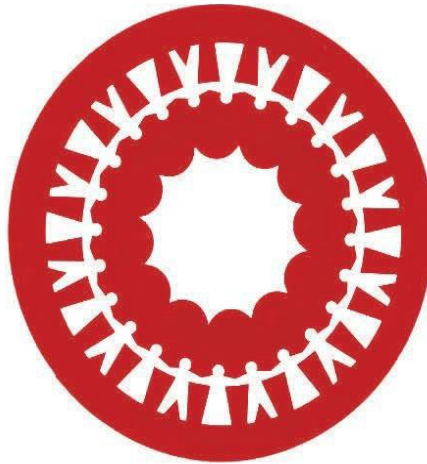


Invitation For Bids (IFB)
FOR
General Contractor SERVICES



METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
FOR
Cayce Utility Phase 1A
NASHVILLE, TENNESSEE

October 22, 2020

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1. INTRODUCTION

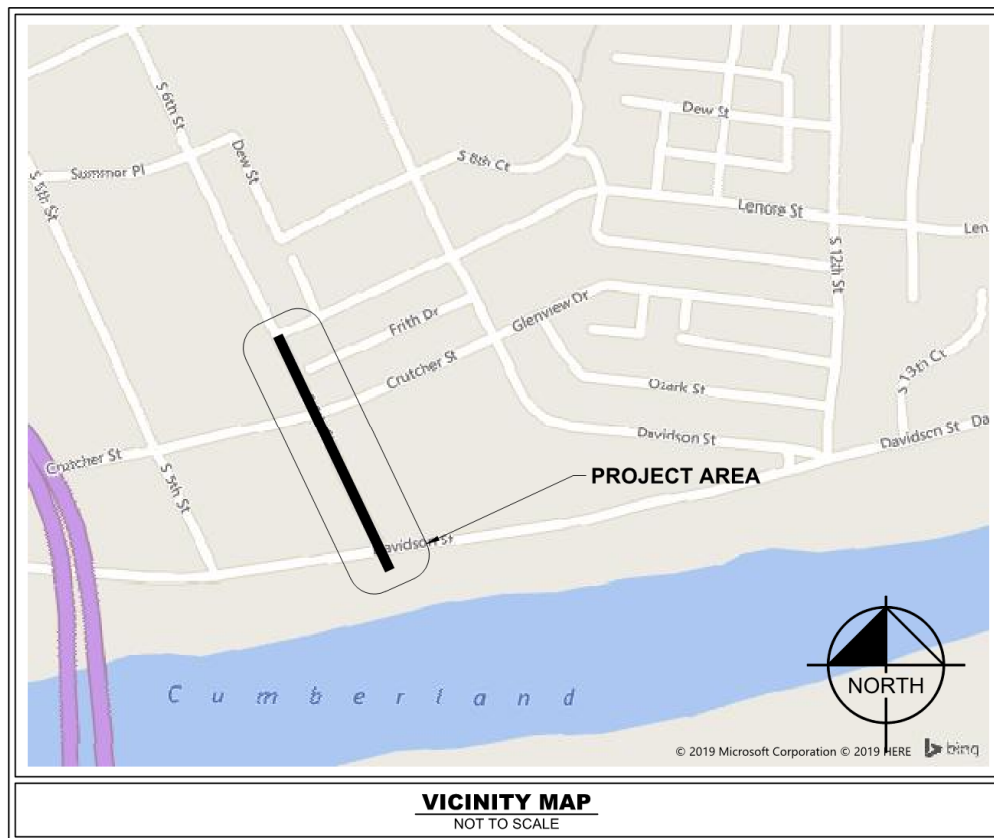
The Metropolitan Development and Housing Agency (MDHA) is seeking Contractor services for Cayce Utility Phase 1. This is a hard bid project. The lowest responsive and responsible bidder will be selected to perform the Work. One Contract will be awarded for all Work.

Cayce Utility Phase 1 will replace several city blocks of water, sanitary, and storm infrastructure increasing the capacity for current and future developments within the Cayce Place neighborhood of East Nashville.

The project will be developed under the requirements of the Cayce Place Specific Plan and the Cayce Place Design Guidelines. The development is guided by the Envision Cayce Master Plan for Revitalization of Cayce Place. Visualized as a new walkable, urban community, the plan features a variety of housing types, mixed incomes and uses, including a large linear park and open spaces, retail and institutional components and illustrates strong civic anchors. The above plans and guidelines can be found at the following web address:

www.nashville-mdha.org/envision-cayce

The Project includes, but is not limited to, the abandonment or removal of, and the installation of new water, sanitary, and storm infrastructure, as well as the replacement of pavement, curb & gutter, sidewalks, and other related work. The Project is primarily located in the S 6th Street Right-of-Way of the Cayce neighborhood of east Nashville, TN including a section from Davidson Street to the Cumberland River.



The Project is fully designed and is in accordance with all applicable Federal, State and local code requirements.

The Contractor will be expected to coordinate with other neighboring projects, with occupied residential and commercial neighbors, with the Engineer, Nashville Electric Service (NES), Metropolitan Public Works (MPW), Metropolitan Water Services (MWS), and other metro departments as necessary.

All Bidders are encouraged to visit the site to become familiar with the factors that may have an impact on their Bid. Should any additional information about the Project become available prior to the due date of the Bid, it will be distributed to all Responders as an Addendum to the IFB.

The Successful Bidder shall be required to finally complete all Work within three hundred twenty (320) calendar days from and after the Commencement Date specified in the Notice to Proceed.

We appreciate your interest and look forward to receiving your Bid in complete accordance with the submittal requirements defined herein.



James E. Harbison
MDHA Executive Director

--END OF SECTION 1--

2. INSTRUCTIONS TO BIDDERS

a. **PRE-BID CONFERENCE**

A Virtual Pre-Bid Conference will be held **November 4, 2020 at 11:00 a.m. CDT** on a Webex conference call hosted by MDHA. Please join us at the following link:

<https://nashville-mdha.webex.com/nashville-mdha/j.php?MTID=meae78814841019429aed0c9d4fb97ff0>

Join by phone

+1-408-418-9388 United States Toll

Meeting number (access code): 173 134 6084

Meeting password: FXmeiWwc835

Attendance at the Pre-Bid Conference is non-mandatory.

b. **EXAMINATION OF SITE AND CONTRACT DOCUMENTS**

All Bidders are expected to examine the specifications, drawings, all instructions, and are encouraged to visit the site and study the Envision Cayce Master Plan on their own time to become familiar with the factors that may have an impact on their Bid. Should any additional information about the Project become available prior to the due date for Bids, it will be distributed to all Bidders as an Addendum to the IFB. Bids shall be based only on this solicitation and formal amendments and/or addendums to this solicitation.

No plea of ignorance, of conditions or difficulties that may exist or conditions or difficulties that may be encountered in the execution of the Work pursuant to these Bidding Documents and as may be reasonably ascertained, as a result of failure to make the necessary examinations shall be accepted as an excuse for any failure or omission on the part of the Successful Bidder, nor shall they be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.

c. **INTERPRETATION OF CONTRACT DOCUMENTS**

No interpretation of the meaning of the plans, specifications or other Bidding Documents shall be made to a Bidder orally. Any such oral interpretations or clarifications shall be without legal effect. All requests for interpretations or clarifications shall be in writing. Requests for interpretation will be accepted until **November 11, 2020 at 2:00 p.m. Central Daylight Time (CDT)**. MDHA's response to written inquiries will be mailed or emailed to all Bidders as addendum. Questions may be submitted via "Housing Agency Marketplace" URL:

https://ha.internationaleprocurement.com/requests.html?company_id=51162

or to:

Diane Baseheart
Contracting Agent/DBE Coordinator
Metropolitan Development & Housing Agency
712 South Sixth Street
Nashville, TN 37206
dbaseheart@nashville-mdha.org

d. SUBMISSION DEADLINE

For consideration, please submit the following no later than **2:00 p.m., November 20, 2020 to the address above or via Marketplace “Housing Agency Marketplace” URL:**
https://ha.internationaleprocurement.com/requests.html?company_id=51162

- i. For hand delivered bids in sealed envelopes, the “Contractor/Subcontractor License Information Form” or same information shall be completed and placed on the outside of the envelope. For electronic bids, the “Contractor/Subcontractor License Information Form” or same information shall be completed and be the first page in the bid package submittal. The Bidder shall show Name of Project, Solicitation Number (60027), Due Date and Time of Bid, Contractor’s State License, applicable Subcontractor’s State License number, expiration date(s), and that part of classification applying to the Bid. Subcontractor(s), if applicable, that shall be shown on the “Contractor/Subcontractor License Information Form” are those who will perform Plumbing, HVAC/ Mechanical, Electrical, Masonry (if masonry exceeds \$100,000 including material and labor), and Geothermal. For Geothermal, list the TDEC Geothermal license number, classification and expiration date. If the Bidder will be performing that work with the Bidders own forces, so state.
- ii. Noncompliance with these instructions will result in the bid not being opened nor bid being considered.
- iii. Bids submitted via a 3rd party courier shall be assembled in the same manner as a hand delivered bid and then inserted into a mailing envelope clearly marked "Sealed Bid Enclosed" on the face thereof.
- iv. To submit Bids, follow Invitation For Bids. It is the Bidder’s responsibility to ensure receipt of (his or her) Bid, before time set and at place identified for receipt of Bids.

e. BID PREPARATION AND SUBMISSION

- i. All bids must be submitted on the forms provided by MDHA. Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder’s name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent’s authority. (Bidders should retain a copy of their bid for their records.) The below listed forms are required to be completed in their entirety and submitted in the order as they are listed. Failure to submit these documents in specific order and their entirety could result in being considered non-responsive. These forms can be found in this solicitation as Attachments A through M:

1. Attachment A - Contractor/Subcontractor License Information Form
2. Attachment B - Bid Form
3. Attachment C - AIA Document A310TM – 2010, Bid Bond
4. Attachment D - Representations, Certifications, and other Statement of Bidders (HUD 5369-A)
5. Attachment E - Form of Non-Collusive Affidavit (must be notarized)
6. Attachment F - AIA Document A305TM-1986, Contractor’s Qualification Statement (must be notarized)
7. Attachment G - Form 2001 – Diversity Business Enterprise Program Solicitation Certificate
8. Attachment H - Form 2002 – Diversity Business Enterprise Joint Venture Agreement
9. Attachment I - Form 2003 – Diversity Business Enterprise Utilization Commitment Plan
10. Attachment J - HUD Section 3 Certification and Compliance Agreement
11. Attachment K - Drug Free Affidavit

12. Attachment L – Fair Employment Practice Statement Affidavit

13. Attachment M – Contingent Fees Statement

- ii. This solicitation requires bidding on all items, failure to do so will disqualify the bid.
- iii. Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.
- iv. Bids submitted by telegraph or facsimile (fax) machines will not be considered.

f. AMENDMENTS/ADDENDA TO INVITATIONS FOR BIDS

- i. Amendments/Addenda shall be binding on Bidder and shall become a part of the Bidding Documents.
- ii. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- iii. Bidders shall acknowledge receipt of any amendment(s) and/or addenda to this solicitation by identifying the amendment(s) and/or the addenda number and date on the bid form. Bids which fail to acknowledge amendment(s) and/or addenda issued will result in the rejection of the bid if the amendment(s) and/or the addenda contained information which substantially changed MDHA's requirements.
- iv. Amendments/Addenda will be on file in the offices of MDHA and the Engineer, or available electronically, at least seven (7) days before bid opening.

g. BID QUANTITIES

- i. Quantities given in the Bid Schedule, while estimated from the best information available, are approximate only. Payment for unit price items shall be based on the actual number of units installed for the Work. Bids shall be compared on the basis of number of units stated in the Bid Schedule as set forth in the Bidding Documents. Said unit prices shall be multiplied by the bid quantities for the total Bid price. Any Bid not conforming to this requirement may be rejected. Special attention to all Bidders is called to this provision, because if conditions make it necessary or prudent to revise the unit quantities, the unit prices will be fixed for such increased or decreased quantities. Compensation for such additive or subtractive changes in the quantities shall be limited to the unit prices in the Bid. Subsequent to the issuance of a notice to proceed, the Project Manager and the Successful Bidder shall have the discretion to re-negotiate any unit price(s) where the actual quantity varies by more than 25% from the estimate at the time of bid. See also Article 4.1.2 of Exhibit A and Specification Section 012200 Unit Prices.
- ii. **Alternate Bid Pricing:** In the event that alternate pricing is requested, it is an expressed requirement of the bid invitation to provide pricing for all alternates as listed. All bids responses received without pricing for all alternates as listed will be considered technically non-responsive and will not be considered for award.

h. RESPONSIBILITY OF PROSPECTIVE CONTRACTOR

- i. MDHA will award the contract only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, MDHA will consider such matters as the bidder's:
 - 1. Integrity;
 - 2. Compliance with public policy;
 - 3. Record of past performance;
 - 4. Financial and technical resources (including construction and technical equipment); and
 - 5. Ability to do work in the State of Tennessee.

- ii. Before a bid is considered for award, the bidder may be requested by MDHA to submit a statement or other documentation regarding any of the items in paragraph (i) above. Failure by the bidder to provide such additional information shall render the bidder non-responsible and ineligible for award.

i. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWAL OF BIDS

- i. Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:
 - 1. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - 2. Was sent by mail, and it is determined by MDHA that the late receipt was due solely to mishandling by MDHA after receipt at MDHA;
 - 3. Was sent by U.S. Postal Service Express Mail Next Day Service Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term “working days” excludes weekends and observed holidays; or
 - 4. Is the only bid received.
- ii. Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (i) of this provision.
- iii. The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.
- iv. The only acceptable evidence to establish the time of receipt at MDHA is the time/date stamp of MDHA on the proposal wrapper or other documentary evidence of receipt maintained by MDHA.
- v. The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service-Post Office to Addressee” label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull’s eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.
- vi. Notwithstanding paragraph (i) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to MDHA will be considered at any time it is received and may be accepted.
- vii. Bids may be withdrawn by written notice, in person or by electronic submission if Notice of Withdrawal is received before the exact time set for the opening of the bids.

j. BID OPENING

- i. All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read in person or electronically on the date, time and place as specified in the solicitation. Bidders and other interested persons may be present with the exception when bids will be opened electronically only. When the solicitation indicates bids will be opened

electronically only, the information to view will be provided in the solicitation or amendment(s)/addenda.

k. SERVICE OF PROTEST

i. Definitions. As used in this provision:

“Interested party” means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

“Protest” means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

ii. Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from:

**Brent Grubb, Acting Contracting Officer,
712 South Sixth Street, Nashville, TN 37206.**

iii. All protests shall be resolved in accordance with MDHA’s protest policy and procedures, copies of which are maintained at MDHA.

I. CONTRACT AWARD

i. MDHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsive and responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the MDHA considering only price and any price-related factors specified in the solicitation.

1. MDHA will evaluate price based upon the **TOTAL BID PRICE from Attachment B – Bid Form. The TOTAL BID PRICE is the sum of BASE BID WORK OTHER THAN UNIT PRICE WORK, BASE BID UNIT PRICE WORK, TOTAL ALT #1, and TOTAL ALT #2 on Attachment B – Bid Form. See also Article 4.1 of Exhibit A – AIA A101-2017 Standard Form of Agreement between Owner and Contractor. Bidder is responsible to ensure calculations are complete and accurate.**

2. MDHA will utilize Metro Procurement Code (§ 4.44) and Regulations (§§ R4.44.020.04), Assistance to Small (SBE) and/or Service-Disabled Veteran (SDV) Owned Businesses, using the Cost Incentive method as a price-related factor for this solicitation.

a. The Metro Procurement Code (§ 4.44) provide options for the Purchasing Agent to maximize the participation and performance of Metro approved SBE/SDV businesses.

b. MDHA is expanding this Code to allow bidders to utilize Minority-owned Business Enterprises (MBE) and Woman-owned Business Enterprises (WBE).

c. Assistance is provided to offerors who are SBE/SDV/MBE/WBE, or who need assistance in locating potential SBE/SDV/MBE/WBE subcontractors or suppliers. For assistance, offerors are encouraged to Diane Baseheart by email at dbaseheart@nashville-mdha.org or call (615) 252-8432. For more information and the forms go to the following website:

<http://www.nashville.gov/Finance/Procurement/Minority-and-Women-Business-Assistance/SMWBE-Lists-and-Forms.aspx>.

d. MDHA also accepts certification from other certifying agencies as listed at the following link: <http://www.nashville-mdha.org/diversity-business-enterprise-program/>

e. If the Offeror is a SBE/SDV/MBE/WBE business, Metro considers the work the SBE/SDV/MBE/WBE firm commits to self-perform. If the work is subcontracted or otherwise procured, only the work performed by a Metro approved SBE/SDV/MBE/WBE subcontractor or supplier may be considered for the purposes of award incentive. All SBE/SDV/MBE/WBE businesses included in offers must be registered online with Metro and approved by the BAO prior to the solicitation closing date.

- f. **Cost Incentive** - The Metro Procurement Code and Regulations (§§ R4.44.020.04) provide options for the Purchasing Agent to provide a cost incentive to maximize SBE/SDV/MBE/WBE participation. If this solicitation includes a cost incentive for the participation of approved SBE/SDV/MBE/WBE business, the methodology for evaluating the SBE/SDV/MBE/WBE participation is described in the regulations found at <https://www.nashville.gov/Portals/0/SiteContent/Finance/Purchasing/Procurement%20Standard/Procurement-Regulations.pdf>.
 - g. Offerors must acknowledge that they understand the SBE/SDV/MBE/WBE participation expectations described above by completing Attachments G, H, and I.
 - h. Offeror also acknowledges that they understand the consequences of failing to comply with their SBE/SDV/MBE/WBE participation commitments. If Contractor fails to comply with their SBE/SDV/MBE/WBE businesses participation commitments, or it is determined that their SBE/SDV/MBE/WBE status or the SBE/SDV/MBE/WBE status of any subcontractor/subconsultant/supplier, is shown to be false; Metro may terminate the Contract and charge Contractor for any costs incurred by Metro as a result of the misrepresentation. Misrepresentation may result in debarment.
 - i. Contractor shall enter payments to SBE/SDV/MBE/WBE subcontractors/subconsultants/suppliers as instructed by Metro. Failure to do so may impact payments to Contractor.
- ii. If no bid is within MDHA's available funding, MDHA shall follow its written policy and procedures in making any award under this solicitation.
 - iii. In the case of tie low bids, award shall be made in accordance with MDHA's written policy and procedures.
 - iv. MDHA reserves the right to reject any and all Bids and/or to waive any informality in the solicitation process or parts thereof and to resolicit. MDHA does not guarantee that a contract will be awarded as a result of this Invitation for Bids.
 - v. Unless precluded elsewhere in the solicitation, MDHA may accept any item or combination of items bid.
 - vi. MDHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.
 - vii. A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party (see Bid Guarantee below).

m. BID GUARANTEE

All Bids must be accompanied by a Bid Guarantee made payable to the Owner which shall not be less than five percent (5%) of the amount of the maximum bid price (determined by adding the Total Base Bid, Total Alt #1, and Total Alt #2). The Bid Guarantee shall be in the form of a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state of Tennessee (see Attachment C – Bid Bond). Failure to submit a Bid Guarantee with the Bid shall result in the rejection of the bid.

The Bid Guarantee of the apparent Successful Bidder will be retained until Owner awards the Agreement to such Bidder, and such Bidder has executed three (3) copies of the Agreement in the form attached herein, furnished the required bonds and insurance, and met the other conditions of the Notice of Award, whereupon the Bid Guarantee will be released. The Owner shall execute all copies and return one fully executed copy of the Agreement to the Successful Bidder within thirty (30) calendar days after receipt of the executed agreement from the Successful Bidder unless any governmental agency having funding control over the Project requires additional time, in which event the Owner shall have such additional time to execute the

Agreement as may be reasonably necessary.

If the Successful Bidder fails to execute and deliver the Contract and furnish the required bond and insurance within ten (10) calendar days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid Guarantee of that Bidder will be forfeited, in whole in the case of a penal sum bid bond, and to the extent of Owner's damages in the case of a damages-form bond. Such forfeiture will be Owner's exclusive remedy if Bidder defaults.

The Bid Guarantee of other Bidders may be retained by Owner until the earlier of seven (7) calendar days after the Effective Date of the Contract or ninety (90) calendar days after the Submission Deadline, whereupon Bid Guarantee furnished by such Bidders will be released.

n. ASSURANCE OF COMPLETION

- i. The successful bidder shall provide a Payment and Performance Bond in the amount of 100% of the Contract amount prior to the issuance of any Notice to Proceed.
- ii. Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.
- iii. Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.
- iv. Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as MDHA may grant based upon reasons determined adequate by MDHA, shall render the bidder ineligible for award. MDHA may then either award the contract to the next lowest responsible bidder or solicit new bids. MDHA may retain the ineligible bidder's bid guarantee.

o. PRECONSTRUCTION CONFERENCE

- i. After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of MDHA and its architect/engineer, and other interested parties convened by MDHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). MDHA will provide the successful bidder with the date, time, and place of the conference.

p. COST INCURRED IN RESPONDING

All costs directly or indirectly related to the preparation of a Bid to this Invitation or clarification to the Bid which may be requested by MDHA shall be the sole responsibility of, and shall be borne by Bidder(s).

Each firm, by submitting its proposal, waives any claim for liability against MDHA as to loss, injury and costs or expenses, which may be incurred as a consequence of its Bid to this document.

q. **CONTRACT COMPLIANCE STATEMENT**

The Bidder shall be in compliance with all applicable rules, regulations, zoning, permitting, registration and licensing requirements of Federal, State and Local governing entities. By the act of submitting a Bid, the Bidder implies their compliance with terms of this Invitation for Bids.

Bidder shall provide their license to do work in the State of Tennessee.

--END OF SECTION 2--

ATTACHMENTS A-M

- Attachment A - Contractor/Subcontractor License Information Form
- Attachment B - Bid Form
- Attachment C - AIA Document A310TM – 2010, Bid Bond
- Attachment D - Representations, Certifications, and other Statement of Bidders (HUD 5369-A)
- Attachment E - Form of Non-Collusive Affidavit (must be notarized)
- Attachment F - AIA Document A305TM-1986, Contractor's Qualification Statement (must be notarized)
- Attachment G - Form 2001 – Diversity Business Enterprise Program Solicitation Certificate
- Attachment H - Form 2002 – Diversity Business Enterprise Joint Venture Agreement
- Attachment I - Form 2003 – Diversity Business Enterprise Utilization Commitment Plan
- Attachment J - HUD Section 3 Certification and Compliance Agreement
- Attachment K - Drug Free Affidavit
- Attachment L – Fair Employment Practice Statement Affidavit
- Attachment M – Contingent Fees Statement

ATTACHMENT A

Contractor/Subcontractor License Information Form

**** VERY IMPORTANT NOTICE ****

This form **SHALL** be completed and submitted with your Bid per the instructions below or your bid will be considered **NONRESPONSIVE**.

- 1) On hand delivered bids in sealed envelopes, this form or same information shall be completed and placed on the outside of the envelope. When electronic bids are being accepted, this form or same information shall be completed and be the first page in the bid package submittal. The Bidder shall show name of Project, Solicitation Number (if applicable), Due Date and Time of Bid, Contractor's State License, applicable Subcontractor's State License number, expiration date(s), and that part of classification applying to the Bid. Subcontractor(s), if applicable, that shall be shown on this form are those who will perform Plumbing, HVAC/Mechanical, Electrical, Masonry (if masonry exceeds \$100,000 including material and labor), and Geothermal. For Geothermal, list the TDEC Geothermal license number, classification and expiration date. If the Bidder will be performing that work with the Bidders own forces, so state.
- 2) Noncompliance with these instructions will result in the bid envelope not being opened nor bid being considered.
- 3) Bids submitted via a 3rd party courier shall be assembled in the same manner as a hand delivered bid and then inserted into a Mailing envelope Clearly marked "Sealed Bid Enclosed" on the face thereof.

Name of Project:	
Solicitation #	
Due Date & Time of Bid:	
Contractor Name:	
License Number	
Expiration Date	
Classification	
SUBCONTRACTORS:	
Plumbing Contractor:	
License Number	
Expiration Date	
Classification	
HVAC/Mechanical Contractor:	
License Number	
Expiration Date	
Classification	
Electrical Contractor:	
License Number	
Expiration Date	
Classification	
Masonry Contractor:	
License Number	
Expiration Date	
Classification	
Geothermal Contractor:	
License Number	
Expiration Date	
Classification	

ATTACHMENT B

BID FORM

PROPOSAL OF:

(Name of Bidder)

(Address of Bidder)

organized and existing under the laws of the State of _____ and doing business as a _____ (insert "a corporation", "a partnership" or "an individual" or otherwise as applicable).

**TO THE: METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
712 SOUTH SIXTH STREET
NASHVILLE, TENNESSEE 37206**

In compliance with your Invitation for Bids, Bidder hereby proposes to furnish all necessary labor, machinery, tools, apparatus, materials, equipment, services and other necessary supplies, in strict accordance with the terms and conditions of plans, specifications and Contract Documents within the number of consecutive calendar days and at the prices set forth below for:

Cayce Utility Phase 1A

The Project includes, but is not limited to, the abandonment or removal of, and the installation of new water, sanitary, and storm infrastructure, as well as the replacement of pavement, curb & gutter, sidewalks, and other related work. The Project is primarily located in the S 6th Street Right-of-Way of the Cayce neighborhood of east Nashville, TN including a section from Davidson Street to the Cumberland River.

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

Bidder agrees, upon receipt of the Notice of Award accompanied by the Agreement and all required attachments, to cause same to be properly executed and returned to the MDHA within ten (10) days thereafter. Bidder further agrees, upon receipt of the Notice to Proceed, to commence work on the project immediately thereafter and to complete the project within **Three Hundred Twenty 320 consecutive calendar days** after receipt of said Notice to Proceed.

The Bidder agrees to furnish and construct all work as shown on the contract documents for a TOTAL BID PRICE, matching that of the unit price Bid Form - Unit Price Schedule below, of

_____ & _____ /100 Dollars,

\$_____. (show amount in both words and figures).

ATTACHMENT B

1. In submitting this bid, it is understood that the right is reserved by the Metropolitan Development and Housing Agency to reject any and all bids. If written notice of the acceptance of this bid is mailed, or electronically delivered to the undersigned within ninety (90) days after the opening therefore, or at any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver a contract in the prescribed form and furnish the required bond and insurance within ten (10) days after the contract is presented to him for signature.

2. Security in the sum of five percent (\$ _____), in the form of _____ a Bid Bond _____ is submitted herewith in accordance with the Specifications.

3. By signing and submitting this bid, the Contractor recognizes the requirement for 5% retainage of payment (Article 5.1.7 of the AIA A101-2017 Standard Form of Agreement between Owner and Contractor) and provisions of the statute T.C.A. 66-11-144, of the State of Tennessee.

4. Attached hereto is an affidavit in proof that the undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or the submitting of proposals for the Contract for which this proposal is submitted.

5. The bidder represents that he (___) has, (___) has not, participated in a previous contract or subcontract subject to the equal opportunity clause prescribed by Executive Orders 10925, 1114 or 11246, or the Secretary of Labor that he (___) has, (___) has not, filed all required compliance reports, and that representations indicating submission of required compliance reports, signed by proposed subcontractor, will be obtained, prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

6. The Bidder acknowledges that he (or she) has received the following Addendum (s). The modifications to the Bid Documents noted therein have been considered and all costs thereto are included in the Bid Sum.
 - A. Addendum Number _____ Dated _____
 - B. Addendum Number _____ Dated _____
 - C. Addendum Number _____ Dated _____

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

DATE: _____

(NAME OF BIDDER)

OFFICIAL ADDRESS & PHONE NUMBER:

BY: _____
TITLE _____

ATTACHMENT B

This document is protected. Bidders can only edit the yellow cells. If Bidder chooses to use this worksheet they are responsible for the complete and accurate calculations of unit price extensions, subtotals, and TOTAL BID PRICE. MDHA assumes no responsibility if the formulas do not work properly.



BID FORM - UNIT PRICE SCHEDULE

PREPARED FOR: METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (MDHA)
DESCRIPTION: CAYCE HOMES UTILITIES - PHASE 1A

DATE: 10/15/2020
KH PROJECT #: 118109016

BASE BID						
WORK OTHER THAN UNIT PRICE WORK						
Note	TDOT Item No.	Item Description	Unit	Quantity	Unit Cost	Total
1	105-01	CONSTRUCTION STAKES, LINES, GRADES	LS	1		\$ -
17	712-01.50	MAINTENANCE OF TRAFFIC	LS	1		\$ -
	717-01	MOBILIZATION	LS	1		\$ -
SUBTOTAL BASE BID - WORK OTHER THAN UNIT PRICE WORK						\$ -
UNIT PRICE WORK						
2	202-02.01	REMOVAL OF PIPES (STORM - BELOW 42")	L.F.	636		\$ -
2	202-02.02	REMOVAL OF PIPES (STORM - 42" AND ABOVE)	L.F.	829		\$ -
2	202-02.21	REMOVAL OF PIPE (WATER MAIN)	L.F.	1068		\$ -
3	202-03	REMOVAL OF RIGID PAVEMENT, SIDEWALK, ETC.	S.Y.	721		\$ -
3	202-03.01	REMOVAL OF ASPHALT PAVEMENT	S.Y.	2792		\$ -
4	202-04.01	REMOVAL OF STRUCTURES (STORM)	E.A.	16		\$ -
5	202-08.15	REMOVAL OF CURB AND GUTTER	L.F.	1197		\$ -
6	203-01.29	ROCK EXCAVATION	C.Y.	100		\$ -
7	203-02.01	BORROW EXCAVATION (GRADED SOLID ROCK)	TON	175		\$ -
8	203-05	UNDERCUTTING	C.Y.	100		\$ -
	209-03.21	FILTER SOCK (12 INCH)	L.F.	1235		\$ -
	209-08.02	TEMPORARY SILT FENCE (WITH BACKING)	L.F.	500		\$ -
	209-40.33	CATCH BASIN PROTECTION (TYPE D)	E.A.	21		\$ -
9	303-01	MINERAL AGGREGATE, TYPE A BASE, GRADING D	TON	1800		\$ -
	307-01.08	ASPHALT CONCRETE MIX (PG64-22) (BPMB-HM) GRADING B-M2	TON	400		\$ -
	402-01	BITUMINOUS MATERIAL FOR PRIME COAT (PC)	TON	5		\$ -
	403-01	BITUMINOUS MATERIAL FOR TACK COAT (TC)	TON	2		\$ -
10	407-20.05	SAWCUTTING ASPHALT PAVEMENT	L.F.	932		\$ -
	411-01.10	ACS MIX (PG64-22) GRADING D	TON	450		\$ -
	415-01.01	COLD PLANING BITUMINOUS PAVEMENT	TON	150		\$ -
11	607-02.02	15" RCP CLASS III	LF	214		\$ -
11	607-03.02	18" RCP CLASS III	LF	61		\$ -
11	607-07.02	36" RCP CLASS III	LF	318		\$ -
11	607-09.02	48" RCP CLASS III	LF	170		\$ -
11	607-11.03	60" RCP CLASS III	LF	26		\$ -
11	607-16.08	53" x 34" HORIZONTAL OVAL CONCRETE PIPE CUVLERT	LF	49		\$ -

ATTACHMENT B

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BID FORM - UNIT PRICE SCHEDULE

PREPARED FOR: **METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (MDHA)**
 DESCRIPTION: **CAYCE HOMES UTILITIES - PHASE 1A**

DATE: **10/15/2020**
 KH PROJECT #: **118109016**

11	607-50.05	8' X 4' PRECAST CONCRETE BOX CULVERT	LF	771		\$	-
11	607-50.12	10' X 3' PRECAST CONCRETE BOX CULVERT	LF	24		\$	-
11	607-50.13	PRECAST CONCRETE BOX CULVERT (TRANSITION SECTION FROM 10' X 3' TO 8' X 4')	LF	10		\$	-
12	611-01.10	MANHOLES, (60" DIAMETER, 9' DEPTH)	EA	1		\$	-
12	611-01.11	MANHOLES, (84" DIAMETER, 10.5' DEPTH)	EA	1		\$	-
12	611-02.16	JUNCTION BOX (8' x 12' CONCRETE STORMWATER VAULT WITH MANHOLE ACCESS (17' DEPTH))	EA	1		\$	-
12	611-02.17	JUNCTION BOX (10' x 10' CONCRETE STORMWATER VAULT WITH MANHOLE ACCESS (10' DEPTH))	EA	1		\$	-
	611-07.69	48" CONCRETE ENDWALL	EA	1		\$	-
12	611-90.01	CATCH BASINS, (SINGLE INLET (METRO NASHVILLE DR-105), 7' - 9' DEPTH)	EA	7		\$	-
12	611-90.02	CATCH BASINS, (DOUBLE INLET (METRO NASHVILLE DR-110), 6' DEPTH)	EA	1		\$	-
12	611-90.03	CATCH BASINS, (84" TDOT D-CB-12RC - SINGLE, 9' DEPTH)	EA	1		\$	-
12	611-90.04	CATCH BASINS, (84" TDOT D-CB-12RC - DOUBLE, 9' DEPTH)	EA	1		\$	-
13	701-01.01	CONCRETE SIDEWALK (4")	SF	5880		\$	-
14	701-02	RESIDENTIAL CONCRETE DRIVEWAY (METRO ST-322)	SF	334		\$	-
14	701-02.02	COMMERCIAL CONCRETE DRIVEWAY (METRO ST-325)	SF	800		\$	-
15	701-02.03	CONCRETE CURB RAMP	SF	240		\$	-
16	702-03	CONCRETE COMBINED CURB AND GUTTER	CY	82		\$	-
	713-16.20	SIGNS (REGULATORY SIGNS WITH POST AND FOOTER)	EA	5		\$	-
	713-16.50	REMOVE AND REPLACE SIGN AND FOOTING	E.A.	2		\$	-
	716-02.05	PLASTIC PAVEMENT MARKING (STOP LINE)	LF	60		\$	-
	716-13.01	SPRAY THERMO PAVEMENT MARKING (60 MIL) (4 IN LINE)	LF	600		\$	-
11	795-01.03	FURNISH AND INSTALL 6" DIP RESTRAINED JOINT WATER LINE	LF	25		\$	-
11	795-01.05	FURNISH AND INSTALL 8" DIP RESTRAINED JOINT WATER LINE	LF	90		\$	-
11	795-01.09	FURNISH AND INSTALL 12" DIP RESTRAINED JOINT WATER LINE	LF	945		\$	-
	795-06.04	RECONNECT TO 6" WATER LINE	EA	1		\$	-
	795-06.07	RECONNECT TO 12" WATER LINE	EA	2		\$	-
	795-07.15	12" X 12" TAPPING SLEEVE/WET TAP 12" WATER LINE	EA	1		\$	-
	795-08.04	6" GATE VALVE ASSEMBLY	EA	1		\$	-
	795-08.05	8" GATE VALVE ASSEMBLY	EA	1		\$	-
	795-08.09	12" GATE VALVE ASSEMBLY	EA	3		\$	-
	795-10.11	REMOVE WATER VALVE	E.A.	8		\$	-
18	795-11.02	FIRE HYDRANT ASSEMBLY	EA	1		\$	-
	795-12.01	REMOVE FIRE HYDRANT	E.A.	1		\$	-
	795-13.01	DI FITTINGS	LB	5100		\$	-
	795-16.21	RELOCATE WATER METER ASSEMBLY	EA	1		\$	-
	795-16.22	RECONNECT WATER SERVICE LINES	EA	5		\$	-

ATTACHMENT B

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BID FORM - UNIT PRICE SCHEDULE

PREPARED FOR: **METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (MDHA)**
 DESCRIPTION: **CAYCE HOMES UTILITIES - PHASE 1A**

DATE: **10/15/2020**
 KH PROJECT #: **118109016**

11	797-05.01	8" DIP GRAVITY SEWER PIPE	LF	102		\$	-
11	797-05.05	10" DIP GRAVITY SEWER PIPE	LF	165		\$	-
11	797-05.56	10" PVC SANITARY SEWER PIPE	LF	244		\$	-
12	797-07.02	48" SANITARY SEWER MANHOLES 4'-6" DEPTH	EA	5		\$	-
12	797-07.03	48" SANITARY SEWER MANHOLES 6'-8" DEPTH	EA	4		\$	-
4	797-07.80	REMOVE SEWER STRUCTURES	E.A.	6		\$	-
3	797-11.35	REMOVE EXISTING SEWER 8IN - 14IN	L.F.	354		\$	-
	801-01	SEEDING (WITH MULCH)	UNIT	5		\$	-
	802-05.01	TEMPORARY TREE PROTECTION	L.F.	150		\$	-
19	920-10.01	CONCRETE TURN DOWN SLAB (1' WIDTH)	LF	293		\$	-
20	920-10.04	DIRECT PIPE CONNECTION INTO BOX CULVERT	EA	6		\$	-
21	920-11.04	BOX CULVERT MANHOLE STACK OUT (SINGLE GRATE)	EA	3		\$	-
21	920-12.04	BOX CULVERT MANHOLE STACK OUT (DOUBLE GRATE)	EA	3		\$	-
21	920-13.04	BOX CULVERT STACK OUT (MANHOLE)	EA	1		\$	-
SUBTOTAL BASE BID UNIT PRICE WORK						\$	-
TOTAL BASE BID						\$	-

BID ALTERNATE #1							
2	202-02.01	BID ALT #1 - REMOVAL OF PIPES (STORM - BELOW 42")	L.F.	151		\$	-
3	202-03.01	BID ALT #1 - REMOVAL OF ASPHALT PAVEMENT	S.Y.	7886		\$	-
4	202-04.01	BID ALT#1- REMOVE STRUCTURES (STORM)	EA	2		\$	-
9	303-01	BID ALT#1 - MINERAL AGGREGATE, TYPE A BASE, GRADING D	TON	340.8		\$	-
	307-01.08	BID ALT#1 - ASPHALT CONCRETE MIX (PG64-22) (BPMB-HM) GRADING B-M2	TON	99.0		\$	-
	402-01	BID ALT#1 - BITUMINOUS MATERIAL FOR PRIME COAT (PC)	TON	1.2		\$	-
	403-01	BID ALT#1 - BITUMINOUS MATERIAL FOR TACK COAT (TC)	TON	0.5		\$	-
10	407-20.05	BID ALT#1 - SAWCUTTING ASPHALT PAVEMENT	L.F.	142		\$	-
	411-01.10	BID ALT#1 - ACS MIX (PG64-22) GRADING D	TON	128.1		\$	-
11	607-03.02	BID ALT#1 - 18" RCP CLASS III	LF	82		\$	-
11	607-09.02	BID ALT#1 - 48" RCP CLASS III	LF	28		\$	-
12	611-01.12	BID ALT#1 - MANHOLES (72" ,12' DEPTH)	EA	1		\$	-
12	611-14.03	BID ALT#1 - CATCH BASINS TYPE 14, 8'-12' DEPTH	EA	1		\$	-
20	920-10.04	DIRECT PIPE CONNECTION INTO BOX CULVERT	EA	1		\$	-
21	920-13.04	BID ALT#1 - BOX CULVERT MANHOLE STACK OUT (MANHOLE)	EA	1		\$	-
TOTAL ALT #1						\$	-

ATTACHMENT B

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BID FORM - UNIT PRICE SCHEDULE

PREPARED FOR: **METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (MDHA)**
 DESCRIPTION: **CAYCE HOMES UTILITIES - PHASE 1A**

DATE: **10/15/2020**
 KH PROJECT #: **118109016**

BID ALTERNATE #2							
22	607-25.02	BID ALT#2 - CIPP PIPE LINING (for 48" pipe)	LF	185		\$	-
						TOTAL ALT #2	\$ -

TOTAL VALUE IF BOTH BID ALTERNATES ACCEPTED	
SUBTOTAL WORK OTHER THAN UNIT PRICE WORK	\$ -
SUBTOTAL UNIT PRICE WORK	\$ -
TOTAL BID PRICE	\$ -

NOTE: Any item, material, equipment, labor, or operation required to complete the work outlined in the Construction Plans that is not listed as a bid item above shall be considered incidental and shall be incorporated into other bid items.

FOOTNOTES	
1	Includes all construction staking and layout necessary for the project. Also includes Metro Water Services required As-built and project close out information.
2	Removal of pipe line items include the excavation to dig down to the pipe and the removal and disposal of the pipes.
3	Includes full depth removal of asphalt or concrete and base stone down to subgrade
4	Removal of structures shall include required excavation, removal and disposal of the structures.
5	Includes full depth removal of existing curb or curb and gutter and base stone down to subgrade.
6	This unit price shall apply to any solid rock excavation that is deemed necessary for installation of utility lines associated with this project. Based on the Geotechnical Report we do not anticipate any large-scale rock formations within the existing roadways. Should we encounter rock that needs to be removed to achieve a depth as indicated on the plans this unit price would apply. Owner and Engineer shall be consulted prior to any rock excavation taking place. Written approval shall be provided before excavation of any solid bedrock.
7	This unit price shall apply when undercutting (203-05) is approved. Borrow Excavation (Graded Solid Rock) will be used to fill back in where poor soils were removed through undercutting. Graded Solid Rock will be used to bring the grade back up to subgrade or bedding grade for utility lines.
8	This unit price shall apply to any excavation below the necessary depth required for pipe bedding or standard excavation required to preform the construction as indicated on the plans. Construction Materials representatives will be on site during excavation and shall be consulted if the contractor believes undercutting is required. This item would consist of additional excavation to remove poor soils and haul off site to an approved and permitted fill site. Owner, Engineer and Material Testing representative shall be consulted prior to any undercutting taking place. Written approval shall be provided before any undercutting occurs.
9	This item shall be used for 8" base stone where full depth asphalt replacement is noted on the plans. All other required stone backfill shall be incidental to pipe installation or other items
10	Includes saw cutting of asphalt and concrete.
11	Pipe installation shall consist of required excavation, bedding material, pipe installation and backfill material up to subgrade. It shall also consist of any trenching, trench boxes or other safety measures required for the installation of the pipe. This item shall also consist of all required testing.
12	Structures shall consist of required excavation, bedding material, structure installation, and backfill material up to subgrade. It shall also consist of any trenching, trench boxes or other safety measures required for the installation of the structure.
13	Concrete sidewalk pay item includes 4" base stone, 4" concrete, expansion and control joints, all prep, labor, materials, formwork, finished associated with the construction of the sidewalk. Refer to Metro Detail No. ST-209 and ST-210 on Sheet C8-02A.

ATTACHMENT B

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BID FORM - UNIT PRICE SCHEDULE

PREPARED FOR: **METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (MDHA)**
DESCRIPTION: **CAYCE HOMES UTILITIES - PHASE 1A**

DATE: **10/15/2020**
KH PROJECT #: **118109016**

14	Concrete driveway pay items includes 4" base stone, welded wire mesh, concrete, expansion and control joints, all prep, labor, materials, formwork, finished associated with the construction of the sidewalk. Refer to Metro Detail No. ST-322, ST-323, ST-324 and ST-325 on Sheet C8-02B.
15	Concrete curb ramp pay item includes 4" base stone, 6" concrete, tactile warning system, expansion and control joints, all prep, labor, materials, formwork, finished associated with the construction of the sidewalk. Refer to Metro Detail No. ST-320, ST-321, ST-329 and ST-330 on Sheet C8-02B and C8-02C.
16	Concrete curb and gutter pay item includes 4" base stone, concrete, expansion and control joints, all prep, labor, materials, formwork, finished associated with the construction of the sidewalk. Refer to Metro Detail No. ST-200 on Sheet C8-02A.
17	Bid item includes all necessary Maintenance of Traffic for the project including but not limited to road closures, lane closures, sidewalk closures, detours, and the lane shifts at Davidson Street and South 6th Street as shown on Sheet C9-00 and C9-01.
18	Fire hydrant assembly shall consist of hydrant, valve, concrete blocks and 6" line from water main. See Metro Detail WDET005 on Sheet C8-01A.
19	See detail on Sheet C8-02C, Sheet C5-02 for locations and cross sections for heights of turn down.
20	This item shall consist of the labor and materials required to connect the pipe into the side of the box culvert. The coring or fabrication of the hole or cutout in the box culvert shall be paid under the 8' x 4' Precast Concrete Box Culvert Line item.
21	This item shall consist of the labor and materials required to add an access structure directly on top of the box culvert. The coring or fabrication of the hole or cutout in the box culvert shall be paid under the 8' x 4' Precast Concrete Box Culvert Line item.
22	Bid item for cured-in-place pipe liner shall include cleaning of pipe before and after pipe lining. It shall also include cleaning of joints and grouting joints as necessary per specifications. Refer to specification sections 33 01 40 and 33 35 20. Also refer to video of pipe provided with bid documents.

DRAFT AIA® Document A310™ - 2010

Bid Bond

CONTRACTOR:
(Name, legal status and address)

<< >>< >
<< >>

SURETY:
(Name, legal status and principal place of business)

<< >>< >
<< >>

OWNER:
(Name, legal status and address)

<< >>< >
<< >>

BOND AMOUNT: \$ << >>

PROJECT:
(Name, location or address, and Project number, if any)

<< >>
<< >>
<< >>

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

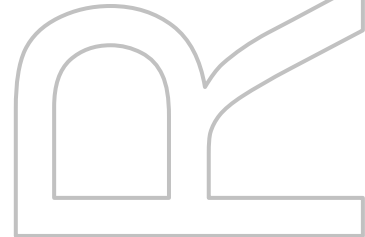
When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.



ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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ATTACHMENT C

Signed and sealed this « » day of « », « »

(Witness)

(Witness)

« »
(Contractor as Principal) (Seal)

« »
(Title)

« »
(Surety) (Seal)

« »
(Title)



**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

ATTACHMENT D

**Representations, Certifications,
and Other Statements of Bidders**
Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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10. Certification of Nonsegregated Facilities	3
11. Clean Air and Water Certification	3
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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [] has, [] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [] has, [] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
 (b) Impair the bidder's objectivity in performing the contract work.
 In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24. (b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) is, is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) is, is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- Black Americans Asian Pacific Americans
 Hispanic Americans Asian Indian Americans
 Native Americans Hasidic Jewish Americans

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) is, is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) is, is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [] is, [] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [] is, [] is not included with the bid.

13. Bidder's Signature

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

ATTACHMENT E

FORM OF NON-COLLUSIVE AFFIDAVIT

AFFIDAVIT

State of _____)
) ss:
County of _____)

_____, being first duly sworn, disposes and says:

That he is _____, (a partner or officer of the firm of, etc.) the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Metropolitan Development and Housing Agency or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Signature of:

- Bidder, if the bidder is an individual;
- Partner, if the bidder is a partnership;
- Officer, if the bidder is a corporation.

Subscribed and sworn to before me

this _____

day of _____, 2020.

My commission expires:

_____, 20__

DRAFT AIA® Document A305™ - 1986

Contractor's Qualification Statement

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO: <>

ADDRESS: <>

SUBMITTED BY: <>

NAME: <>

ADDRESS: <>

PRINCIPAL OFFICE: <>

[<>] Corporation

[<>] Partnership

[<>] Individual

[<>] Joint Venture

[<>] Other <>

NAME OF PROJECT: (if applicable) <>

TYPE OF WORK: (file separate form for each Classification of Work)

[<>] General Construction

[<>] HVAC

[<>] Electrical

[<>] Plumbing

[<>] Other: (Specify) <>

§ 1 ORGANIZATION

§ 1.1 How many years has your organization been in business as a Contractor? <>

§ 1.2 How many years has your organization been in business under its present business name? <>

§ 1.2.1 Under what other or former names has your organization operated?

<>

§ 1.3 If your organization is a corporation, answer the following:

§ 1.3.1 Date of incorporation: <>

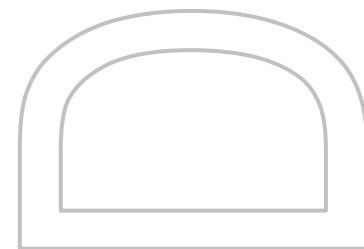
§ 1.3.2 State of incorporation: <>

§ 1.3.3 President's name: <>

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.



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ATTACHMENT F

§ 1.3.4 Vice-president's name(s)

<< >>

§ 1.3.5 Secretary's name: << >>

§ 1.3.6 Treasurer's name: << >>

§ 1.4 If your organization is a partnership, answer the following:

§ 1.4.1 Date of organization: << >>

§ 1.4.2 Type of partnership (if applicable): << >>

§ 1.4.3 Name(s) of general partner(s)

<< >>

§ 1.5 If your organization is individually owned, answer the following:

§ 1.5.1 Date of organization: << >>

§ 1.5.2 Name of owner:

<< >>

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

<< >>

§ 2 LICENSING

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

<< >>

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

<< >>

§ 3 EXPERIENCE

§ 3.1 List the categories of work that your organization normally performs with its own forces.

<< >>

§ 3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?

<< >>

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

<< >>

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

<< >>

§ 3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

<< >>

ATTACHMENT F

§ 3.4 On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

<< >>

§ 3.4.1 State total worth of work in progress and under contract:

<< >>

§ 3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

<< >>

§ 3.5.1 State average annual amount of construction work performed during the past five years:

<< >>

§ 3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

<< >>

§ 4 REFERENCES

§ 4.1 Trade References:

<< >>

§ 4.2 Bank References:

<< >>

§ 4.3 Surety:

§ 4.3.1 Name of bonding company:

<< >>

§ 4.3.2 Name and address of agent:

<< >>

§ 5 FINANCING

§ 5.1 Financial Statement.

§ 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);

Net Fixed Assets;

Other Assets;

Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes);

ATTACHMENT F

Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

§ 5.1.2 Name and address of firm preparing attached financial statement, and date thereof:

<< >>

§ 5.1.3 Is the attached financial statement for the identical organization named on page one?

<< >>

§ 5.1.4 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

<< >>

§ 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

<< >>

§ 6 SIGNATURE

§ 6.1 Dated at this << >> day of << >> << >>

Name of Organization: << >>

By: << >>

Title: << >>

§ 6.2

<< >>

M << >> being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this << >> day of << >> << >>

Notary Public: << >>

My Commission Expires: << >>

ATTACHMENT G

FORM 2001

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
DIVERSITY BUSINESS ENTERPRISE EQUAL OPPORTUNITY SOLICITATION CERTIFICATION**

COMPANY NAME:	ADDRESS/TELEPHONE:
PROJECT NAME:	DATE FORM SUBMITTED:

IMPORTANT - THIS FORM MUST BE COMPLETELY FILLED OUT AND SUBMITTED WITH BID OR PROPOSAL

Please list the name(s) of Minority (M) Women (W) Small (S) Business and Veteran's (V) Enterprise Firms contacted, and their responses to the above procurement package. If additional space is required, this form may be duplicated.

Name/Address	Type of Business M/W/S/V	Type of Work/Service(s) Solicited	Indicate How Businesses Were Contacted (i.e. letter, phone, fax)	Response to Solicitation (i.e. interested, not interested, no response)	Company Representative	Telephone/Fax Number

It is hereby certified that the following Diversity Business Enterprise firms were contacted and offered an opportunity to bid or propose on the above procurement. We further certify that the above statements are a true account of Diversity Business Enterprise firm's response to our solicitation.

Company Representative (Name/Title/Signature)	Date
---	------

ATTACHMENT H

FORM 2002

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS
ENTERPRISE PROGRAM JOINT VENTURE AGREEMENT IMPORTANT
THIS DOCUMENT MUST BE SUBMITTED WITH BID OR PROPOSAL**

COMPANY NAME:		COMPLETE ADDRESS/TELEPHONE:	
PROJECT NAME:		DATE FORM SUBMITTED:	
<i>Please note: Completion of this form is only required when the Bidder/Proposer enters into a joint venture agreement with a Diversity Business Enterprise Firm. Please indicate N/A if the Bidder/Proposer is not a Joint Venture.</i>			
A. PRIMARY PARTY OF JOINT VENTURE			
Company Name, Complete Address, and Telephone Number		Diversity Business Enterprise Status: (Check appropriate box.)	
Percentage of Joint Venture <input style="width:80px; height:20px;" type="text"/>		Minority Owned <input type="checkbox"/>	Hasidic Jewish American <input type="checkbox"/>
		African American <input type="checkbox"/>	Woman Owned Business <input type="checkbox"/>
		Asian <input type="checkbox"/>	Small Owned Business <input type="checkbox"/>
		Hispanic American <input type="checkbox"/>	Veteran Owned Business <input type="checkbox"/>
PRIMARY PARTY'S TOTAL CONTRIBUTIONS			
Total Cash: \$		Bond Percentage:	
Equipment	Total Cost	Cost	
B. SECONDARY PARTY OF JOINT VENTURE			
Company Name, Complete Address, and Telephone Number		Diversity Business Enterprise Status: (Check appropriate box.)	
Percentage of Joint Venture <input style="width:80px; height:20px;" type="text"/>		Minority Owned <input type="checkbox"/>	Hasidic Jewish American <input type="checkbox"/>
		African American <input type="checkbox"/>	Woman Owned Business <input type="checkbox"/>
		Asian <input type="checkbox"/>	Small Owned Business <input type="checkbox"/>
		Hispanic American <input type="checkbox"/>	Veteran Owned Business <input type="checkbox"/>
SECONDARY PARTY'S TOTAL CONTRIBUTIONS			
Total Cash: \$		Bond Percentage:	
Equipment	Total Cost	Cost	
Please attach copy of Joint Venture Agreement and all pertinent information.			

Revision 1, November 1, 2002 - Revision 2, December 12, 2017

ATTACHMENT I

FORM 2003

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS
ENTERPRISE (DBE) PROPOSED UTILIZATION PLAN IMPORTANT
THIS DOCUMENT MUST BE SUBMITTED WITH BID OR PROPOSAL**

COMPANY NAME:	COMPLETE ADDRESS/TELEPHONE NUMBER:
----------------------	---

PROJECT NAME:	DATE FORM SUBMITTED:
----------------------	-----------------------------

The above-named company proposes to use the services of the following listed DBE firms. This form may be duplicated if additional space is needed.

Fill in below if above-named company is a certified DBE company and will be self-performing on the project.

DBE NAME/ADDRESS/TELEPHONE	<i>(Please Indicate Status)</i>				Certifying Agency	Type of Work	DBE DOLLARS	DBE %
	MBE	WBE	SBE	VBE				
MBE Dollars/Percentage:	\$				%			
WBE Dollars/Percentage:	\$				%			
SBE Dollars/Percentage:	\$				%			
VBE Dollars/Percentage:	\$				%			

Signature:	Title:
-------------------	---------------

ATTACHMENT J

HUD SECTION 3
BIDDER CERTIFICATION AND COMPLIANCE AGREEMENT

The bidder represents and certifies as part of its bid/offer the following:

[] Is a Section 3 Business concern in accordance with HUD Act of 1968 (12 U.S.C.1701u) (Section 3) Part 135. A Section 3 Business concern means a business concern:

- 1. That is 51% or more owned by Section 3 Residents(s); or
2. Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or within the last three years of the date of first employment with the business concern were Section 3 residents; or
3. That provides evidence of a commitment to subcontract in excess of 25% of the dollar value of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 herein.

[] Is Not a Section 3 Business concern but who has and will continue to seek compliance with Section 3 by certifying the following efforts to be undertaken:

- 1. By contacting business assistance agencies, minority contractors associations and community organizations to inform them of the contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids for a portion of the work.
2. By advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas of the applicable developments(s) owned and managed by the Housing Authority.
3. By providing written notice to all known Section 3 business concern of contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to bid invitations.
4. By following up with Section 3 business concerns that have expressed interest in the contracting opportunities.
5. By coordinating meetings at which Section 3 business concerns could be informed of specific elements of the work for which subcontract bids are being sought.
6. By conducting workshops on contracting procedures and specific contacting opportunities in a timely manner so that Section 3 concerns can take advantage of contracting opportunities.
7. By advising Section 3 business concerns as to where they may seek assistance to overcome barriers such as inability to obtain bonding, financing, insurance, etc.
8. Where appropriate, by breaking out contract work into economically feasible units to facilitate participation by Section 3 businesses.
9. By developing and utilizing a list of eligible Section 3 business concerns.
10. By actively supporting and undertaking joint ventures with Section 3 businesses.
11. By establishing training programs, which are consistent with the requirements of the Department of Labor, specifically for Section 3 residents in the building trades.
12. By advertising employment and training positions to dwelling units occupied by Category 1 and 2 residents.
13. By contacting resident councils and other resident organizations in the affected housing development to request assistance in notifying residents of the training and employment positions to be filled.
14. By arranging interviews and conducting interviews on the job site.
15. By undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hire for employment opportunities.

Signature: _____ Title: _____

Sworn to and subscribed before me on this ____ day of _____, 20__

Notary Public

My Commission Expires: _____

ATTACHMENT K

CONTRACTOR DRUG-FREE WORKPLACE AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF _____

1. Now Comes Affiant, who being duly sworn, deposes and says:
2. He/She is the principal officer for _____

3. That the bidding entity has submitted a bid to _____
_____ for the construction of _____
_____.
4. That the affiant certifies that the bidding entity has in effect, at the time of submission of its bid to perform the construction referred to above, a drug-free workplace program that complies with Tennessee Code Annotate 50-9-113.
5. That this affidavit is made on personal knowledge.

Further affiant saith not.

AFFIANT

STATE OF _____
COUNTY OF _____

Before me personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained.

Witness my hand and seal at office this _____ day of _____, 20__.

Notary Public

My commission expires: _____, 20__

ATTACHMENT L

FAIR EMPLOYMENT PRACTICE STATEMENT AFFIDAVIT

STATE OF: _____

COUNTY OF: _____

After being first duly sworn according to the law, the undersigned (Affiant) states that he/she is

_____ (TITLE) of _____

(Contractor) and that by its employment policy, standards, and practices, the Contractor does not subscribe to any personnel policy which permits discrimination or harassment against any qualified employee or job applicant in regard to hiring, promotion, demotion, employment, dismissal, or other terms and conditions of employment due to an employee's or applicant's protected class in violation of applicable federal law or the laws of the State of Tennessee.

Any further Affiant sayeth not.

Signature

Type/ Print Name

Sworn to and subscribed before me on this _____ day of _____.

NOTARY PUBLIC

My Commission Expires: _____

ATTACHMENT M

CONTINGENT FEES STATEMENT

State of _____ -'

County of _____ -'

In accordance with the Metropolitan Development and Housing Agency's policy, it is a breach of ethical standards for a person to be retained, or to upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After being first duly sworn according to law, the undersigned (affiant) states that he/she is the _____, of

_____ (Offeror) and that the Offeror has not retained anyone in violation of the foregoing.

And further Affiant sayeth not.

By: _____
Title: _____

Sworn to and subscribed before me on this _____ day of _____, 20

EXHIBIT A
AIA A101-2017
Standard Form of Agreement between Owner and Contractor
Modified by MDHA

AIA[®] Document A101[®] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Metropolitan Development and Housing Agency
701 S 6th Street
Nashville, TN 37206

and the Contractor:
(Name, legal status, address and other information)

TBD

for the following Project:
(Name, location and detailed description)

Cayce Utility Phase 1A
Utility work in S 6th St from Lenore St to the Cumberland River to include, but not be
limited to, storm sewers, sanitary sewers, water lines, asphalt and site concrete as described
in these Contract Documents
Nashville, TN 37206

~~The Architect:~~Engineer:
(Name, legal status, address and other information)

Kimley-Horn & Associates, Inc.
214 Oceanside Drive
Nashville, TN 37204

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101[®]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[®]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

EXHIBIT A

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

~~EXHIBIT A – INSURANCE AND BONDS~~

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

EXHIBIT A

(Check one of the following boxes and complete the necessary information.)

Not later than three hundred twenty (320) consecutive calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
<u>N/A</u>	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 ~~The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be —(\$ —), subject to additions and deductions as provided in the Contract Documents.~~ Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

§ 4.1.1 For all Work other than Unit Price Work, a lump sum of TBD (\$) based upon the subtotal of lump sum items listed in Exhibit G, Attachment B – Bid Form. All specific cash allowances stipulated by Exhibit G, Attachment B – Bid Form, if any, are included in the above price in accordance with Article 3.8 of the General Conditions.

§ 4.1.2 For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item). See Exhibit G, Attachment B – Bid Form. The Unit Price Subtotal is TBD (\$). The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Article 4.1.2.1 below, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner's Representative. Accepted Alternates stipulated by Exhibit G, Attachment B – Bid Form, are included in the above Unit Price Subtotal.

§ 4.1.2.1 UNIT PRICE WORK

- 1 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.
- 2 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.
- 3 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.
- 4 Owner's Representative will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner's Representative will review with Contractor the Owner's Representative's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Owner's Representative'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.

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EXHIBIT A

§ 4.1.2.2 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.

§ 4.1.3 Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) TBD (\$).

§ 4.2 Alternates NOT USED

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
------	-------

NOT USED

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

NOT USED

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Time is of the essence to the Contract Documents and all obligations thereunder. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial use of the completed Work (ie roadways and sidewalks ready for automotive and pedestrian traffic) following expiration of the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially, or cause Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain damages and loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and the Contractor agree that if the Contractor fails to achieve Substantial Completion of the Work by the date of Substantial Completion established in Article 3.3.1, subject to modification agreed upon hereafter, Owner shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, \$1,000.00 per day commencing upon the first day of the day

EXHIBIT A

following expiration of such timeframe and continuing until the actual date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work. The Owner may deduct liquidated damages prescribed in this paragraph from any unpaid amounts then or thereafter due the Contractor under this Agreement and any liquidated damages not so deducted shall be payable to the Owner by the Contractor upon demand by the Owner.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

Not applicable

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect-Owner's Representative by the Contractor and Certificates for Payment issued by the Architect-Owner's Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Not applicable

§ 5.1.3 Provided that an Application for Payment is received by the Architect-Owner's Representative not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the thirtieth (30th) day of the month. If an Application for Payment is received by the Architect-Owner's Representative after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (—) days after the Architect receives the Application for Payment, thirty (30) days after the Owner's Representative receives the Application for Payment. If the Application for Payment is returned to the Contractor for revision, the payment will be made by the Owner not later than twenty (20) days following receipt of acceptable submission. The Owner's Representative is responsible for reviewing quantities of Work in place subject to the provisions of Article 4.1.2 and will provide this information to the Engineer for the Engineer's review and certification within the period stated above.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. Engineer and Owner may require. The initial schedule of values shall be based on the Unit Price Schedule to Attachment B – Bid Form. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. Partial or interim releases of liens for Contractor and such Subcontractors and Sub-subcontractors shall be submitted with all pay requests for work performed and for which payment has been made and as required by Project financing. The Contractor shall include with each pay application Disadvantaged Business Enterprise (DBE) Form 2006 reflecting payments made to DBE firms.

§ 5.1.4.1 Adjustments to the Schedule of Values shall be reviewed and approved by the Engineer and Owner no later than submission of an Application for Payment based on such revision. Approval shall not be unreasonably withheld.

§ 5.1.4.2 Change Orders shall be itemized on the Schedule of Values as they are approved in a method acceptable to the Owner and Engineer.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. For unit price work will be based on the number of units completed during the pay period, and cost-based work will be based on the cost of the Work completed by the Contractor during

Init.

EXHIBIT A

the pay period. Applications for Payment shall be supported with observation reports detailing daily quantities placed, material invoices that support quantities placed, and truck tickets supporting cut/fill material.

§ 5.1.6 In accordance with AIA Document ~~A201™ 2017~~, ~~A201™ 2007~~, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed ~~Work~~; Work in accordance with billing instructions per the specifications.
- .2 ~~That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and~~
- .3 ~~That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.~~

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the ~~Architect-Engineer~~ has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document ~~A201-2017~~; ~~A201-2007~~;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the ~~Architect-Engineer~~ may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201-2017~~; ~~A201-2007~~; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Not applicable

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Not applicable

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that exclusively includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

For Work that is incomplete, Work that is non-conforming, or other reasons as may be determined by the Engineer

EXHIBIT A

§ 5.1.8 If final completion of the Work. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017-Contractor or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 5.1.9 Except with the Owner's written prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 the final unit price quantities are settled in accordance with 4.1.2;
- .3 a final Certificate for Payment has been issued by the Architect-Engineer;
- .4 Consent of Surety is received; and
- .5 Release of liens from subcontractors and major suppliers is received.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's-Engineer's final Certificate for Payment, or as follows:

For any uncorrected punch list items at the time of final payment, the Owner may hold an amount of money equal to two (2) times the value of the items. The Contractor and subcontractor with punch list items shall correct to the satisfaction of the Engineer and Owner, items on its punch list prior to final payment which will be completed within forty five (45) days.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest ninety (90) days from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Prime %

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect-Engineer will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Engineer .)

Init.

EXHIBIT A

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, ~~A201-2007~~, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document ~~A201-2017~~.A201-2007.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document ~~A201-2017~~,A201-2007, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

NOT APPLICABLE (NO TERMINATION FEE)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2017~~.A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document ~~A201-2017~~.A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

David Dellinger, Contracting Officer
Bradley Muckel, Project Manager
701 S Sixth Street
Nashville, TN 37206

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

TBD

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior written notice to the other party.

§ 8.5 Insurance and Bonds

Init.

EXHIBIT A

~~§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™ 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents, forth, below and elsewhere in the Contract Documents.~~

~~§ 8.5.2 Worker's Compensation Insurance Providing coverage in compliance with the laws of the state in which any part of the Work is to be performed.~~

~~§ 8.5.3 Comprehensive General Liability Insurance Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000 for each occurrence. \$2,000,000 aggregate.~~

~~§ 8.5.4 Automobile Liability Insurance Bodily injury and property damage combined single limit in the minimum of \$1,000,000 for each occurrence. \$2,000,000 aggregate.~~

~~§ 8.5.5 Builder's Risk Insurance Refer to AIA Document A201™-2007 Article 11.3 Property Insurance~~

~~§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, below, and elsewhere in the Contract Documents.~~

§ 8.5.3 PERFORMANCE BOND AND PAYMENT BOND

~~§ 8.5.3.1 The Owner requires the Contractor to furnish bonds in form and substance satisfactory to Owner covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~

~~§ 8.5.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. As applicable, Contractor shall provide bonds with dual or multiple obligee riders to satisfy the requirements of the financing institutions.~~

~~§ 8.5.3.3 Payment and Performance Bond in full amount of the Contract price.~~

~~§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201 2017, may be given in accordance with AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~

~~(If other than in accordance with AIA Document E203 2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~

~~NOT USED~~

~~§ 8.7 Other provisions:~~

~~§ 8.7.1 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work: (1) That it and its subcontractors are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (2) That it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder; (3) That it is authorized to do business in the State of Tennessee and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project; (4) That its execution of this Agreement and its performance~~

Init.

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EXHIBIT A

thereof is within its duly authorized power; (5) That its duly authorized representative has visited the site of the Project, is familiar with the local and special conditions under which Work is to be performed and has correlated onsite observations with the requirements of the Contract Documents; and (6) That it possesses a high level of experience and expertise in the business administration, construction, construction management and superintendents of projects of the size, complexity and nature of this particular Project, and that it will perform the Work with the care, skill and diligence of such a Contractor.

§ 8.7.2 The Construction Manager shall provide information requested by the Owner with reasonable promptness to facilitate the rendering of informed decisions by the Owner. The Construction Manager acknowledges the Owner is governed by a Board of Commissioners that meets on a regular basis. The Construction Manager shall anticipate decisions that will need to be made by the Owner in order to expedite the Project schedule and provide information required for a decision to be rendered in advance of regular meetings of the Board of Commissioners.

§ 8.7.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 8.7.4 In the event of an inconsistency between or among the terms of this Agreement, the General Conditions and the Supplementary Conditions, and to the extent neither the Contract Documents nor the parties' intentions are clear as to which instrument should control, the terms of this Agreement shall be deemed to control the relative right and duties of the parties with respect to such matters.

§ 8.7.5 Upon execution of this Agreement and accompanying General Conditions and Supplementary Conditions incorporated herein, this Agreement shall be deemed to have been drafted and prepared by both the Owner and Construction Manager. Neither party shall be deemed to be the drafter nor preparer of the instrument, such that the terms of this Agreement or the conditions incorporated herein shall be construed against either party and in favor of the other.

§ 8.7.6 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

§ 8.7.7 Contractor shall reimburse Owner for all of Owner's attorney's fees, court costs and other expenses incurred in enforcing or declaring the Contractor's obligations under this Agreement, incurred in exercising any right or remedy hereunder or under law or equity in event of a default by Contractor, or incurred in any litigation in which Owner, without its fault, becomes involved by reason of the existence of this Agreement

§ 8.7.8 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 8.7.9 Effective Date. This Agreement shall not be binding upon the parties until it has been signed by the parties. When it has been so signed, this Agreement shall be effective as of the date first written above.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds

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- .3 AIA Document A201™-2017, A201™-2007, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)
- .5 Supplemental Conditions to the Construction Contract
- .6 Geotechnical Engineering Report – Cayce Homes Stormwater Outfall dated February 6, 2020
- .5 Drawings

Number	Title	Date	
.6	Specifications		
.6	Section	Title	Date Pages

.7 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

~~.8~~ ~~Other Exhibits:~~
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

~~AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:~~
(Insert the date of the E204-2017 incorporated into this Agreement.)

~~The Sustainability Plan:~~

Title	Date	Pages
-------	------	-------

~~Supplementary and other Conditions of the Contract:~~

.8	Document	Title	Date	Pages
---------------	----------	-------	------	-------

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017-A201™-2007 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- Exhibit A – List of Drawings and Specifications
- Exhibit B – Insurance Certificate
- Exhibit C- Disadvantaged Business Enterprise (DBE) forms 2004, 2005, 2006
- Exhibit D – Standard Form Partial Release of Liens and Final Release of Liens Contractor
- Exhibit E – Standard Form Partial Release of Liens and Final Release of Liens Subcontractor
- Exhibit F – Contractor’s License

EXHIBIT A

Exhibit G – Attachments from RFP

Attachment A - Contractor/Subcontractor License Information Form

Attachment B - Bid Form

Attachment C - Bid Bond

Attachment D - Representations, Certifications, and other Statement of Bidders (HUD 5369-A)

Attachment E - Form of Non-Collusive Affidavit (must be notarized)

Attachment F - AIA Document A305TM-1986, Contractor's Qualification Statement (must be notarized)

Attachment G - Form 2001 – Diversity Business Enterprise Program Solicitation Certificate

Attachment H - Form 2002 – Diversity Business Enterprise Joint Venture Agreement

Attachment I - Form 2003 – Diversity Business Enterprise Utilization Commitment

Plan Attachment J - HUD Section 3 Certification and Compliance Agreement

Attachment K - Drug Free Affidavit

Attachment L – Fair Employment Practice Statement Affidavit

Attachment M – Contingent Fees Statement

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

TBD

(Printed name and title)

EXHIBIT A

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Michael Wegerson, Director of Recapitalization, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 20:24:22 ET on 10/21/2020 under Order No. 5228255808 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

EXHIBIT B
AIA A201-2007
General Conditions of the Contract for Construction
Modified by MDHA

 **AIA**[®] Document A201[®] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Cayce Utility Phase I

Utility work in S 6th St from Lenore St to the Cumberland River, S 7th St between Lenore St and Crutcher St, and Crutcher Street extending past S 6th St and S 7th St to include, but not be limited to, storm sewers, sanitary sewers, water lines, asphalt and site concrete as described in these Contract Documents

Nashville, TN 37206

THE OWNER:

(Name, legal status and address)

Metropolitan Development and Housing Agency

701 S 6th Street

Nashville, TN 37206

THE ARCHITECT:

THE ENGINEER:

(Name, legal status and address)

Kimley-Horn & Associates, Inc.

214 Oceanside Drive

Nashville, TN 37204

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the ~~Agreement~~ Agreement), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the ~~Architect-Engineer~~. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the ~~Architect-Engineer~~ or the ~~Architect's-Engineer's~~ consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the ~~Architect-Engineer~~ or the ~~Architect's-Engineer's~~ consultants or (4) between any persons or entities other than the Owner and the Contractor. The ~~Architect-Engineer~~ shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect's-Engineer's~~ duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, ~~materials, workmanship, materials (manufacture and fabrication of components),~~ equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written description of the technical requirements for construction materials, equipment, systems, standards and workmanship for the Work, and performance of related services-services, and includes the criteria and tests for determining whether the requirements are met.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Architect-Engineer~~ and the ~~Architect's-Engineer's~~ consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as

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binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Sections of Division 1 of the Specifications-General Requirements, govern the execution of all sections of the Specifications.

§ 1.2.5 Scope paragraphs placed at the beginning of the Sections of the Specifications present a brief indication of the principal Work included in that Section, but do not limit Work to subject mentioned nor purport to itemize Work that may be included.

§ 1.2.6 The Relation of Specifications and Drawings shall be that of equal authority and priority. Should they disagree in themselves, or with each other, the provision or interpretation resulting in the greater quantity and/ or quality of work indicated shall apply. The appropriate Work, in the event of the above mentioned disagreements, shall be determined by the Engineer in consultation with the Owner.

§ 1.2.7 Should the Drawings disagree in themselves, figures shall govern over scaled measurements, large scaled drawings shall govern over small scale drawings, the greater quantity and quality of work or materials shall be furnished and performed; the descriptive writings shall govern over legends indicated material or conditions and the Agreement takes precedence over Contract Documents.

§ 1.2.8 Failure to report a conflict in the Contract Documents shall be deemed evidence that the Contractor has elected to proceed in the manner called for in 1.2.6 and/ or 1.2.7.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants-Engineer, the Engineer's consultants, and the Owner shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, other documents and documents in electronic form, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants'-Engineer's or Engineer's consultants', and the Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect and the Architect's consultants-~~Engineer and the Engineer's consultants.

§ 1.5.3 Reproduction of the Engineer's Construction Documents (in whole or part) for use as submittals for Shop Drawings is not acceptable.

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§ 1.5.4 To the extent that the provisions of this Section 1.5 are inconsistent with provisions of the Engineer's Agreement, the provisions of the Engineer's Agreement shall prevail.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a ~~representative Contracting Officer~~ who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the ~~Architect-Engineer~~ does not have such authority. The term "Owner" means the Owner or the Owner's authorized ~~representative Contracting Officer~~.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce ~~mechanic's lien-applicable~~ rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 ~~The At Contractor's reasonable request,~~ Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If Subject to the rights of the Surety, if the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect's Engineer's~~ additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect-Engineer~~. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or other entity identified as such in the Agreement who is entering into the Agreement with MDHA to perform all of the work required under the Contract, and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.2.1 The Contractor shall be responsible for ascertaining correct dimensions, and Contractor is not to ascertain dimensions simply by scaling drawings. In case of a discrepancy between Drawings and Specifications, Contractor shall consult Engineer promptly for an interpretation before proceeding with the Work.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Architect-Engineer~~ in the ~~Architect's Engineer's~~ administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall provide their own clerical assistance for compliance surveys, analyses, tabulations, and summaries.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the ~~Architect-Engineer~~ any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Engineer~~ may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect-Engineer~~ any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Engineer~~ may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the ~~Architect-Engineer~~ issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations

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of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or ~~Architect-Engineer~~ for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and ~~Architect-Engineer~~ and shall not proceed with that portion of the Work without further written instructions from the ~~Architect-Engineer~~. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.1.1 The Contractor shall review specified or recommended construction or installation procedures, including those recommended by manufacturers, and shall advise the Engineer:

- .1 If the procedure deviates from good construction practice;
- .2 If following the procedure will affect warranties, including the Contractor's general warranty;
- .3 Of objections the Contractor may have to the procedure;
- .4 If the Contractor proposes alternative procedures which the Contractor is willing to warrant; and
- .5 If any specific products adversely affect schedule.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Clarifying communications with the Engineer or Owner shall be confirmed in writing by the Contractor through use of a request for information (RFI).

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the ~~Architect-Engineer~~ in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the ~~Architect-Engineer~~ and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall only employ labor on the Project in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

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§ 3.4.4.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Engineer or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

§ 3.4.4.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.5 WARRANTY

~~The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~

§ 3.5.1 The Contractor, and its Subcontractors, warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, or modifications to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and under normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided and installed. Contractor further agrees that (a) Contractor will require, in addition to other warranties to be provided by law or otherwise, that each Subcontractor provide, at a time no later than final payment by Contractor of such Subcontractor, a one (1) year express warranty for each Subcontractor's Work, unless a longer period is set forth in the Contract Documents, which warranty shall commence on the Date of Substantial Completion for the Project; and (b) in this regard, Contractor agrees that Contractor shall (i) assemble written warranties from Subcontractors and Suppliers as required in the Contract Documents, (ii) review such warranties in order to ensure compliance with the Contract Documents, and (iii) deliver the same to the Owner on or before the Date of Substantial Completion for the Project.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor agrees to assign to the Owner at the time not later than final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and requirements of public authorities applicable to performance of the Work.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 ~~Concealed or Unknown Conditions.~~ If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. Refer to Supplemental Conditions to the Construction Contract.

§ 3.7.5 ~~If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.~~
Not Used

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent English-speaking superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect-Engineer the name and qualifications of a proposed superintendent. The Architect-Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect-Engineer has reasonable objection to the proposed superintendent or (2) that the Architect-Engineer requires additional time to review. Failure of the Architect-Engineer to reply within the 14 day period shall constitute notice of no reasonable objection.

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§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect-Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's written consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's-Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.1.1 The Contractor's construction schedule shall be in a format that is acceptable to the Owner and Engineer.

§ 3.10.1.2 The Contractor's Construction Schedule for the Work establishes Baseline Construction Schedule that: (1) provides a graphic representation of all activities and events that will occur during performance of the Work; (2) identifies each phase of construction and occupancy; and (3) sets forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. Progress report schedules shall be provided regularly that compares the actual conditions to the Baseline Construction Schedule. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/ or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.1.3 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall, without prejudice to any other rights the Owner may have the right to order the Contractor, at the Contractor's sole expense, to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in, the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Paragraph 3.10.1.3.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph 3.10.1.3 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's-Engineer's approval. The Architect's-Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect-Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect-Engineer.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the ~~Architect-Engineer~~ and shall be delivered to the ~~Architect-Engineer~~ for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the ~~Architect-Engineer~~ is subject to the limitations of Section 4.2.7. Informational submittals upon which the ~~Architect-Engineer~~ is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the ~~Architect-Engineer~~ without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, ~~approve and submit to the Architect and indicate approval with the Contractors' stamp, date, and signature, and submit to the Engineer~~ Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the ~~Architect-Engineer~~ or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Owner shall be provided a copy of submittals concurrently with Engineer and Consultant review. Owner shall have 5 days to add comments after Engineer and Consultants have provided their own.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and ~~Architect-Engineer~~ that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the ~~Architect-Engineer, their consultants, and the Owner.~~

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the ~~Architect's-Engineer's~~ approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the ~~Architect-Engineer~~ in writing of such deviation at the time of submittal and (1) the ~~Architect-Engineer~~ has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the ~~Architect's-Engineer's~~ approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the ~~Architect-Engineer~~ on previous submittals. In the absence of such written notice, the ~~Architect's-Engineer's~~ approval of a resubmission shall not apply to such revisions.

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§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of ~~architecture or engineering~~ unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the ~~Architect-Engineer~~ will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the ~~Architect-Engineer~~. The Owner and the ~~Architect-Engineer~~ shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and ~~Architect-Engineer~~ have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the ~~Architect-Engineer~~ will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria contained within the Contract Documents except when specified in the Contract Documents.

§ 3.12.13 By the date of Substantial Completion, the Contractor shall provide Owner with an affidavit notarized by a notary public which certifies that hazardous waste, trash, debris, etc. have been disposed of in a manner which is in strict compliance with current requirements of EPA, State, County, City and Local districts or authorities.

§ 3.12.14 Contractor shall provide documented training, manuals, warranty documents and certificates, and record of the Work as constructed in accordance with the Specifications.

§ 3.13 USE OF SITE

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor acknowledges the ongoing operations of the Owner and agrees to coordinate Work with the Owner and conduct the Work in a manner which minimizes or eliminates adverse impacts on the Owner.

§ 3.13.2 Contractor shall develop a Site Management Plan for the purpose of staging the construction operations and submit the plans to the Owner prior to the installation for approval. The detailed plan shall clearly identify site particulars such as the primary access to and from the construction site including appropriate dimensions, the location of construction parking and traffic patterns inclusive of entrances and exits, the location of temporary facilities, the proposed location of hoists, cranes and other stationary equipment, the positioning of barricades and construction fences and the locations of pedestrian pathways and/or protected tunnels/bridges, etc. The Site Management Plan shall address each phase of construction (i.e. demolition, civil/ utility, building construction phases, etc.).

§ 3.13.3 The Contractor shall coordinate movements around the site, inclusive of the surrounding public streets, to accommodate transportation and delivery schedules that shall support safe work environments around occupied facilities, residences, etc. to maintain a safe and secure site at all times.

§ 3.13.4 The Contractor shall store and place equipment and materials so as not to endanger the public, the workers or adjoining property(ies) for the duration of the project. The Contractor shall make every effort to protect and maintain pedestrian surfaces, including walkways for the life of the project. The Contractor and Owner shall document existing conditions prior to issuing the NTP. The Contractor shall leave all public spaces in as good condition (or better), as it was prior to commencement of the Work.

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§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Public access roadways to be swept and cleaned of all debris, equipment, and materials daily. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and ~~Architect-Engineer~~ access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the ~~Owner and Architect-Owner, MDHA, and Engineer~~ harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or ~~Architect-Engineer~~. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the ~~Architect-Engineer~~.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's Engineer, Engineer's~~ consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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ARTICLE 4 ARCHITECT

ARTICLE 4 ENGINEER

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an ~~architect-Engineer~~ lawfully licensed to practice ~~architecture-engineering~~ or an entity lawfully practicing ~~architecture-engineering~~ in the jurisdiction where the Project is located. That person or entity is identified as the ~~Architect-Engineer~~ in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the ~~Architect-Engineer~~ as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and ~~Architect-Engineer~~. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the ~~Architect-Engineer~~ is terminated, the Owner shall employ a successor ~~architect Engineer~~ as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the ~~Architect-Engineer~~.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The ~~Architect-Engineer~~ will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the ~~Architect-Engineer~~ issues the final Certificate for Payment. The ~~Architect-Engineer~~ will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The ~~Architect-Engineer~~ will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ~~Architect-Engineer~~ will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect-Engineer~~ will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the ~~Architect-Engineer~~ will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The ~~Architect-Engineer~~ will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect-Engineer~~ will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the ~~Architect-Engineer~~ about matters arising out of or relating to the Contract. Communications by and with the ~~Architect's-Engineer's~~ consultants shall be through the ~~Architect-Engineer~~. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.4.1 Communication with Contractor. Notwithstanding anything to the contrary in this Agreement, the Owner has not relinquished its right to communicate with the Contractor directly, but the Owner shall make reasonable efforts to keep the Engineer informed as to the content of communications.

§ 4.2.4.2 Direct communications between Owner and Contractor that affect the performance or administration of the Contract shall be made or confirmed in writing, with copies to the Engineer, and such communications that represent a modification of the Contract requirements shall be documented as called for in the Contract Documents.

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§ 4.2.4.3 Communications between the Engineer and Subcontractors shall be confirmed in writing to the Contractor, with a copy to the Owner.

§ 4.2.5 Based on the Architect-Engineer's evaluations of the Contractor's Applications for Payment, the Architect-Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect-Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect-Engineer considers it necessary or advisable, the Architect-Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect-Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect-Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect-Engineer will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect-Engineer's action will be taken in accordance with the submittal schedule approved by the Architect-Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect-Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect-Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect-Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect-Engineer, of any construction means, methods, techniques, sequences or procedures. The Architect-Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Engineer acknowledges the Owner is to be given opportunity to review and comment on Contractor's submittals as noted in SECTION 3.12.5.

§ 4.2.8 The Architect-Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect-Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect-Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive from the Contractor (which shall provide Engineer with such documents) and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect-Engineer agree, the Architect-Engineer will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The Engineer's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents: the Project Representatives.~~

§ 4.2.11 The Architect-Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect-Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect-Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect-Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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§ 4.2.13 The ~~Architect's decisions~~ Engineer's decisions after consulting with the Owner on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The ~~Architect-Engineer~~ will review and respond to requests for information about the Contract Documents. The ~~Architect's-Engineer's~~ response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the ~~Architect-Engineer~~ will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the ~~site-site~~ or to supply material or equipment for the Project. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the ~~site-site~~ or to supply material or equipment for the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the ~~Architect-Engineer~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect-Engineer~~ may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the ~~Architect-Engineer~~ has reasonable objection to any such proposed person or entity or (2) that the ~~Architect-Engineer~~ requires additional time for review. Failure of the Owner or ~~Architect-Engineer~~ to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.1.1 The Engineer shall respond in writing even if the Owner or the Engineer has no objections to a Subcontractor or Sub-Subcontractor. Work shall not be started until objections have been resolved in writing.

§ 5.2.1.2 If requested, the Contractor shall furnish evidence satisfactory to the Engineer and Owner showing each proposed Subcontractor or Sub-Subcontractor is competent to execute the Work covered by its contract. The Contractor shall verify the qualifications of bidding subcontractors and suppliers based on a) experience on projects of similar size and complexity, b) Owner/ Engineer/ Contractor references, c) financial stability, d) quality of work, e) qualified project and field management personnel, and f) project workload during the duration of this project.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or ~~Architect-Engineer~~ has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or ~~Architect-Engineer~~ has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or ~~Architect-Engineer~~ has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or ~~Architect-Engineer~~ makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate ~~agreement, written where legally required for validity, written agreement,~~ the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities,

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including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and ~~Architect-Engineer~~. Each subcontract agreement shall preserve and protect the rights of the Owner and ~~Architect-Engineer~~ under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. ~~Where appropriate, the The~~ Contractor shall require each Subcontractor to enter into similar written agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Assignment made under this section shall not relieve the Contractor of its duties and responsibilities under the Contract nor shall assignment be deemed a waiver by the Owner of actions or claims which it could assert against the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the ~~Architect-Engineer~~ apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect-Engineer~~ will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and ~~Architect-Engineer~~; a Construction Change Directive requires agreement by the Owner and ~~Architect-Engineer~~ and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the ~~Architect-Engineer~~ alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Architect-Engineer~~ and signed by the Owner, Contractor and ~~Architect-Engineer~~ stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Adjustments to the Contract Sum shall be substantiated with an itemized and detailed cost breakdown of the Contractor's and each Subcontractor's/ supplier's labor (direct and indirect separated), material, equipment, indirect costs, taxes, permit fees, overhead, profit, and premiums for Bonds and Insurance.

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§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect-Engineer~~ and signed by the Owner and ~~Architect-Engineer~~, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized per 7.2.2 and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the ~~Architect-Engineer~~ of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect-Engineer~~ shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect-Engineer~~ may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect-Engineer~~. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect-Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect-Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect-Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect-Engineer and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement-Agreement

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. Engineer with the consent of and subject to the approval of the Owner in accordance with Section 9.8. Disputes regarding the date of Substantial Completion will be resolved in the manner as described in Article 15 of this Agreement.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.1.5 The Contractor shall deliver the Project to Substantial Completion, as defined in Section 9.8, within the Contract Time specified for completion of the Work.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement-The Contractor has the experience and qualifications necessary to complete a complex Project as undertaken in this endeavor. The qualifications, exclusions, and assumptions set forth in the Drawings and Specifications as provided by the Engineer, provide the Contractor with a reasonable basis upon which to estimate the time required for completion of the Project. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 The provisions of Section 8.3, of which this Section 8.3.1 is a part, shall govern all remedies available to Contractor in the event of any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar claims (collectively

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referred to in this Section 8.3 as "Delays") whether or not such Delays are foreseeable. The Contract Time shall be extended as a result of one or more Delays only in the following circumstances, and then for such reasonable time as the Engineer may determine: If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or ~~Architect, Engineer,~~ or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable ~~casualties-casualties,~~ adverse weather conditions documented in accordance with Section 15.1.5.2, or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the ~~Architect-Engineer~~ determines may justify delay, ~~then-then,~~ as provided above, the Contract Time shall be extended by Change Order for such reasonable time as the ~~Architect may determine-Engineer may determine.~~ Any delay justifying an extension of the Contract Time under the provisions of this Section 8.3.1 shall be referenced in this Section 8.3 as a "Delay Extension of Time".

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

~~§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time shall be the sole remedy of the Contractor for any Delay Extension of Time, unless the Delay Extension of Time is caused by changes in the Work under Article 7 hereof, acts of the Owner constituting active interference with the Contractor's performance of the Work (and then only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference). In such event, the Contractor shall not be entitled to any compensation or recovery of any damages in connection with Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.~~

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum ~~or Guaranteed Maximum Price,~~ the Contractor shall submit to the ~~Architect, the Owner and the Engineer,~~ before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect may require-Engineer, and Owner may require in accordance with Section 5.1.4 of AIA A101.~~ This schedule, unless objected to by the ~~Architect, Engineer or Owner,~~ shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect-Engineer~~ an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or ~~Architect-Engineer~~ may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 ~~As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, ~~to the best of the Contractor's knowledge, information and belief,~~ be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The ~~Architect-Engineer~~ will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the ~~Architect-Engineer~~ determines is properly due, or notify the Contractor and Owner in writing of the ~~Architect's-Engineer's~~ reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the ~~Architect-Engineer~~ to the Owner, based on the ~~Architect's-Engineer's~~ evaluation of the Work and the data comprising the Application for Payment, that, to the best of the ~~Architect's-Engineer's~~ knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the ~~Architect-Engineer~~. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect-Engineer~~ has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The ~~Architect-Engineer~~ may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the ~~Architect's-Engineer's~~ opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the ~~Architect-Engineer~~ is unable to certify payment in the amount of the Application, the ~~Architect-Engineer~~ will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and ~~Architect-Engineer~~ cannot agree on a revised amount, the ~~Architect-Engineer~~ will promptly issue a Certificate for Payment for the amount for which the ~~Architect-Engineer~~ is able to make such representations to the Owner. The ~~Architect-Engineer~~ may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the ~~Architect's-Engineer's~~ opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated~~ failure to carry out the Work in accordance with the Contract Documents.

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§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the ~~Architect-Engineer~~ withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the ~~Architect-Engineer~~ and the ~~Architect-Engineer~~ will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the ~~Architect-Engineer~~ has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the ~~Architect-Engineer~~.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The ~~Architect-Engineer~~ will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the ~~Architect-Engineer~~ and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor ~~Architect-Engineer~~ shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.4.1 Periodic Affidavits and Waivers of Liens. Contractor will submit to Engineer and Owner, at the time of submission of each Application for Payment, affidavits and waivers of lien, in form and substance satisfactory to Owner and Engineer, from Contractor and Subcontractors, Sub-Subcontractors, and material suppliers for each period of time for which payment has been previously made.

§ 9.6.4.2 Contractor to Discharge Mechanics' Liens. If mechanics' or materialmen's liens shall be asserted or filed against the Project as a result of Contractor's construction activities or those of Subcontractors, Sub-Subcontractors, or materialman, for which the Owner has paid the Contractor, at Contractor's expense, promptly shall take and diligently prosecute appropriate action to have the same discharge of record or bonded off within thirty (30) days after notice of filing thereof or such lesser period as shall be necessary to prevent judgment, execution or foreclosure of such mechanics' lien or adverse consequences for Owner. Upon Contractor's failure to do so, Owner, in addition to other rights or remedies that Owner may have, may take such action as may be reasonably necessary to protect Owner's interest, including payment or settlement of the lien claim, and Contractor shall reimburse Owner amounts paid or incurred by Owner in connection with such action. Contractor shall indemnify and hold harmless Owner with respect to claims or liens asserted by Contractor's Subcontractors or Sub-Subcontractors at level if Contractor has been paid with respect to the work or materials for which the claim or lien is asserted.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary

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liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the ~~Architect-Engineer~~ does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within ~~seven-fourteen~~ days after the date established in the Contract Documents the amount certified by the ~~Architect-Engineer~~ or awarded by ~~binding dispute resolution, a court,~~ then the Contractor may, upon seven additional days' written notice to the Owner and ~~Architect-Engineer,~~ stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is ~~sufficiently-finally~~ complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended ~~use-use~~ without the Contractor needing to return to correct items of noncompliance as issued by the Engineer; provided, however, that as a condition precedent to Substantial Completion, the Owner has received approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial utilization of the Work, or a designated portion thereof.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the ~~Architect-Engineer~~ a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the ~~Architect-Engineer, along with the Owner,~~ will make an initial inspection to determine whether the Work or designated portion thereof is substantially complete. If the ~~Architect's Engineer, and Owner determines the Work is substantially complete no further inspections will be required. If the Engineer's and Owner's~~ inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the ~~Architect-Engineer.~~ In such case, the Contractor shall then submit a request for ~~another inspection by the Architect to determine Substantial Completion; a final inspection by the Engineer and Owner to determine Substantial Completion. If additional inspections are required for the Engineer to determine Substantial Completion, they shall be at the expense of the Contractor.~~

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the ~~Architect-Engineer~~ will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Final completion of the Project shall be achieved no later than 45 days following the date of Substantial Completion.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the

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Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect-Engineer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect-Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect-Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect-Engineer will promptly make such inspection and, when the Architect-Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect-Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect's Engineer's knowledge, information and belief, and on the basis of the Architect's-Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's-Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither In addition to other requirements for final payment, or release of retainage in the Contract Documents or applicable law, neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect-Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment and~~ (5) payment, (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner.~~ by the Owner, (6) assignments of information on warranties and guarantees relating to the Work, (7) required approvals by governmental entity or agency, and (8) other items required in the Construction or Contract Documents or Owner's Lenders and Investors. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 Final Affidavits and Waivers of Lien Rights. Contractor shall submit to Owner final affidavits and waivers of lien rights from the Contractor, Subcontractors, Sub-Subcontractors, and material suppliers at the Final Completion of the Work. On request of the Owner, Contractor shall provide additional information or certifying documentation necessary under applicable mechanic lien laws and as required as a condition of Owner financing.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect-Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Architect-Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that

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portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect~~ Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or ~~Architect~~ Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and ~~Architect~~ Engineer.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

~~§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. Refer to Supplemental Conditions to the Construction Contract.~~

~~§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.~~

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

~~§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 — Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
 - .2 — Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
 - .3 — Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees; and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement and elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance products in the jurisdiction where the Project is located. The Owner, Engineer, and Engineer's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.
 - .4 — Claims for damages insured by usual personal injury liability coverage;
 - .5 — Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 - .6 — Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
 - .7 — Claims for bodily injury or property damage arising out of completed operations; and
 - .8 — Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
- § 11.1.1.1 The insurance required by Section 11.1.1 shall not contain any exclusion for explosion collapse, or underground property damage liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Included with certificates of insurance shall be copies of Professional Liability including Errors and Omissions Coverage (if applicable), General Liability Additional Insured Endorsement, and, when legally applicable, Waiver of Worker's Compensation Subrogation Endorsement. At Owner's request, copies of insurance policies shall also be provided. These certificates and the insurance policies required by this Section 11.1 shall be in form and substance satisfactory to Owner and shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect-Engineer and the Architect's Engineer's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 The Contractor and subcontractors shall name the Owner (including financing institutions as applicable) as and additional insured under Commercial General Liability, Commercial Automobile Liability, Professional Liability

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Errors and Omissions Coverage (if applicable), and Umbrella Liability coverage and such other coverage(s) as Owner may request. Such insurance in which the Owner is included as an additional insured shall be primary and noncontributory as to other insurance available to the Owner. The Commercial General Liability additional insured endorsement or coverage shall include ongoing and completed operations coverage. Completed Operations additional insured shall be for the entire period of coverage required by the Contract. Commercial General Liability insurance shall not contain an exclusion for property damage to work performed by sub-contractors on behalf of the Contractor or for work performed by sub-subcontractors on behalf of sub-contractors. Personal Injury Liability shall not exclude liability assumed in a contract. The definition of "insured contracts" shall include that part of other contracts or agreements pertaining to the Contractor's business (including an indemnification of a municipality in connection with work performed for a municipality) under which the Contractor assumes the tort liability or another party to pay for "bodily injury", "property damage" or "personal injury" to a third person or organization. If policies contain deductibles or self-insured retentions the Owner will not be responsible for payment of deductible or self-insured retention. The inadequacy of coverage or absence of coverage does not relieve the Contractor or its subcontractors of liability required by insurance coverage. In the event operations of Contractor or subcontractor include asbestos abatement or lead paint abatement, coverage for these operations shall not be excluded from Commercial General Liability insurance or shall be insured separately at limits shown for Commercial General Liability and shall name the Owner as an additional insured. Contractor shall require its subcontractors to comply with this section.

The Contractor waives and Subcontractors shall waive rights of subrogation against the Owner as respects to Workers Compensation claims. A copy of the Waiver of Subrogation endorsement shall be included with the certificate of insurance and referenced in the certification of insurance.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

~~§ 11.3.1 Unless otherwise provided, the Owner~~The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials ~~whether~~ supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, ~~the Lender,~~ the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for ~~Architect's and Contractor's Engineer's and Owner's~~ services and expenses required as a result of such insured loss.

~~§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. ~~The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the ~~Architect, Architect's Engineer, Engineer's~~ consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the ~~Architect, Architect's Engineer, Engineer's~~ consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the ~~Owner's~~ property insurance shall be adjusted by the Owner or Contractor, whomever is purchasing the policy serving as fiduciary and made payable to the Owner or Contractor whomever purchasing the policy serving as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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§ 11.3.9 If required in writing by a party in interest, the Owner or Contractor whomever purchasing the policy serving as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's fiduciary's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner-fiduciary shall deposit in a separate account proceeds so received, which the Owner-fiduciary shall distribute in accordance with such agreement as the parties in interest may reach, ~~or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor.~~ If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The ~~Owner as fiduciary~~ shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the ~~Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~ Fiduciary's exercise of this power.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner ~~shall have the right to require~~ requires the Contractor to furnish bonds in form and substance satisfactory to Owner covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. As applicable, Contractor shall provide bonds with dual or multiple obligee riders to satisfy the requirements of the financing institutions.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect-Engineer, be uncovered for the Architect's Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect-Engineer has not specifically requested to examine prior to its being covered, the Architect-Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect-Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it

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promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or ~~Architect~~, Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.1 Contractor shall comply , and cause those performing or supplying part of the Work to comply, with federal, state, and local laws applicable to the Work.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

~~Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or~~

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certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.3.1 Except as otherwise provided in Section 13.3.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 13.3.2 Notice of Claims as provided in Section 15.1.2 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, ~~Architect-Engineer~~, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the ~~Architect-Engineer~~ timely notice of when and where tests and inspections are to be made so that the ~~Architect-Engineer~~ may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the ~~Architect-Engineer~~, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the ~~Architect-Engineer~~ will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the ~~Architect-Engineer~~ of when and where tests and inspections are to be made so that the ~~Architect-Engineer~~ may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the ~~Architect's-Engineer's~~ services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect-Engineer~~ and Owner.

§ 13.5.5 If the ~~Architect-Engineer~~ is to observe tests, inspections or approvals required by the Contract Documents, the ~~Architect-Engineer~~ will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the ~~Architect-Engineer~~ has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and ~~Architect-Engineer~~, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the ~~Architect-Engineer~~, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of ~~substantial breach of a provision of the Contract Documents~~ material breach of a provision of the Contract Documents;
- .5 Breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 Fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; or
- .7 Files a voluntary proceeding under or otherwise takes advantage of or remains for more than sixty (60) days the debtor in any involuntary proceeding under any bankruptcy law or other debtor relief or similarly law or makes a general assignment for the benefit of creditors.

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§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's-Engineer's~~ services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such ~~termination, along with reasonable overhead and profit on the Work not executed.~~ termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

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§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. (and if not the Engineer with copies to the Engineer). Claims initiated by either party: (a) if during the prosecution of the Work, within 7 days after the occurrence of the event or the recognition by claimant of a condition giving rise to such Claim; or (b) if after Final Completion, within 21 days after the occurrence of the event or the recognition by claimant of a condition giving rise to such Claim.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The ~~Architect-Engineer~~ will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented to the Owner's reasonable satisfaction by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. A baseline of weather days that shall be included in the Contractor's schedule are established and incorporated in the Specifications. No additional costs will be considered for days added to the contract time for approved weather days above the baseline established in the Specifications.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

Except for the assessment of Liquidated Damages, The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.7 LIQUIDATED DAMAGES

As defined in the Agreement.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding claims arising after warranty period and those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The ~~Architect-Engineer~~ will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with

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no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the ~~Architect-Engineer~~, if the ~~Architect-Engineer~~ is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

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§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

§ GENERAL PROVISIONS

§ 16.1 Supplemental modifications, changes, deletions, or additions to this document are acknowledged as revisions. Where an article, paragraph, subparagraph, or clause of general conditions is modified or deleted, unaltered provisions of that article, paragraph, subparagraph, or clause shall remain in effect.

EXHIBIT B

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Michael Wegerson, Director of Recapitalization , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 19:09:47 ET on 08/06/2020 under Order No. 5228255808 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

EXHIBIT C

Supplemental Conditions to the Construction Contract

EXHIBIT C

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions supplement AIA A201 – 2007 General Conditions and are based on Article 5 of EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The AIA A201 – 2007 General Conditions remain in full force and effect except as amended.

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

Definitions:

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.

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

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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. The following Reports and Drawings contain Technical Data: ~~The Supplementary Conditions identify:~~
 1. ~~the Engineer's Drawings and Specifications; Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;~~
 2. ~~the Geotechnical Report provided as an Exhibit to the Agreement. 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

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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 above 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

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(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~~the Agreement; 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~~the Agreement.

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:

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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 including but not limited to:
 - a. Metro Water Services (MWS) specifically requests coordination with their Route Services group when working around the sanitary force main. MWS also recommends not to work on the sanitary force main when significant rains are forecast;
 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

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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~~ the Agreement;
 - 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~~ the Agreement; 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. ~~The Owner and Engineer, to their knowledge, have not found 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~~ above. 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.

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- 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~~the Agreement.
- 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~~the Agreement. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with ~~Article 8~~the Agreement.
- 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

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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.

EXHIBIT D
Geotechnical Report



Geotechnical Engineering Report

**Cayce Homes Stormwater Outfall
Nashville, Davidson County, TN**

February 6, 2020

Terracon Project No. 18195125

Prepared for:

Kimley-Horn and Associates, Inc
Nashville, TN

Prepared by:

Terracon Consultants, Inc.
Nashville, TN



EXHIBIT D

February 6, 2020

Kimley-Horn and Associates, Inc
214 Oceanside Drive
Nashville, TN 37204



Attn: Mr. Zac DuFour
P: (615) 351-3634
E: Zachary.Dufour@kimley.horn.com

Re: Geotechnical Engineering Report
Cayce Homes Stormwater Outfall
5th Street S and 6th Street S
Nashville, Davidson County, TN
Terracon Project No. 18195125

Dear Mr. Dufour:

We have completed the Geotechnical Engineering services for the above referenced project. This study was performed in general accordance with Terracon Proposal No. P18195125 dated July 24, 2019. This report presents the findings of the subsurface exploration and provides subsurface characterization for the proposed project.

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

Sincerely,

Terracon Consultants, Inc.



John E. Agee, P.E.
Regional Manager

A handwritten signature in black ink that reads "David A. Been".

David A. Been, P.E.
Geotechnical Department Manager



EXHIBIT D

REPORT TOPICS

INTRODUCTION.....	1
SITE CONDITIONS.....	1
PROJECT DESCRIPTION.....	2
GEOTECHNICAL CHARACTERIZATION.....	2
GENERAL COMMENTS.....	3

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

ATTACHMENTS

EXPLORATION AND TESTING PROCEDURES
SITE LOCATION AND EXPLORATION PLANS
EXPLORATION RESULTS
SUPPORTING INFORMATION

Note: Refer to each individual Attachment for a listing of contents.

Geotechnical Engineering Report
Cayce Homes Stormwater Outfall
5th Street S and 6th Street S
Nashville, Davidson County, TN
Terracon Project No. 18195125
February 6, 2020

INTRODUCTION

This report presents the results of our subsurface exploration and geotechnical engineering services performed for the proposed stormwater outfall to be located at 5th Street S and 6th Street S in Nashville, Davidson County, TN. The purpose of these services is to provide information and subsurface characterization.

The geotechnical engineering Scope of Services for this project included a geophysical survey and the advancement of two test borings to depths of about 30 feet below existing site grades.

Maps showing the site and boring locations are shown in the **Site Location** and **Exploration Plan** sections, respectively.

SITE CONDITIONS

The following description of site conditions is derived from our site visit in association with the field exploration and our review of publicly available geologic and topographic maps.

Item	Description
Parcel Information	The project is located along 5th Street S and 6th Street S and Crutcher Street in Nashville, Davidson County, TN. 36.1638374, -86.7585526 (approximate) (See Exhibit D)
Existing Improvements	Developed residential and commercial properties and infrastructure
Current Ground Cover	Asphalt pavements and graveled lots
Existing Topography (from Nashville GIS)	The ground surface varies from about elevation 434 to 416 feet, MSL.

EXHIBIT D

Geotechnical Engineering Report

Cayce Homes Stormwater Outfall ■ Nashville, Davidson County, TN

February 6, 2020 ■ Terracon Project No. 18195125



Item	Description
Geology	<p>Ordovician age Nashville Group - Bigby-Cannon Limestone - Brownish-gray phosphatic calcarenite and light-gray to brownish-gray, cryptograined to medium- grained, even-bedded limestone. Thickness 50 to 125 feet; and Hermitage Formation - Thin-bedded to laminated, sandy and argillaceous limestone with shale; nodular shaly limestone; coquina; and phosphatic calcarenite. Thickness 50 to 100 feet.</p> <p>Alluvial deposits along the Cumberland River.</p> <p>References: Greene, D.C., and Wolfe, W.J., 2000, Superfund GIS - 1:250,000 Geology of Tennessee, USGS, (geo250k). Hardeman, W.D., Miller, R.A., and Swingle, G.D., 1966, Geologic Map of Tennessee: Division of Geology, Tennessee Department of Environment and Conservation, 4 sheets, scale 1:250,000</p>

PROJECT DESCRIPTION

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

Item	Description
Information Provided	Project information was provided by Ms. Kelley Frank and Mr. Zac Dufour with KHA via phone and email to Mr. John Agee with Terracon.
Project Description	The named streets are potential locations for new or improved sewer lines. The 5 th Street sewer may be installed by tunneling.
Proposed Structure	New sewer lines varying from 72 to 108 inches in diameter at depths of 30-feet or less.

GEOTECHNICAL CHARACTERIZATION

Based on the geophysical testing and two correlation borings, we have developed a 2D profile along the test lines. These are attached.

Generally, along South 5th and 6th Streets and the connecting streets of interest, the top of rock varies from about 20 to 30 feet below the ground surface. As shown by the green areas at shallower depths, some areas appear to have “floating” layers of rock as shear wave velocities

Geotechnical Engineering Report

Cayce Homes Stormwater Outfall ■ Nashville, Davidson County, TN

February 6, 2020 ■ Terracon Project No. 18195125



exceed 2,000 feet per second (fps) in these areas. As is typical of the area geology, the top of rock undulates and would be expected to have erratic weathered surfaces.

Based on this data, we anticipate the majority of the planned storm lines would be excavated through soil.

The geophysical images and individual logs can be found in the **Exploration Results** section of this report.

GENERAL COMMENTS

Our analysis and opinions are based upon our understanding of the project, the geotechnical conditions in the area, and the data obtained from our site exploration. Natural variations will occur between exploration point locations or due to the modifying effects of construction or weather. The nature and extent of such variations may not become evident until during or after construction.

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

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

Site characteristics as provided are for design purposes and not to estimate excavation cost. Any use of our report in that regard is done at the sole risk of the excavating cost estimator as there may be variations on the site that are not apparent in the data that could significantly impact excavation cost. Any parties charged with estimating excavation costs should seek their own site characterization for specific purposes to obtain the specific level of detail necessary for costing. Site safety, and cost estimating including, excavation support, and dewatering requirements/design are the responsibility of others. If changes in the nature, design, or location of the project are planned, our conclusions and recommendations shall not be considered valid unless we review the changes and either verify or modify our conclusions in writing.

EXHIBIT D

ATTACHMENTS

EXPLORATION AND TESTING PROCEDURES

Field Exploration

Number of Points	Depth (feet) ¹	Planned Location
5 geophysical lines	80 to 140	Planned sewer areas
2 borings/coring	30	Along potential tunnel area

1. Below ground surface.

A seismic refraction survey was performed utilizing the Multi-channel analysis of surface waves (MASW) method. Our method of investigation utilized a seismograph and a linear array of twenty-four 4.5Hz geophones to collect Multi-channel analysis of surface waves (MASW) data. MASW was performed by collecting surface waves created by a seismic source consisting of a sledgehammer striking an aluminum ground plate. The data was processed using dispersion analysis software (SurfSeis, engineered by the Kansas Geological Survey) that extracts the fundamental-mode dispersion curve(s). The curves were inverted and modeled to yield a 1D shear-wave velocity profile along the array for a corresponding depth. A land-streamer setup was utilized and involved a vehicle pulling a land-streamer array along linear paths. 24 geophones were spaced approximately 5 feet apart along the land-streamer for a total line length of 115 feet. The array was pulled at specific intervals of approximately 10 feet and a source strike was completed with the sledge hammer at each interval while recording the seismic response. 1D profiles were created at each interval and then combined to yield a 2D profile. These 2D profiles were then examined for changes in shear wave velocities to indicate bedrock and low velocity karst zones.

Layout and Elevations: We used handheld GPS equipment to locate geophysical test lines with an estimated horizontal accuracy of +/-20 feet. Surface elevations were not included.

Subsurface Exploration Procedures: To correlate the geophysical data and provide additional rock quality data for the pending tunneling contractor, we advanced two soil borings with a track-mounted drill rig using continuous flight augers (solid stem and/or hollow stem, as necessary, depending on soil conditions). Four samples will be obtained in the upper 10 feet of each boring and at intervals of 5 feet thereafter. Soil sampling was performed using split-barrel sampling procedures. The split-barrel samplers are driven in accordance with the standard penetration test (SPT). The samples will be placed in appropriate containers, taken to our soil laboratory for testing, and classified by a Geotechnical Engineer. In addition, we observed and record groundwater levels during drilling and sampling. Given auger refusal was not encountered at the 25-foot depth, the borings were extended to 30 feet and terminated in soil. For safety purposes, all borings were backfilled with auger cuttings after their completion. Pavements were patched with cold-mix asphalt and/or pre-mixed concrete, as appropriate.

EXHIBIT D

Geotechnical Engineering Report

Cayce Homes Stormwater Outfall ■ Nashville, Davidson County, TN

February 6, 2020 ■ Terracon Project No. 18195125



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

EXHIBIT D

SITE LOCATION AND EXPLORATION PLANS

Contents:

Site Location Plan

Exploration Plan

Note: All attachments are one page unless noted above.

EXHIBIT D

SITE LOCATION

Cayce Homes Stormwater Outfall ■ Nashville, Davidson County, TN
February 6, 2020 ■ Terracon Project No. 18195125

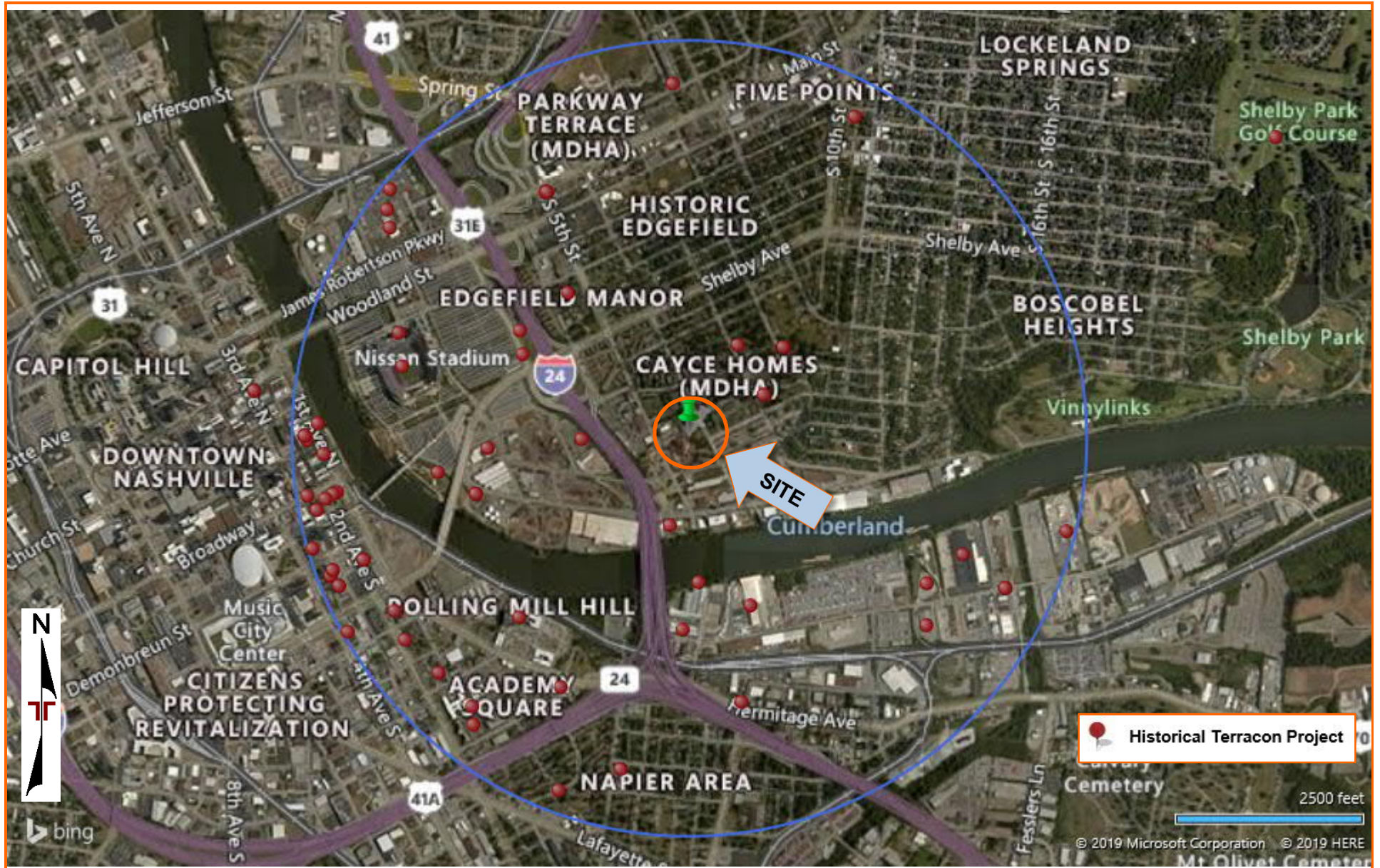


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS

EXHIBIT D

EXPLORATION PLAN – GEOPHYSICS LINES AND BORINGS

Cayce Homes Stormwater Outfall ■ Nashville, Davidson County, TN

February 6, 2020 ■ Terracon Project No. 18195125



DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS

EXHIBIT D

EXPLORATION RESULTS

Contents:

Geophysical Test Data (5 pages)

Boring Logs (B-1 and B-2)

EXHIBIT D



DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

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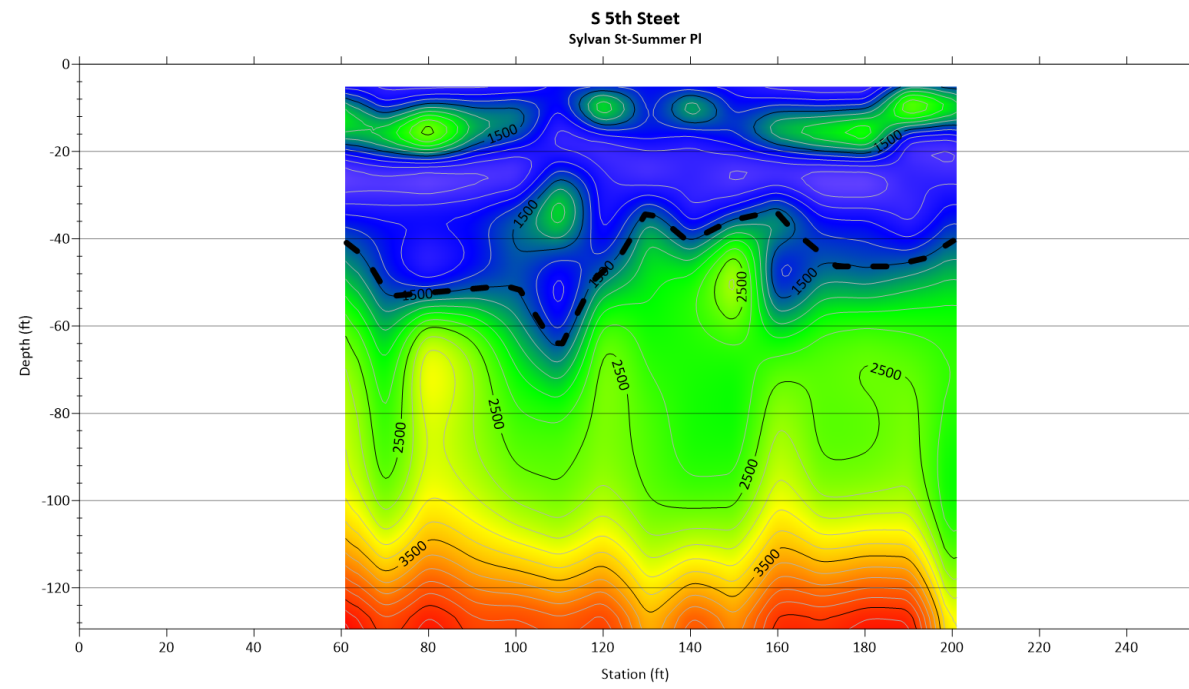
Terracon
Consulting Engineers & Scientists

611 Lunken Park Dr. Cincinnati, OH
PH. (513) 612-9081 FAX. (513) 321-0294

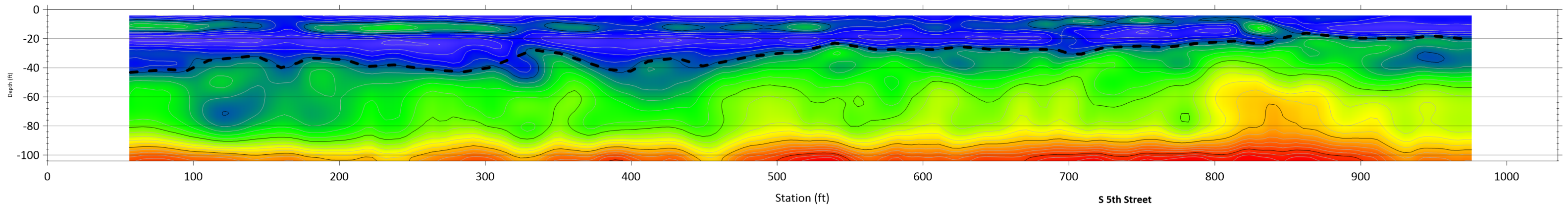
MASW Site Survey Plan
Cayce Homes Stormwater Outfall
Nashville, Tennessee

Exhibit
1

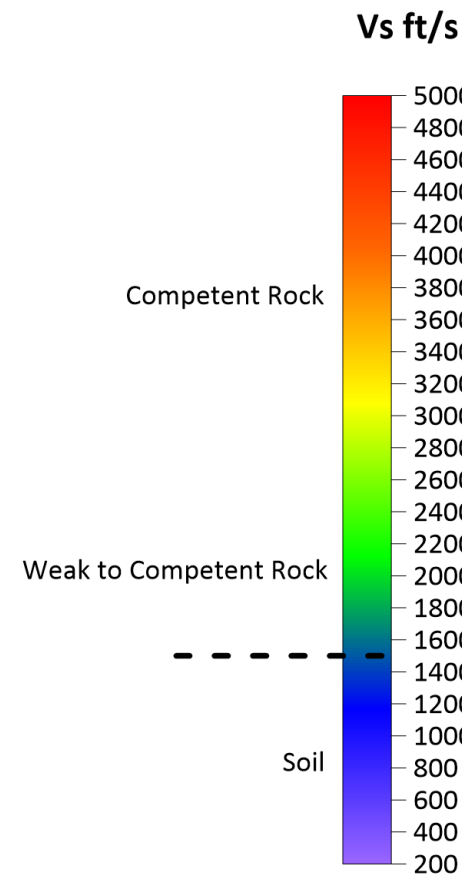
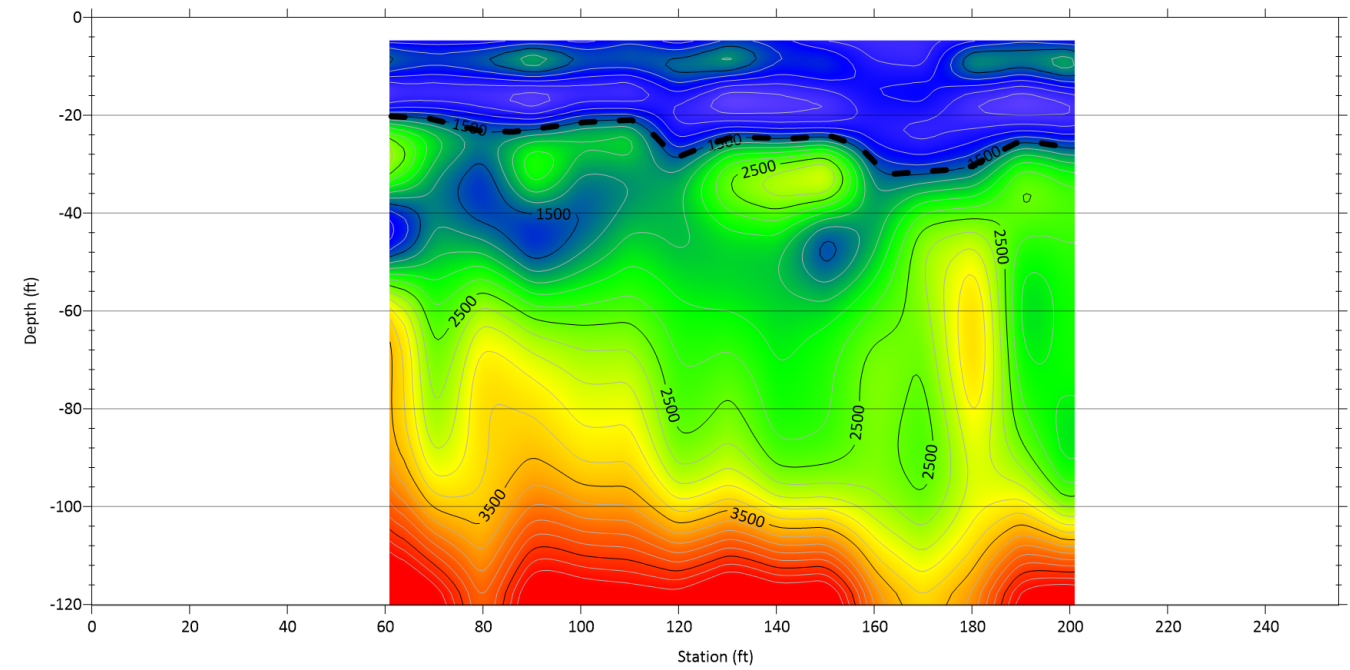
EXHIBIT D



S 5th Street
Summer PI-Crutcher St



S 5th Street
Crutcher St-Music City Bikeway

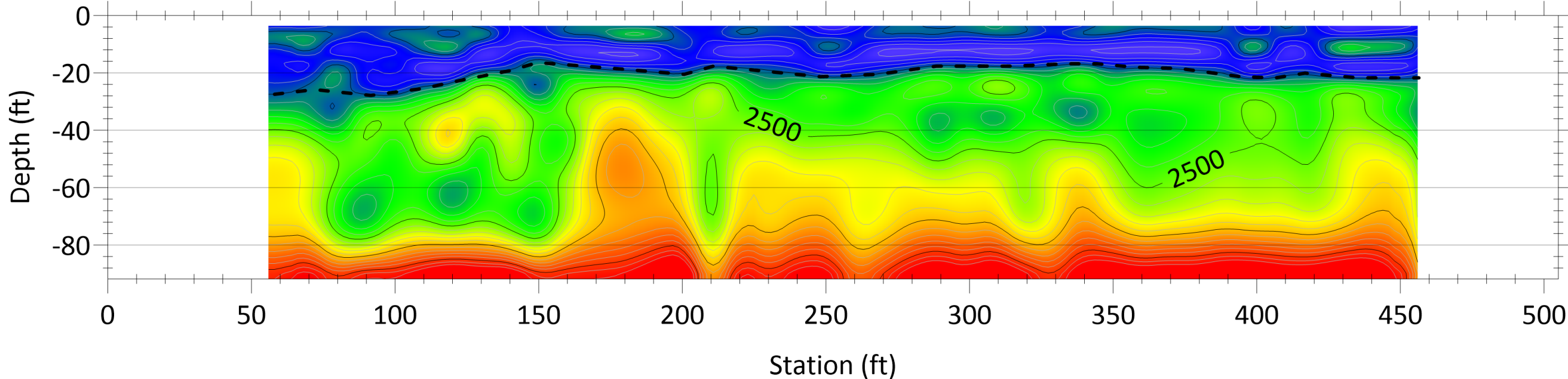


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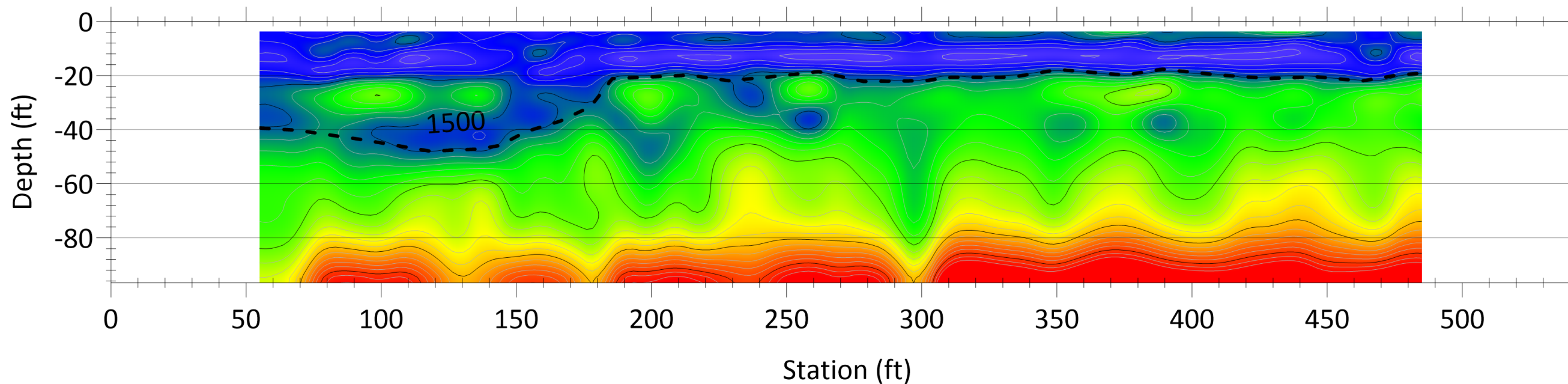
Terracon
Consulting Engineers & Scientists
611 Lunken Park Drive
Cincinnati, Ohio 45226

LINE 1 MASW CROSS-SECTIONS
CAYCE HOMES STORMWATER OUTFALL
KIMLEY-HORN & ASSOCIATES, INC.
NASHVILLE, DAVIDSON COUNTY, TN

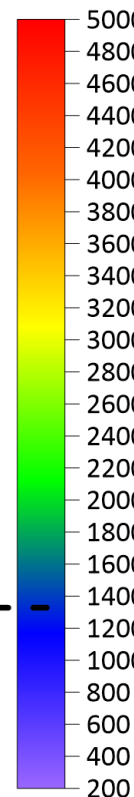
Crutcher Street S 5th St-S 6th St



Crutcher Street S 6th St-S 7th St



Vs ft/s



Competent Rock

Weak to Competent Rock

Soil

Approximate Top of Bedrock

Project Manager:	JEA	Project No.:	18195125
Drawn by:	KJS	Scale:	As Shown
Checked by:	JA	File Name:	map
Approved by:	JEA	Date:	12/11/2019

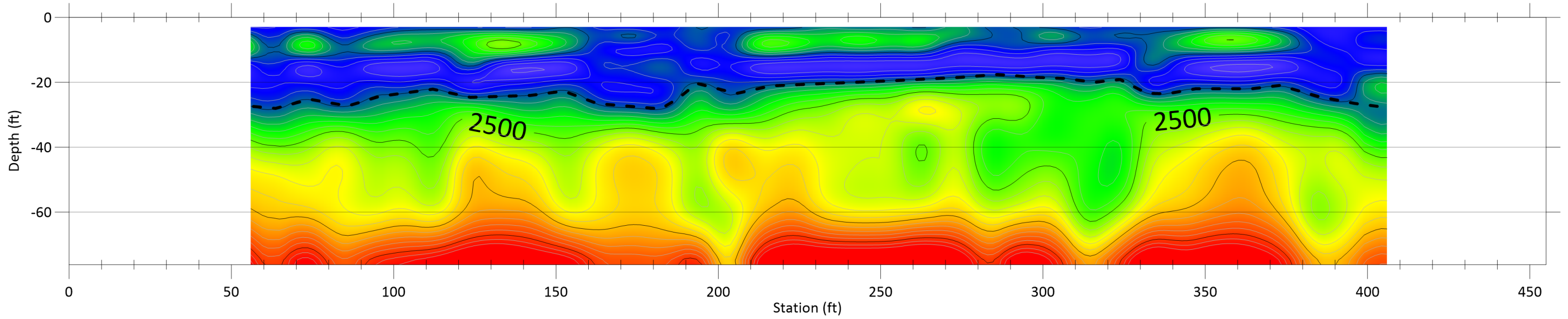
Terracon
Consulting Engineers & Scientists
611 Lunken Park Drive
Cincinnati, Ohio 45226

LINE 2 MASW CROSS-SECTIONS
CAYCE HOMES STORMWATER OUTFALL
KIMLEY-HORN & ASSOCIATES, INC.
NASHVILLE, DAVIDSON COUNTY, TN

EXHIBIT D

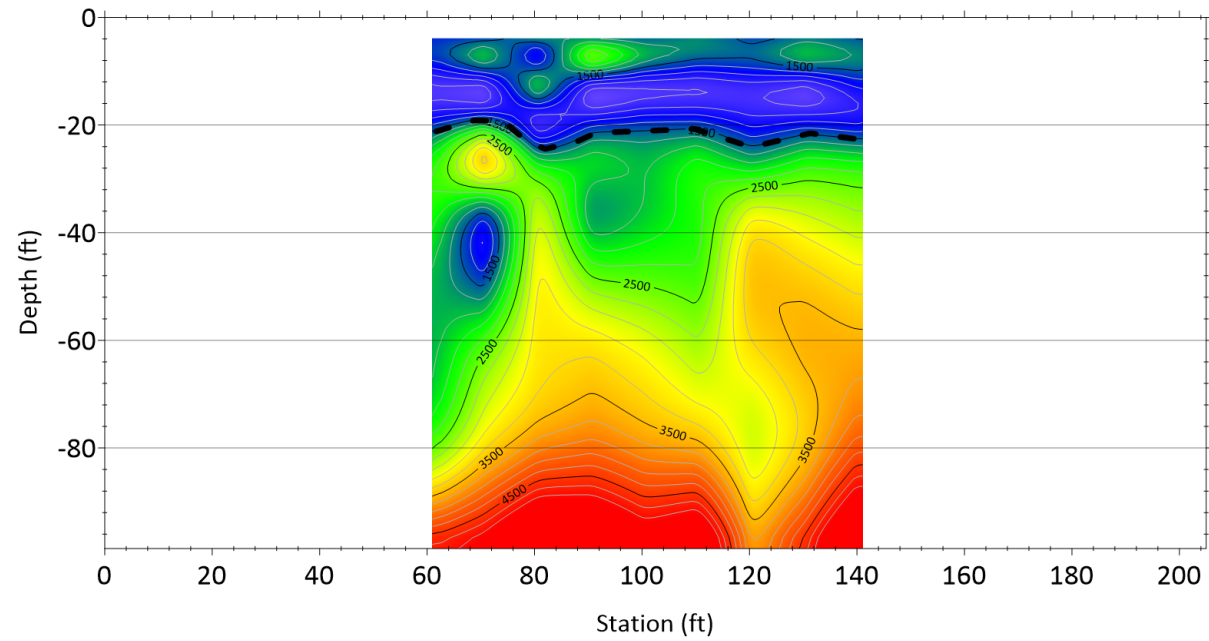
Line 3

S 6th Street
Crutcher St-Music City Bikeway

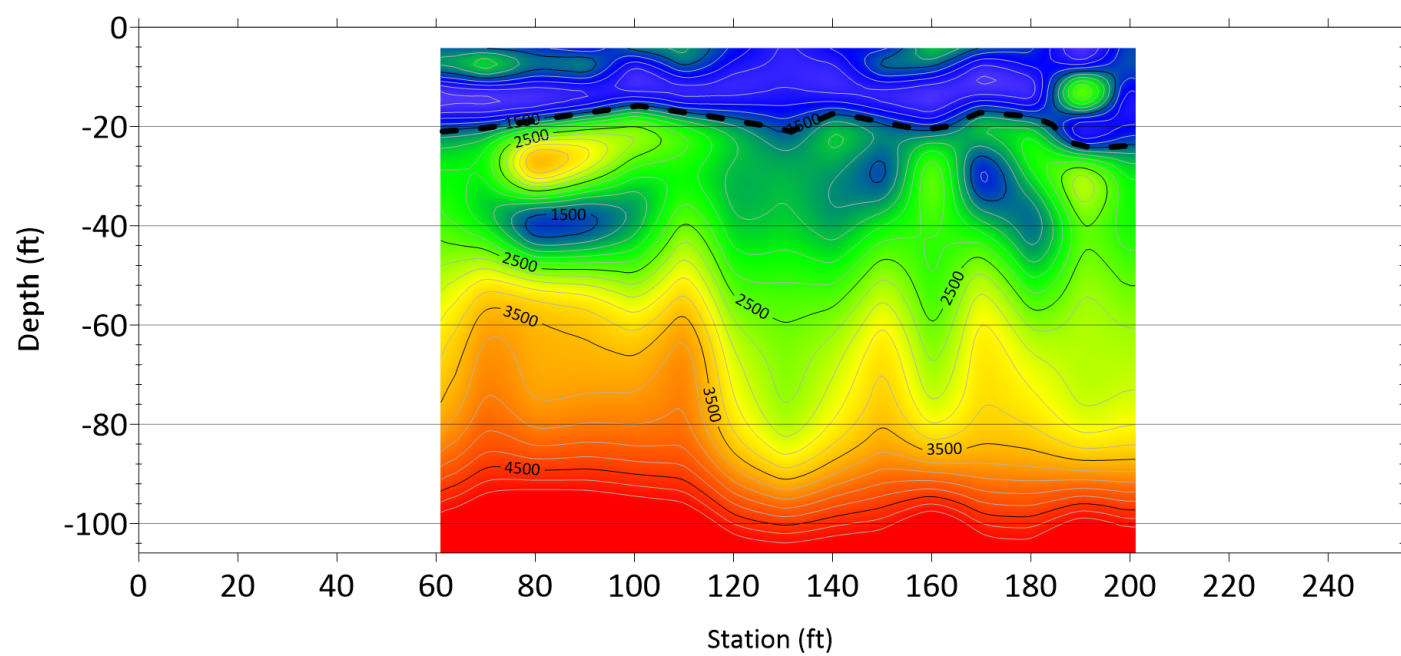


Line 4

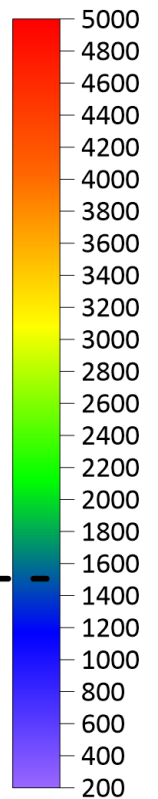
S 6th Street
Lenore St-Crutcher St



S 7th Street
Lenore St-Crutcher St



Vs ft/s



Competent Rock

Weak to Competent Rock

Soil

Approximate Top of Bedrock

Project Manager:	JEA	Project No.	18195125
Drawn by:	KJS	Scale:	As Shown
Checked by:	JA	File Name:	map
Approved by:	JEA	Date:	12/11/2019

Terracon
Consulting Engineers & Scientists
611 Lunken Park Drive
Cincinnati, Ohio 45226

LINES 3 - 4 MASW CROSS-SECTIONS
CAYCE HOMES STORMWATER OUTFALL
KIMLEY-HORN & ASSOCIATES, INC.
NASHVILLE, DAVIDSON COUNTY, TN

EXHIBIT
4

S 5th Street (N-S)

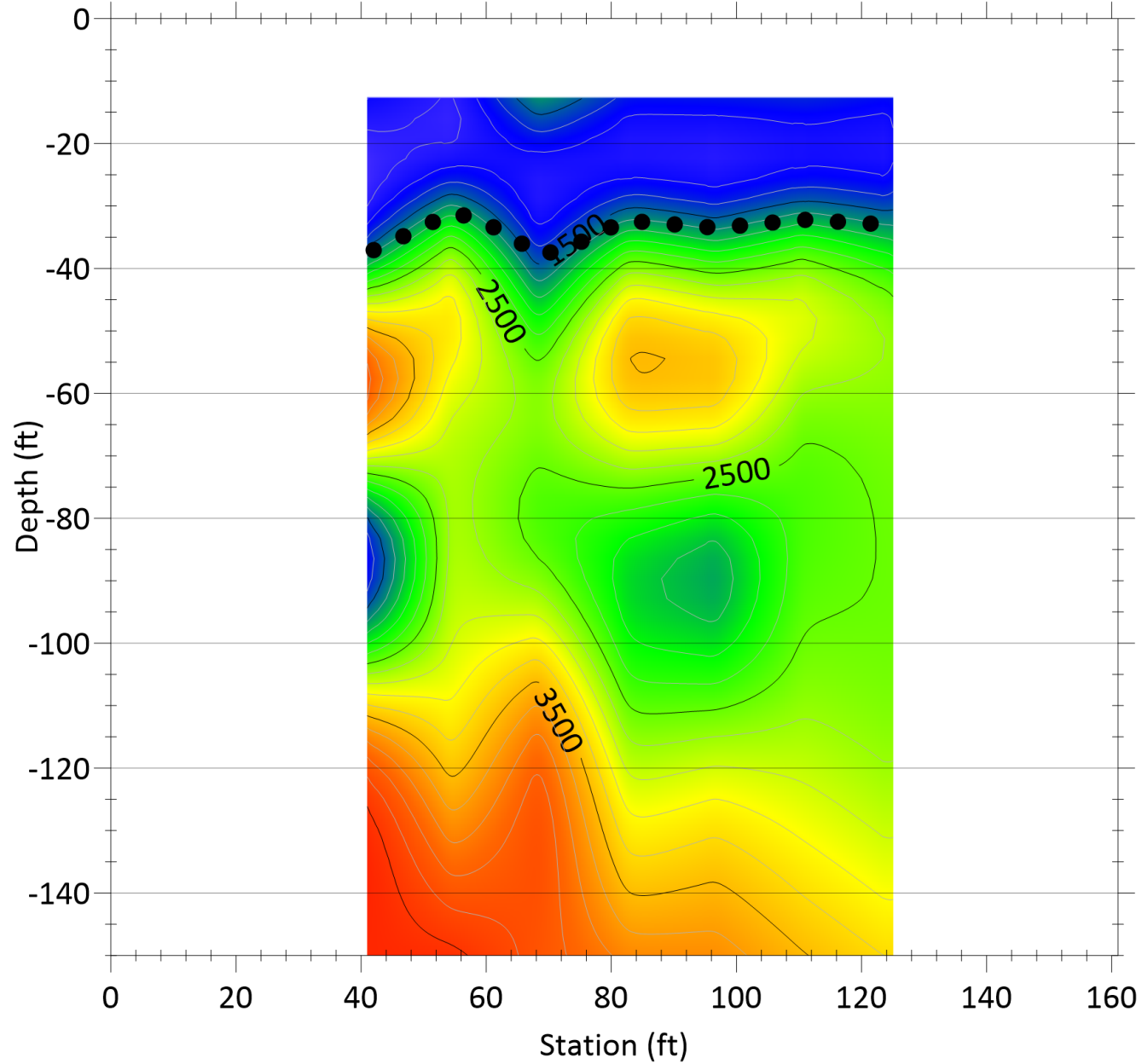
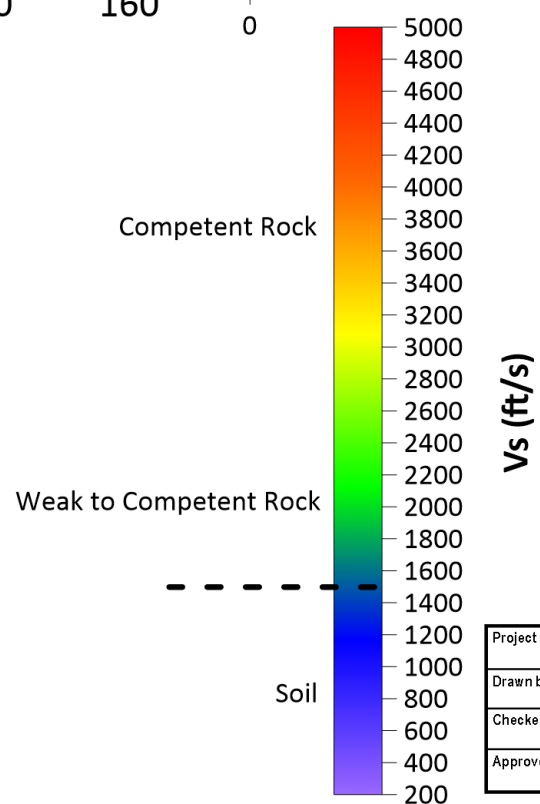
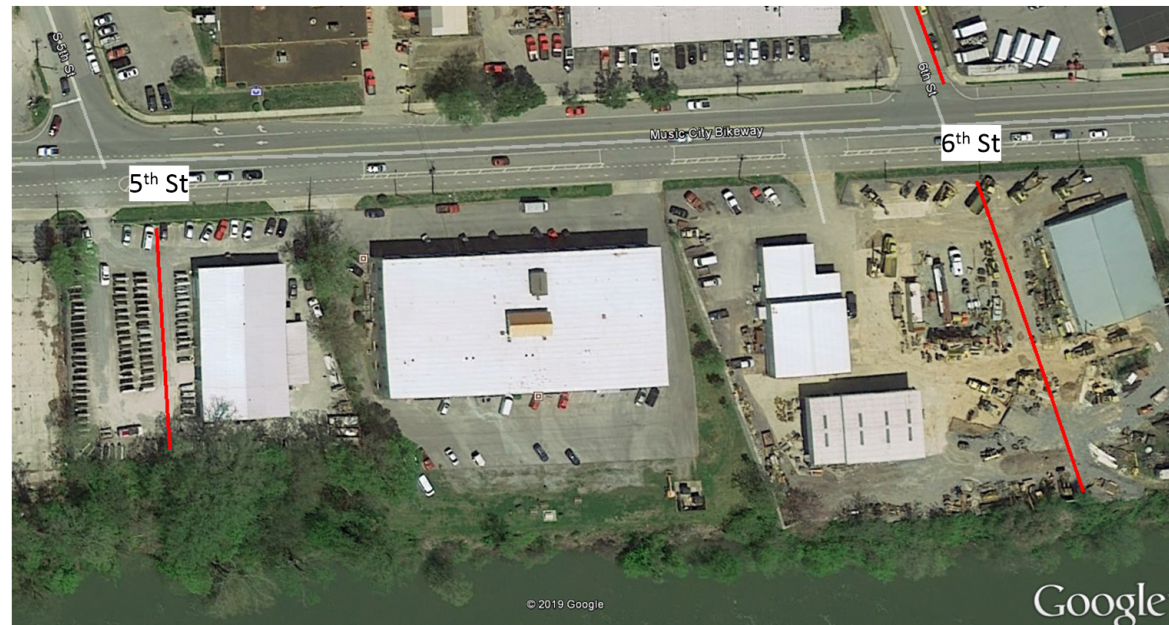
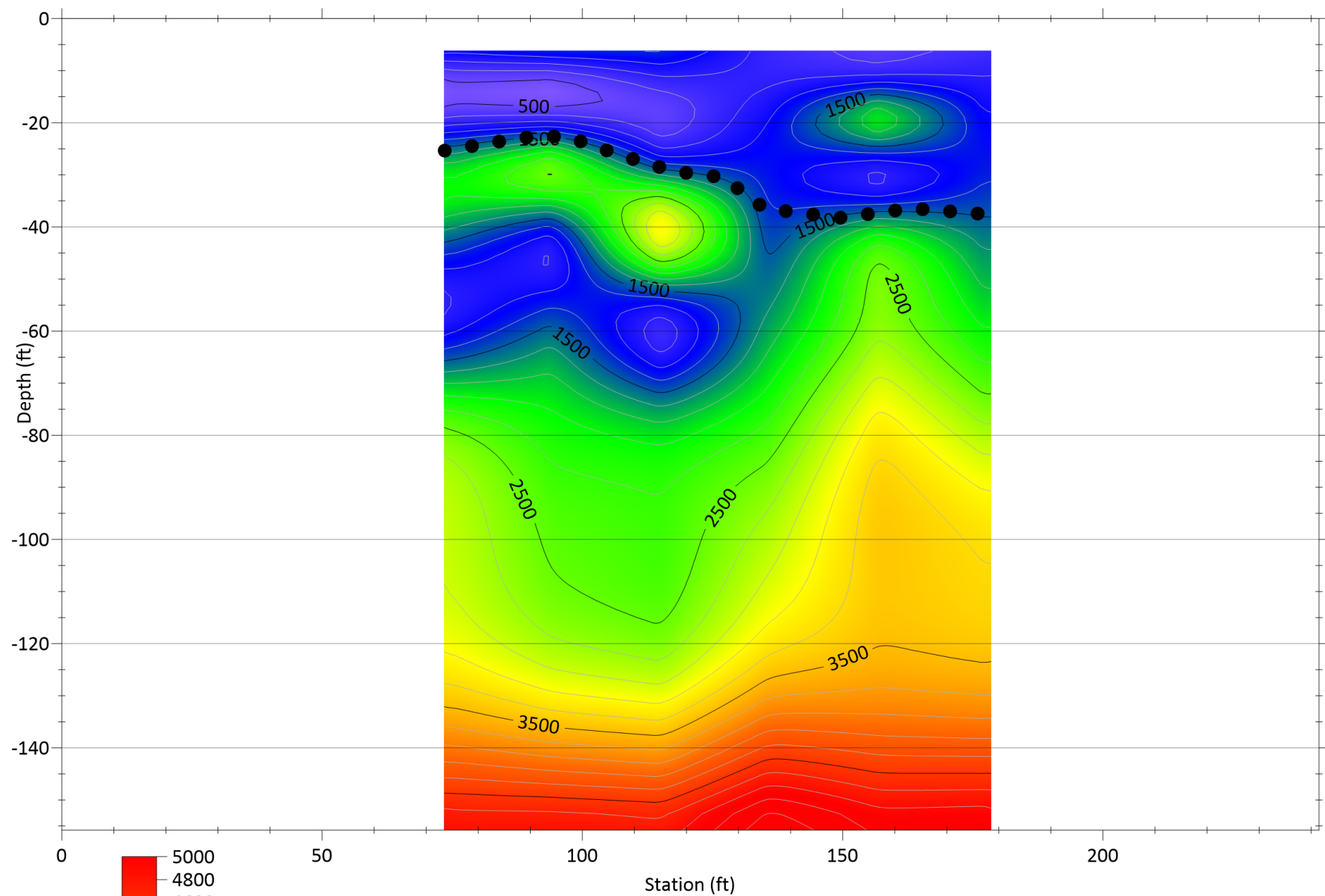


EXHIBIT D

S 6th Street (N-S)



--- Approximate Top of Bedrock

Project Manager:	JEA	Project No.:	18195125
Drawn by:	KJS	Scale:	As Shown
Checked by:	JA	File Name:	map
Approved by:	JEA	Date:	12/11/2019

Terracon
Consulting Engineers & Scientists
611 Lunken Park Drive
Cincinnati, Ohio 45226

LINE 1 MASW CROSS-SECTIONS
CAYCE HOMES STORMWATER OUTFALL
KIMLEY-HORN & ASSOCIATES, INC.
NASHVILLE, DAVIDSON COUNTY, TN

BORING LOG NO. B-1

PROJECT: Cayce Homes Stormwater Outfall

CLIENT: Kimley-Horn & Associates Inc
Nashville, TN

SITE: 5th Street S and 6th Street S
Nashville, TN

GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 1° Longitude: 1°	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS	
							LL-PL-PI	
	DEPTH							
0.7	8" GRAVEL							
	FILL - LEAN CLAY (CL) , with gravel and organics, brown			X	6-4-6 N=10			
	with coal ash 3' - 8'	5		X	4-5-4 N=9			
				X	2-3-2 N=5			
	olive brown, with petroleum odor, with some sand	10		X	2-2-2 N=4			
		15		X	1-1-1 N=2			
		20		X	3-2-3 N=5			
		23.5	▽					
	LEAN CLAY (CL) , with sand and silt, brown, medium stiff, alluvium	25		X	4-4-4 N=8			
		30		X	4-3-4 N=7			
	Boring Terminated at 30 Feet	30						

Stratification lines are approximate. In-situ, the transition may be gradual.

Advancement Method:
Hollow stem auger

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

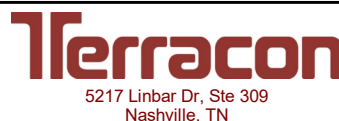
Notes:

Abandonment Method:
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

WATER LEVEL OBSERVATIONS

▽ While drilling



Boring Started: 01-02-2020

Boring Completed: 01-02-2020

Drill Rig:

Driller: Tri-State Drilling

Project No.: 18195125




THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL - 18195125 CAYCE HOMES STORM.GPJ TERRACON_DATATEMPLATE.GDT 2/4/20

BORING LOG NO. B-2

PROJECT: Cayce Homes Stormwater Outfall

CLIENT: Kimley-Horn & Associates Inc
Nashville, TN

SITE: 5th Street S and 6th Street S
Nashville, TN

GRAPHIC LOG	LOCATION See Exploration Plan Latitude: 1° Longitude: 1°	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS	
							LL-PL-PI	
	DEPTH							
	0.7' 8" TOPSOIL							
	FILL - LEAN CLAY (CL) , with sand, with brick, dark brown, with cinders	5		X	4-4-4 N=8			
				X	4-4-4 N=8			
				X	3-4-5 N=9			
	8.0' FAT CLAY (CH) , with sand, brown, stiff	10		X	4-5-4 N=9			
				X	4-5-5 N=10			
	medium stiff	15						
				X	2-2-3 N=5			
		20						
				X	2-3-3 N=6			
	soft	25						
			▽					
			▽					
				X	0-1-1 N=2			
	30.0' Boring Terminated at 30 Feet	30						

Stratification lines are approximate. In-situ, the transition may be gradual.

Advancement Method:
Hollow stem auger

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

WATER LEVEL OBSERVATIONS

- ▽ While drilling
- ▽ At completion of drilling



Boring Started: 01-23-2020

Boring Completed: 01-02-2020

Drill Rig:

Driller: Tri-State Drilling

Project No.: 18195125

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL. 18195125 CAYCE HOMES STORM.GPJ TERRACON_DATATEMPLATE.GDT 2/4/20

EXHIBIT D

SUPPORTING INFORMATION

Contents:

General Notes

Unified Soil Classification System

Note: All attachments are one page unless noted above.






GENERAL NOTES

DESCRIPTION OF SYMBOLS AND ABBREVIATIONS

Cayce Homes Stormwater Outfall ■ Nashville, TN

February 6, 2020 ■ Terracon Project No. 18195125

EXHIBIT D

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

DESCRIPTIVE SOIL CLASSIFICATION

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

LOCATION AND ELEVATION NOTES

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

STRENGTH TERMS

RELATIVE DENSITY OF COARSE-GRAINED SOILS (More than 50% retained on No. 200 sieve.) Density determined by Standard Penetration Resistance		CONSISTENCY OF FINE-GRAINED SOILS (50% or more passing the No. 200 sieve.) Consistency determined by laboratory shear strength testing, field visual-manual procedures or standard penetration resistance		
Descriptive Term (Density)	Standard Penetration or N-Value Blows/Ft.	Descriptive Term (Consistency)	Unconfined Compressive Strength Qu, (tsf)	Standard Penetration or N-Value Blows/Ft.
Very Loose	0 - 3	Very Soft	less than 0.25	0 - 1
Loose	4 - 9	Soft	0.25 to 0.50	2 - 4
Medium Dense	10 - 29	Medium Stiff	0.50 to 1.00	4 - 8
Dense	30 - 50	Stiff	1.00 to 2.00	8 - 15
Very Dense	> 50	Very Stiff	2.00 to 4.00	15 - 30
		Hard	> 4.00	> 30

RELEVANCE OF SOIL BORING LOG

The soil boring logs contained within this document are intended for application to the project as described in this document. Use of these soil boring logs for any other purpose may not be appropriate.

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

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

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

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

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

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

^F If soil contains $\geq 15\%$ sand, add "with sand" to group name.

^G If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.

^H If fines are organic, add "with organic fines" to group name.

^I If soil contains $\geq 15\%$ gravel, add "with gravel" to group name.

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

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

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

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

^N $PI \geq 4$ and plots on or above "A" line.

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

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

^Q PI plots below "A" line.

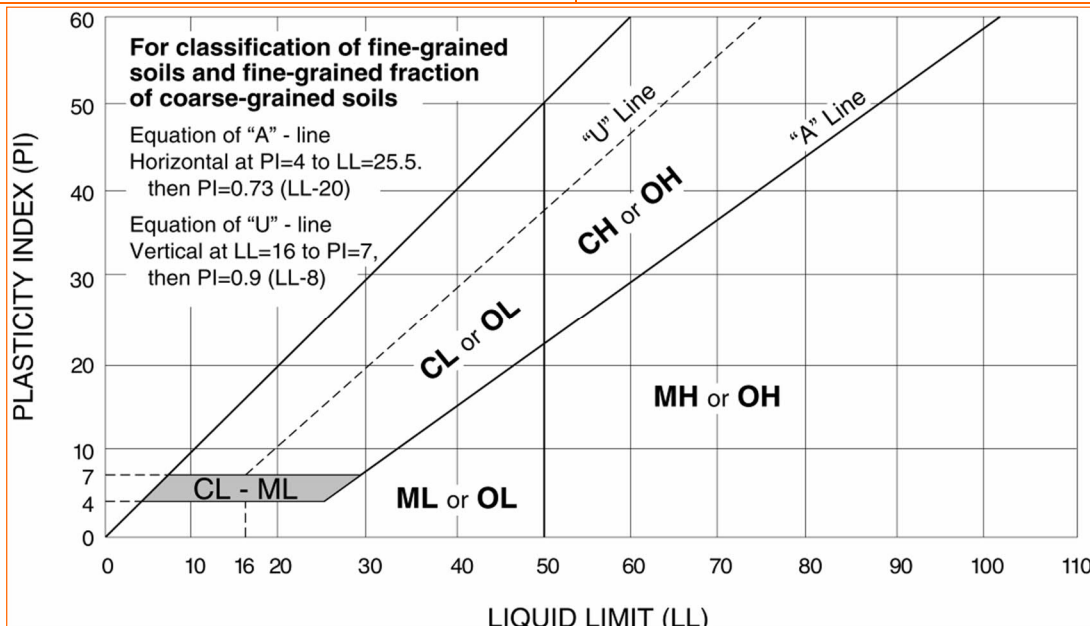


EXHIBIT E

Exhibits to the Agreement

Exhibit A- List of Drawings and Specifications

Exhibit B- Insurance Certificate

Exhibit C- Disadvantaged Business Enterprises (DBE) forms 2004, 2005, 2006

Exhibit D- Standard Form Partial Release of Liens and Final Release of

Liens Contractor

Exhibit E- Standard Form Partial Release of Liens and Final Release of

Liens Subcontractor

Exhibit F- Contractor's License

Exhibit G- Attachments from RFP

EXHIBIT A to the AIA Agreement

List of Drawings and Specifications

Cayce Utility Phase 1A

Sheet List Table

Sheet Number	Sheet Title	Issue Date	Revision Date
C0-00	COVER	10/08/2020	
C0-01	GENERAL NOTES	10/08/2020	
C1-00	OVERALL KEY MAP	10/08/2020	
C1-01	OVERALL UTILITY LAYOUT	10/08/2020	
C1-02	DRAINAGE MAP	10/08/2020	
C1-03	DRAINAGE MAP TABLES	10/08/2020	
C1-10	DEMOLITION PLAN	10/08/2020	
C1-11	DEMOLITION PLAN	10/08/2020	
C1-12	DEMOLITION PLAN	10/08/2020	
C1-13	DEMOLITION PLAN - BID ALTERNATE	10/08/2020	
C2-01	STORM PLAN AND PROFILE	10/08/2020	
C2-02	STORM PLAN AND PROFILE	10/08/2020	
C2-03	STORM PLAN AND PROFILE	10/08/2020	
C2-04	STORM PLAN AND PROFILE - BID ALTERNATE	10/08/2020	
C2-05	STORM PLAN AND PROFILE S - 6TH ST CONNECTIONS	10/08/2020	
C2-06	STORM PLAN AND PROFILE S - 6TH ST CONNECTIONS	10/08/2020	
C2-07	STORM STRUCTURE AND PIPE TABLES	10/08/2020	
C3-01	SANITARY SEWER PLAN AND PROFILE	10/08/2020	
C4-01	WATER PLAN AND PROFILE	10/08/2020	
C4-02	WATER PLAN AND PROFILE	10/08/2020	
C4-03	WATER PLAN AND PROFILE	10/08/2020	
C5-01	ROADWAY TYPICAL SECTIONS	10/08/2020	
C5-02	ROADWAY PLAN AND PROFILE - S 6TH STREET	10/08/2020	
C5-03	ROADWAY PLAN AND PROFILE - S 6TH STREET	10/08/2020	
C5-04	ROADWAY PLAN AND PROFILE - S 6TH STREET	10/08/2020	
C6-01	S 6TH STREET CROSS SECTIONS	10/08/2020	
C7-10	EROSION CONTROL PLAN - PHASE 1	10/08/2020	
C7-11	EROSION CONTROL PLAN - PHASE 1	10/08/2020	
C7-12	EROSION CONTROL PLAN - PHASE 1	10/08/2020	
C7-20	EROSION CONTROL PLAN - PHASE 2	10/08/2020	
C7-21	EROSION CONTROL PLAN - PHASE 2	10/08/2020	
C7-22	EROSION CONTROL PLAN - PHASE 2	10/08/2020	
C8-00	STORMWATER DETAILS	10/08/2020	
C8-01A	WATER AND SEWER DETAILS	10/08/2020	
C8-01B	WATER AND SEWER DETAILS	10/08/2020	
C8-02A	ROADWAY DETAILS	10/08/2020	
C8-02B	ROADWAY DETAILS	10/08/2020	
C8-02C	ROADWAY DETAILS	10/08/2020	
C8-03	EROSION CONTROL DETAILS	10/08/2020	
C9-00	CONSTRUCTION PHASING	08/05/2020	
C9-01	DAVIDSON ST AND S 6TH ST MAINTENANCE OF TRAFFIC	08/05/2020	

GENERAL

Recipients of bidding instruments must consult the Index to determine the full scope of the work involved and to ensure that all pages of the project manual and drawings have been included.

Neither the Owner nor the Owner’s Representative will be responsible for bids submitted that are based on incomplete bidding instruments.

DOCUMENTS

Technical Specifications

	<u>Date</u>
011000 – Summary	July 2020
012200 – Unit Prices	July 2020
012300 – Alternates	July 2020
012500 – Substitution Procedures	July 2020
012600 – Contract Modification Procedures.....	July 2020
012664 – Weather Delays	July 2020
012900 – Payment Procedures.....	July 2020
013100 – Project Management and Coordination.....	July 2020
013200 – Construction Progress Documentation	July 2020
013300 – Submittal Procedures.....	July 2020
014000 – Quality Requirements.....	July 2020
014200 – References	July 2020
015639 – Temporary Tree and Plant Protection.....	July 2020
017700 – Closeout Procedures.....	July 2020
017839 – Project Record Documents.....	July 2020
330130 – Post-rehabilitation Sanitary Sewer CCTV Inspection.....	July 2020
330140 – Cured-in-place Pipe Lining	July 2020
330151 – Pre-rehabilitation Sanitary Sewer CCTV Inspection	July 2020
333520 – Sewer Cleaning for Preparation of Sewer Rehabilitation	July 2020

The following additional Technical Specifications are incorporated by Reference. The referenced specifications are available to download through MDHA or through the agency responsible for the specifications.

Metro Water Services Specifications

Revision Date

Metro Water Services Specifications – MWS Water and Sewer Standard Specifications	05/08/2019
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Metro Nashville Public Works Specifications

02225 – Earthwork for Structures and Pipelines.....	11/13/00
02520 – Cement Concrete Curb, Gutter, and Combined Curb and Gutter	09/06/00
02522 – Cement Concrete Sidewalks, Driveways, and Median Pavement.....	09/06/00
02523 – Detectable Warnings.....	05/07/14
02575 – Pavement Repair Specification.....	08/22/14
02500 – Paving and Resurfacing	02/14/13
02720 – Storm Sewers and Drain Systems.....	N/A

TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT) STANDARD SPECIFICATIONS, SUPPLEMENTAL SPECIFICAIONS, AND SPECIAL PROVISIONS

Standard Specifications for Road and Bridge Construction

January 1, 2015

	<u>Revision Date</u>
Supplemental Specifications to The Standard Specifications	
Supplemental Specification to Section 100.....	12/30/19
Supplemental Specification to Section 200.....	12/30/19
Supplemental Specification to Section 300.....	12/30/19
Supplemental Specification to Section 400.....	12/30/19
Supplemental Specification to Section 500.....	12/30/19
Supplemental Specification to Section 600.....	12/30/19
Supplemental Specification to Section 700.....	12/30/19
Supplemental Specification to Section 900.....	12/30/19

Project Documents

Cayce Utility Phase 1 Bid Set, by Kimley-Horn and Associates, Inc., dated August 5, 2020

Geotechnical Engineering Report, by Terracon Consultants, dated February 6, 2020

CCTV files of Stormwater pipes

The above Standard Specifications, Supplemental Specifications, and Special Provisions revised as noted, are incorporated by reference for bidding and contract purposes. These documents may be obtained from the Department at Suite 700, James K. Polk Bldg., Nashville, Tennessee or viewed on the Department's website at <http://www.tdot.state.tn.us/construction>.

EXHIBIT B to the AIA Agreement

Insurance Certificate

Insurance Certificate from the Selected Responder will
be Entered Here Prior to Execution of the Contract.

EXHIBIT C to the AIA Agreement

Disadvantage Business Enterprises (DBE)

Forms 2004, 2005, 2006

FORM 2004

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
STATEMENT OF INTENT TO UTILIZE DIVERSITY BUSINESS ENTERPRISE FIRMS**

THIS FORM MUST BE COMPLETED AND SUBMITTED TO CONTRACT COMPLIANCE OFFICER PRIOR TO CONTRACT AWARD

COMPANY NAME:	COMPLETE ADDRESS/TELEPHONE:
PROJECT NAME:	DATE FORM SUBMITTED:

_____ agrees to perform work on the above project as (check one):
(Name of DBE Subcontractor or Supplier)

_____ will enter into a formal agreement for the work with _____
(Name of DBE Subcontractor or Supplier) A/E or Contractor

conditioned upon the company executing a contract with the MDHA. _____ will submit to MDHA proof of
A/E or Contractor

any purchase orders awarded and/or subcontract agreements entered into with the above named DBE Subcontractor/Supplier as
 documentation of utilization of DBE firms.

ITEM NUMBER	DESCRIPTION OF WORK	SUBCONTRACT/ PURCHASE ORDER PRICE	% OF TOTAL CONTRACT PRICE	START DATE	COMPLETION DATE

CONTRACTOR REPRESENTATIVE SIGNATURE, TITLE & DATE

DIVERSITY BUSINESS ENTERPRISE FIRM REPRESENTATIVE SIGNATURE, TITLE & DATE

FORM 2005

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
CHANGES TO THE DIVERSITY BUSINESS ENTERPRISE UTILIZATION PLAN**

COMPANY NAME:	COMPLETE ADDRESS/TELEPHONE:
PROJECT NAME:	DATE FORM SUBMITTED:

SUBMIT THIS FORM WHEN A CHANGE ORDER WILL AFFECT DBE SUBCONTRACTS (ADDITIVE OR DEDUCTIVE)

DBE NAME ADDRESS & PHONE	TYPE OF WORK	DBE DOLLARS	DBE %	REASON FOR CHANGE

MBE Dollars/Percentage:	\$		%
WBE Dollars/Percentage:	\$		%
SBE Dollars/Percentage:	\$		%

TOTAL DBE DOLLARS & PERCENTAGE:

Contractor Signature/Title:
Date:

**METROPOLITAN DEVELOPMENT HOUSING AGENCY
 DIVERSITY BUSINESS ENTERPRISE MONTHLY UTILIZATION REPORT
 RECORD OF PAYMENTS TO DIVERSITY BUSINESS ENTERPRISE FIRMS**

****PLEASE NOTE: THIS DOCUMENT MUST BE SUBMITTED WITH MONTHLY INVOICE

COMPANY NAME:	COMPLETE ADDRESS/TELEPHONE:
----------------------	------------------------------------

PROJECT NAME:	PAY APPLICATION#:
----------------------	--------------------------

DBE NAME, ADDRESS & TELEPHONE	Description of Work	MBE Dollars	SBE Dollars	WBE Dollars	Dollars DueThis Period	Total Dollars Paid To-Date	% Of Work Completed	Scheduled Start Date	Scheduled End Date
	Dollars Awarded								
	% of Current Contract								
				TOTAL MBE/SBE/WBE DOLLARS DUE					
					TOTAL MBE/SBE/WBE DOLLARS PAID TO-DATE				

The undersigned swears that the foregoing statements and information recorded above is correct, and that each of the representations herein set forth is true. "Any misrepresentation will be grounds for termination of contract and for initiating actions under Federal or State laws concerning false statements."

Name of Company Representative:	TITLE:	TELEPHONE:
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EXHIBIT D to the AIA Agreement

**Standard Form Partial Release of Liens and Final Release of Liens
Contractor**

EXHIBIT D RELEASE OF LIENS CONTRACTOR

General Contractor's

Affidavit of Partial Waiver of Lien & Waiver of Claim

NOW THEREFORE BE IT KNOWN, the undersigned certifies that they have been paid and have received payment in the cumulative sum of \$ _____ for labor, services, equipment, and/or material furnished to MDHA (OWNER) for the PROJECT of _____ (PROJECT) at the worksite located at _____ (location), in Nashville Davidson County, TN. _____ (CONTRACTOR) does hereby release any lien, stop notice, bond right, or other claim, cause of action, or entitlement to relief that the undersigned has on the above reference job to the following extent:

The undersigned warrants that they have already paid or shall ensure that monies received from the payment(s) will pay in full all the contract laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, and services provided and change orders, if any, for the above reference project up to the date of this waiver.

In addition, the undersigned certifies that all appropriate sales, use, or other applicable taxes to the State of Tennessee have been paid on all materials, labor, and installation.

Furthermore in consideration of the sum of \$ _____, and in order to induce partial payment in accordance with the Contract Agreement and/or any other agreement between parties, receipt and sufficiency of which is hereby acknowledged, Contractor does hereby waive and release any and all liens, or right to claim on lien, it may have against the Owner and Project for all services, labor and/or materials furnished with regard to the work through the date of _____.

CONTRACTOR: _____

BY: _____
(MUST BE AN OFFICER OF THE COMPANY)

TITLE: _____

DATE: _____

STATE OF: TENNESSEE _____.

COUNTY OF: DAVIDSON _____.

Appeared and subscribed before me, this _____ day of _____, 20_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

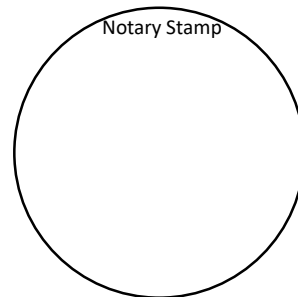


EXHIBIT D RELEASE OF LIENS CONTRACTOR

General Contractor's

Affidavit of Final Waiver of Lien & Waiver of Claim

NOW THEREFORE BE IT KNOWN, the undersigned certifies that they have been paid and have received payment in the cumulative sum of \$ _____ for labor, services, equipment, and/or material furnished to MDHA (OWNER) for the PROJECT of _____ (PROJECT) at the worksite located at _____ (location), in Nashville Davidson County, TN. In order to induce the release of retained or other amounts in the sum of \$ _____, receipt and sufficiency of which is hereby acknowledged and completes payment for the final Guaranteed Maximum Price of \$ _____, _____ (CONTRACTOR) does hereby release any lien, stop notice, bond right, or other claims, cause of action, or entitlement to relief that the undersigned has on the above reference job to the following extent:

The undersigned warrants that they have already paid or shall ensure that monies received from the payment(s) will pay in full all the contract laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, and services provided and change orders, if any, for the above reference project up to the date of this waiver.

In addition, the undersigned certifies that all appropriate sales, use, or other applicable taxes to the State of Tennessee have been paid on all materials, labor, and installation.

CONTRACTOR: _____

BY: _____
(MUST BE AN OFFICER OF THE COMPANY)

TITLE: _____

DATE: _____

STATE OF: TENNESSEE _____.

COUNTY OF: DAVIDSON _____.

Appeared and subscribed before me, this _____ day of _____, 20_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

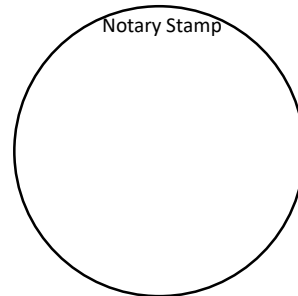


EXHIBIT E to the AIA Agreement

**Standard Form Partial Release of Liens and Final Release of Liens
Subcontractor**

EXHIBIT E-4 RELEASE OF LIENS SUBCONTRACTOR/ SUPPLIER

Subcontractor/ Supplier

Affidavit of Final Waiver of Lien & Waiver of Claim

NOW THEREFORE BE IT KNOWN, the undersigned certifies that they have been paid and have received payment in the cumulative sum of \$ _____ for labor, services, equipment, and/or material furnished to _____ for the PROJECT of _____ (PROJECT) at the worksite located at _____ (location), in Nashville Davidson County, TN. In order to induce the release of retained or other amounts in the sum of \$ _____, receipt and sufficiency of which is hereby acknowledged and completes payment for Subcontract or Purchase Order amount of \$ _____, _____ (SUBCONTRACTOR/ SUPPLIER) does hereby release any lien, stop notice, bond right, or other claims, cause of action, or entitlement to relief that the undersigned has on the above reference job to the following extent:

The undersigned warrants that they have already paid or shall ensure that monies received from the payment(s) will pay in full all the contract laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, and services provided and change orders, if any, for the above reference project up to the date of this waiver.

In addition, the undersigned certifies that all appropriate sales, use, or other applicable taxes to the State of Tennessee have been paid on all materials, labor, and installation.

SUBCONTRACTOR/ SUPPLIER: _____

BY: _____
(MUST BE AN OFFICER OF THE COMPANY)

TITLE: _____

DATE: _____

STATE OF: _____

COUNTY OF: _____

Appeared and subscribed before me, this ____ day of _____, 20____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

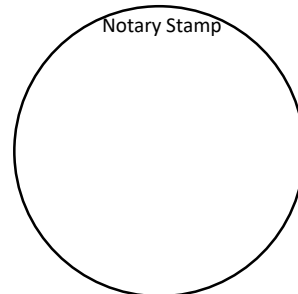


EXHIBIT F

Contractor's License

Contractor's License from the Selected Responder will
be Entered Here Prior to Execution of the Contract.

EXHIBIT G

Attachments from RFP

Completed Attachments from the Selected Responder
will be Entered Here Prior to Execution of the Contract.