the high spots of the textured surface.

The Department will measure HMA LONGITUDINAL JOINT REPAIR before overlay by the square yard of the area.

The RE will measure HOT MIX ASPHALT PAVEMENT REPAIR before overlay by the square yard of area bounded by the sawcuts.

The RE will measure TACK COAT, TACK COAT 64-22, PRIME COAT, and POLYMER MODIFIED TACK COAT by the volume delivered, converted to the number of gallons at 60 °F as calculated by the temperature-volume correction factors specified in 902.01.

The RE will measure HOT MIX ASPHALT _____ SURFACE COURSE, HOT MIX ASPHALT _____ INTERMEDIATE COURSE, and HOT MIX ASPHALT _____ BASE COURSE by the ton as indicated on the certified weigh tickets, excluding unused material. When nominal maximum aggregate size 3/8 inch HMA surface course is directed for use in transition (run out) areas, the Department will include this weight with the weight for HOT MIX ASPHALT _____ SURFACE COURSE.

The Department will not include payment for polymerized joint adhesive in the various paving Items. The Department will make payment for polymerized joint adhesive under POLYMERIZED JOINT ADHESIVE.

The Department will make a payment adjustment for HMA air void quality per lot by the following formula:

$$\text{Pay Adjustment Per HMA Lot} = - Q \times BP \times \text{Reduction Per Lot (\%)}$$

Where:

BP = Bid Price of HMA
Q = Quantity of HMA in lot receiving payment adjustment
Reduction Per Lot (%) = Air void Reduction (%) per lot as specified in [401.03.07.H](#).

The Department will make a payment adjustment for HMA thickness quality per lot by the following formula:

$$\text{Pay Adjustment Per HMA Lot} = - Q \times BP \times \text{Percent Reduction (\%)}$$

Where:

BP = Bid Price of HMA
Q = Quantity of HMA in lot receiving payment adjustment
Percent Reduction (%) = Thickness Percent Reduction (%) per lot as specified in [401.03.07.I](#).

DIVISION 600 – MISCELLANEOUS CONSTRUCTION

SECTION 602 – DRAINAGE STRUCTURES

602.03.03 Setting Castings, Resetting Castings, and Reconstructing Inlets and Manholes

THE FOLLOWING PARAGRAPHS ARE ADDED:

No separate payment shall be made for the connection of existing or proposed pipe to proposed, reconstructed or reset inlets. All costs thereof shall be included in the prices bid for each respective item.

When Reset Existing Casting is utilized, the Contractor shall remove the existing casting, reset and/or replace no more than 12” of the top of the inlet or manhole, add new bricks to bring the structure up to proper grade, parge the exposed surfaces both inside and out, and set the existing casting in a new mortar bed at the proper elevation for paving operations.

602.04 MEASUREMENT AND PAYMENT

THE FOLLOWING IS ADDED TO THIS SUBSECTION:

Pay Item

RESET EXISTING CASTING

Pay Unit

UNIT

When inlets are to be constructed or reconstructed in an area where the roadway is to be milled and overlaid, no separate payment will be made for sawcutting, excavation, compaction, supply and placement of Dense Graded Aggregate Base Course, and supply and placement of Hot Mix Asphalt Base Course. All costs shall be included in the price bid for the appropriate Pay Item.

SECTION 606 – SIDEWALKS, DRIVEWAYS, AND ISLANDS

606.01 DESCRIPTION

THE FOLLOWING IS ADDED:

This section describes the work to complete Detectable Warning Surface, Paver Driveway and Gravel Driveway Restoration as shown on the Drawings or specified herein, or both.

606.02 MATERIALS

THE FOLLOWING IS ADDED:

606.02.02 Materials:

Detectable Warning Surfaces:

Detectable Warning Surfaces shall be 24”x48” cast-in-place replaceable truncated dome detectable warning systems as manufactured by ADA Solutions, Inc., or an approved equal. Color shall be determined by the Borough. At locations where curved Detectable Warning Surfaces are depicted, the contractor shall install customized Detectable Warning Surface tiles or shall cut standard tiles to the sizes required, unless otherwise directed by the Engineer.

606.03.03 Detectable Warning Surfaces

THE FOLLOWING IS ADDED:

Handicap ramps shall be constructed in accordance with handicap ramp details. The concrete sidewalk shall be sloped to the depressed curb and shall comply with the grades and cross-slopes specified in the technical

requirements of Section 4 (Accessible Design) of the U.S. Department of Justice's 2010 ADA Standards for Accessible Design Guidelines.

Handicap ramps to be built along East Main Street shall be built in accordance with the standards of a Driveway Apron due to truck turning. The Contractor is to be paid for this appropriately and it shall be coordinated in the field.

THE FOLLOWING IS ADDED:

606.04 MEASUREMENT AND PAYMENT

THE FOLLOWING PAY ITEM IS ADDED:

<u>Pay Item</u>	<u>Pay Unit</u>
CONCRETE SIDEWALK, 4" THICK	SQUARE YARD
DETECTABLE WARNING SURFACE	SQUARE YARD

No separate payment shall be made for header curbs. All costs associated with this shall be included in the prices bid for Concrete Sidewalk, 4" Thick.

After the Contractor provides the as-built for the Owner, No separate payment will be made for ANY additional corrective measures inclusive of concrete sidewalk that are deemed necessary by the Owner to correct the grading to be as per the Contract Plans. All costs shall be included in the various items in the Proposal.

SECTION 607 – CURB

607.01 DESCRIPTION

THE PARAGRAPH IS CHANGED TO:

This Section describes the requirements for constructing concrete curb, granite curb, and HMA curb, for resetting granite curb, and for cutting concrete vertical curb.

607.04 Measurement and Payment

THE FOLLOWING IS ADDED:

After the Contractor provides the as-built for the Owner, No separate payment will be made for ANY additional corrective measures inclusive of concrete curb or concrete curb and gutter that are deemed necessary by the Owner to correct the grading to be as per the Contract Plans. All costs shall be included in the various items in the Proposal.

607.04 MEASUREMENT AND PAYMENT

THE FOLLOWING PAY ITEMS ARE DESCRIBED:

<u>Pay Item</u>	<u>Pay Unit</u>
ASPHALT CURB	LINEAR FOOT

SECTION 610 – TRAFFIC STRIPES, TRAFFIC MARKINGS, AND RUMBLE STRIPS

610.04 MEASUREMENT AND PAYMENT

THE SUBPART IS CHANGED TO:

The Department will measure and make payment for Items as follows:

Pay Item

TRAFFIC STRIPES, 4"
TRAFFIC MARKINGS LINES, 4"
TRAFFIC MARKINGS LINES, 6"
TRAFFIC MARKINGS LINES, 24"
TRAFFIC MARKINGS SYMBOLS

Pay Unit

LINEAR FOOT
LINEAR FOOT
LINEAR FOOT
LINEAR FOOT
LINEAR FOOT

All Traffic Striping and Marking Items shall be Long-Life Thermoplastic.

DIVISION 650 – UTILITIES

SECTION 651 – WATER

651.03 Construction.

THE FOLLOWING IS ADDED TO THIS SUBSECTION:

The CONTRACTOR shall take care to maintain the existing condition of the various valve boxes to be reset. Any damage to the existing valve boxes by the CONTRACTOR shall be replaced with an equivalent to the existing and to the satisfaction of the ENGINEER at no additional cost to the OWNER.

651.04 MEASUREMENT AND PAYMENT

THE FOLLOWING IS ADDED:

No separate payment will be made for resetting water valves.

SECTION 653 – GAS

653.04 MEASUREMENT AND PAYMENT

THE FOLLOWING IS ADDED:

The CONTRACTOR shall reset the existing gas valve boxes. Any damage to the existing valve boxes by the CONTRACTOR shall be replaced with an equivalent to the existing and to the satisfaction of the ENGINEER at no additional cost to the OWNER.

No separate payment will be made for resetting gas valves. Cost thereof shall be included in the price bid for the various items in the proposal.

DIVISION 700 – ELECTRICAL

SECTION 701 – GENERAL ITEMS

701.01 DESCRIPTION.

THE FOLLOWING SECTION IS ADDED:

Any Utility Pole near improvements, such as inlets, curbs, or handicap ramps, shall be braced as directed in the field by the Engineer. No separate pay item shall be made for bracing, but all costs shall be included within the price bid for other items.

NJDOT TEST METHODS

NJDOT R-1 – DETERMINING RIDE QUALITY OF PAVEMENT SURFACES

B. Apparatus.

PART B IS CHANGED TO:

Use the following apparatus:

1. Class 1 IPS that meets the requirements of ASTM E 950, Sections 4.0, 5.0 and 6.0 of AASHTO M 328, and the following:
 - a. Valid certification.
 - b. Recertification after any major component repairs or replacements.
 - c. The data system provides the raw profile data in format readable in ProVal.
 - d. Current version of pavement profile analysis software installed on the IPS computer to compute the IRI.
2. Base plate and gauge blocks, of 1 inch and 2 inch thickness, provided by the manufacturer to verify daily vertical calibration.
3. Retro-reflective traffic marking tape or other approved mechanism to automatically trigger the start and stop of profile measurements.

C. Procedure.

PART C IS CHANGED TO:

Perform the following steps:

1. Turn on the inertial profiler and warm up all electronic equipment in accordance with the manufacturer recommendations before testing.
2. Perform Block and Bounce tests each day before collecting data. Record the results in the calibration log. Ensure tolerances are within the certified limits.
3. Ensure retro-reflective traffic marking tape or other approved mechanism is placed at the beginning and end of each direction of travel lane.
4. Enter project information in the test equipment system.
5. Make provisions to start and stop recording profile at the beginning and end of testing. If an automatic trigger mechanism is not installed, make provision to initiate start and end of data recording manually by pressing an appropriate key(s) on the computer.
6. Ensure that the required speed, as recommended by the manufacturer, is achieved and that the system is collecting profile data before recording profile.
7. For each test section, perform 3 test runs to collect data of both wheel paths of each lane in the longitudinal direction of travel. The wheel path is defined as being located approximately 3 feet on each side of the centerline of the lane and extending for the full length of the lane. Lanes are defined by striping.
8. Save data from each run separately before the next run or lane testing, clearly identifying each test run, lane identification, and run number.

THE FOLLOWING IS ADDED TO NJDOT TEST METHODS:

NJDOT B-14 – DETERMINING THE SHEAR STRENGTH BETWEEN PAVEMENT LAYERS

A. Scope. This test method is used to determine the shear strength of the interface between pavement layers.

B. Apparatus. Use the following apparatus:

1. Bond Test Device. The device used for the bond shear test shall be designed to accommodate a 6 inch diameter test specimen. The device shall have a metal cylindrical specimen holder and a sliding metal loading head with a concave surface having a 3 inch radius of curvature to apply load to the specimen. The gap between the specimen holder and the sliding loading head shall be 1/4 inch \pm 1/32 inch.

2. Loading Machine. The loading machine shall produce a uniform vertical movement of 2 inches per minute. The Marshall Stability test apparatus or other mechanical or hydraulic testing machine may be used provided the rate of movement is maintained at 2 inches per minute while the load is being applied.
3. Wet masonry saw.

C. Procedure. Perform the following steps:

1. Sample Preparation.

- a. Each roadway core specimen shall be 6 inches in diameter with the entire surface of the perimeter perpendicular to the top surface of the core within ¼ inch. If the height of the core above or below the interface being tested is greater than 3 inches, it shall be trimmed with a wet masonry saw to a height of approximately 3 inches.
- b. Identify the location of the interface layer with white or silver paint with three equally spaced marks approximately one inch long around the perimeter of each core.

2. **Specimen Dimensions.** Measure the diameter of the core and the thickness of the overlay to the nearest 0.05 inch. Measure the diameter in at least three locations and average the readings.
3. **Specimen Conditioning.** Allow the specimens to stabilize at the test temperature of 77±2°F (25±1°C) for a minimum of 2 hours in an oven, or 40 minutes in a water bath in an enclosed leak-proof bag to protect it from getting wet.
4. **Specimen Positioning.** Orient the core in the bond strength device so that the direction of traffic marked on the core is vertically pointing downward and the marked interface is centered between the edge of the loading block and the edge of the loading head.
5. **Bond Test Device Positioning.** Align the loading head adjacent to the bonded interface. The loading head shall rest parallel to the bonded interface on the asphalt overlay portion of the specimen.
6. **Rate of Displacement.** Apply the displacement continuously and without shock at a constant strain rate of 2 inches per minute until failure occurs. Record the maximum load in pounds, P_{MAX}, carried by the specimen during the test.

D. Calculation. Calculate the bond shear strength, S_B, as follows:

$$A = \frac{\pi \times D^2}{4} \quad S_B = \frac{P_{MAX}}{A}$$

Where:

S_B = shear strength, pounds per square inch (psi)

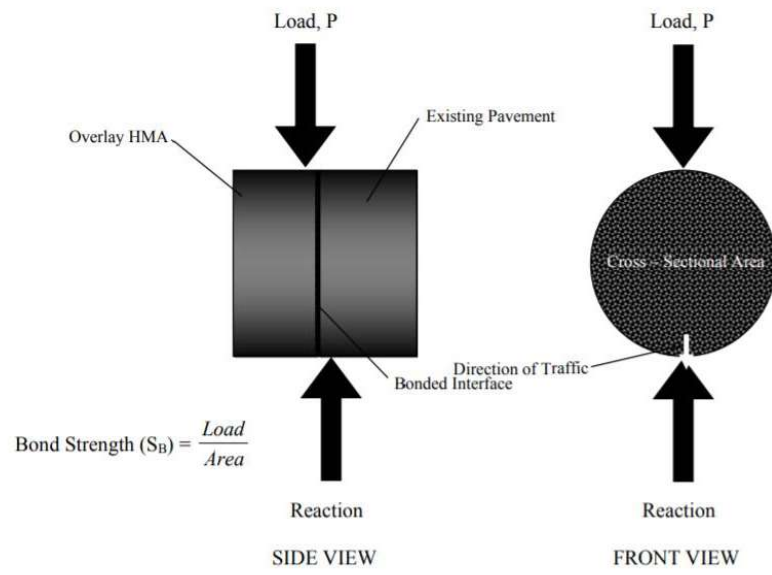
P_{MAX} = maximum load applied to specimen, pounds-force (lbf)

D = average diameter of test specimen, inches (in)

A = cross-sectional area of test specimen, square inches (in)²

E. Report.

1. Record each core number or identification, sampling date, and test date.
2. Failure surface. Identify if failures occurred at the interface, in the existing layer, or in the overlay for each core.
3. Note the appearance of the interface including any contaminants, milling striations, stripping, tack coat streaks, or other observations.
4. Record the test results for each core.
5. Specimen dimensions including thickness of the overlay asphalt, thickness of existing layer, the average diameter, and the cross- section area.
6. Maximum load applied, rounded to the nearest 50 lbf.
7. Bond shear strength, rounded to the nearest psi.
8. Calculate and record the mean and standard deviation of the bond strength for the set of cores.



WAGE RATES

STATE & COUNTY WAGE RATES

Are Available in the Office Of

101 Crawfords Corner Road, Suite 3400, Holmdel, NJ 07733

Prevailing Wage

Request for Determination

To be used by the Public Body in requesting Wage Determination pursuant to the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. and N.J.S.A. 34:1B-5.1, Chapter 150, Laws of 1963.

Complete and mail to:

Public Contracts Section
Office of Wage and Hour Compliance
CN 389
Trenton, NJ 08625-0389

Phone: 609-292-2259
Fax: 609-695-1174

Request is made for determination of wage rates to be paid laborers and mechanics on the work described below:

Name and Title of Requesting Officer	Phone Number
Address of Requesting Office	Proposed Advertising Date
	Estimated Value of Contract
Signature of Requesting Officer	Date of Request
Name and Address of Public Body (Owner) Who Will be Awarding Contract	Name and Address of Official Who will Receive Payrolls
Description of Work	
Location Where Work Will be Performed	Municipality
	County
Remarks	

Note: If faxed, do not send duplicate by mail.