

Invitation For Bids (IFB)
FOR
General Contractor Services

Solicitation NO.2022-CON-B05



METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

FOR

Cayce Utility Phase 1b

NASHVILLE, TENNESSEE

July 20, 2022

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1 INTRODUCTION

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

1.1 Background

As the housing and development agency of Nashville and Davidson County, MDHA's mission is to create affordable housing opportunities, support neighborhoods, strengthen communities and help build a greater Nashville. The Agency owns and/or manages nearly 6,700 apartments at 38 properties and administers more than 7,000 vouchers, providing stable housing to approximately 30,000 people. The Agency also facilitates several programs that ensure affordable apartments are created and preserved.

Established in 1938, MDHA is a government agency predominately funded by the federal government and chartered by the state to serve Davidson County. It is governed by a seven-member Board of Commissioners appointed by the Mayor and confirmed by Metro Council.

As the largest owner and operator of affordable housing in Nashville, MDHA seeks every opportunity to be a leading voice in developing solutions to Nashville's housing affordability crisis.

- MDHA is committed to transforming its aging family properties into mixed-income communities. The process ensures a one-for-one replacement of the existing federally subsidized units at each site and deconcentrates poverty by adding new affordable, workforce and market-rate housing. The Agency's first transformation at Cayce Place has been demonstrating promising returns through community engagement, safety outcomes, and new modern apartment buildings.
- MDHA's Payment in Lieu of Taxes (PILOT) program was first approved by Metro Council in 2016. In the first six years, the program has assisted in creating and preserving more than 6,000 affordable apartments. The PILOT program provides financial incentives for Low-Income Housing Tax Credit (LIHTC) developments that encourage new construction and substantial rehabilitation of affordable multi-family housing.
- MDHA has also converted nearly 1,000 of its Tenant-Based Vouchers to project-based vouchers, ensuring units remain affordable for 15 to 20 years. This move has allowed MDHA to assist with creating nearly 700 new apartments and preserving more than 200 affordable apartments.

MDHA administers four Community Planning and Development (CPD) programs on behalf of the city of Nashville: Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grant (ESG) and Housing Opportunities for Persons with AIDS (HOPWA). These funds are awarded by the U.S. Department of Housing and Urban Development (HUD).

The Agency also oversees 11 Redevelopment Districts, manages Metro's Tax Increment Financing (TIF) program and serves as a developer for the city. One of its current projects is the rebuild of historic Second Avenue.

MDHA's strategic plan focuses on four primary goals:

- Preserve and expand affordable housing in Nashville;
- Provide sustainable and healthy communities;
- Cultivate, enhance and evaluate strategic partnerships;
- Continuously improve MDHA's operations.

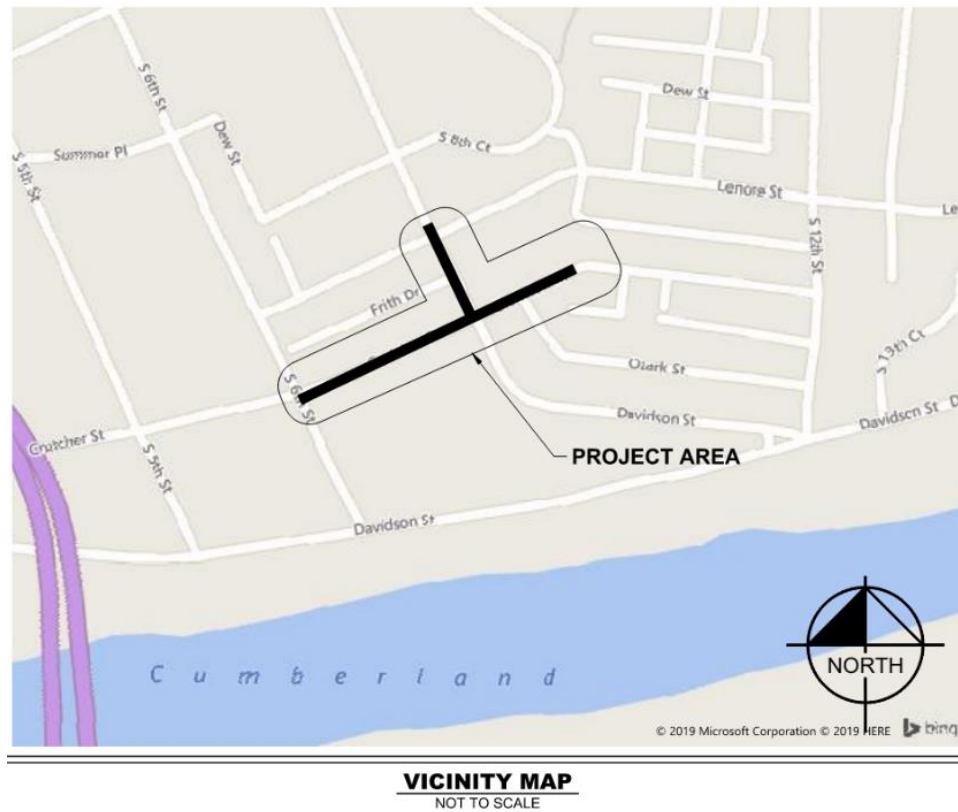
With MDHA at the helm, and multiple partners from the public and private sectors working together, we can expand and preserve affordable housing in Nashville.

1.2 Scope of Work

Cayce Utility Phase 1b 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 sewer, and storm infrastructure (including pipe lining), as well as the replacement of pavement, curb & gutter, and sidewalks. The Project is primarily located in the S. 7th Street public right-of-way between Lenore Street and Crutcher Street, and along the Crutcher Street public right-of-way between S. 6th Street and S. 7th Street and Glenview Drive between S. 7th Street and just east of Ozark Street.



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.

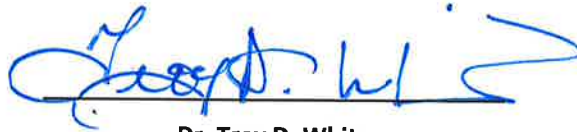
All Bidders are encouraged to visit the site to become familiar with the factors that may have an impact on their Bid. Should any additional information about the Project become available prior to the due date of the Bid, it will be distributed to all Responders as an Addendum to the IFB.

Each bid shall be accompanied by a Bid Bond in an amount not less than five percent (5%) of the total Bid to be retained as liquidated damages in the event the Successful Bidder fails to execute the Agreement and file the required bonds and insurance within ten (10) calendar days after the receipt of the Notice of Award.

The Successful Bidder acknowledges and agrees that it shall execute the Agreement in the form attached hereto and incorporated herein.

The Successful Bidder shall be required to finally complete all Work within **one hundred eighty (180) consecutive 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.



Dr. Troy D. White

MDHA Executive Director

--END OF SECTION 1--

2 INSTRUCTIONS TO BIDDERS

2.1 PRE-BID CONFERENCE

A Virtual Pre-Bid Conference will be held **July 28, 2022, at 2:00 p.m. Central Daylight Time (CDT)** via Zoom conference call hosted by MDHA or in person at 712 South Sixth Street, Nashville, TN 37206, Construction Conference Room. Zoom link:

<https://us06web.zoom.us/j/88649079629?pwd=UDF6MWQwVStteStpMjRnMGJFeFZ5Zz09>

Join by phone: 1 (646) 931-3860

Meeting ID: 886 4907 9629

Passcode: 814214

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

2.2 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 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 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.

2.3 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 **August 10, 2022, at 2:00 p.m. Central Daylight Time (CDT)**. MDHA's response to written inquiries will be 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
purchasing@nashville-mdha.org

2.4 SUBMISSION DEADLINE

For consideration, please submit the following no later than **2:00 p.m. Central Daylight Time (CDT), August 22, 2022**, to the address above or via Marketplace "Housing Agency Marketplace" URL:

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

- 2.4.1 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 2022-CON-B05**, 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.

- 2.4.2 Noncompliance with these instructions will result in the bid envelope not being opened nor bid being considered.
- 2.4.3 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.
- 2.4.4 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.

2.5 BID PREPARATION AND SUBMISSION

2.5.1 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 K:

- Attachment A - Contractor/Subcontractor License Information Form (when submitting in person place on the outside of your sealed bid envelope)
- Attachment B - Bid Form
- Attachment C – AIA Document A310™-2010, Bid Bond
- Attachment D - Form of Non-Collusive Affidavit (must be notarized)
- Attachment E - Drug Free Affidavit
- Attachment F - AIA Document A305™-2020 Contractor's Qualification Statement (must be notarized)
- Attachment G – DBE Form 2001 – Metropolitan Development and Housing Agency Diversity Business Enterprise Program, Bidder/Proposer DBE Outreach Efforts and Documentation
- Attachment H – DBE Form 2002 – Metropolitan Development and Housing Agency Diversity Business Enterprise Program, Diversity Business Enterprise Program Utilization Plan
- Attachment I - HUD Section 3 Bidder/Proposer Certification and Compliance Agreement
- Attachment J – Fair Employment Practice Statement Affidavit
- Attachment K – Contingent Fees Statement

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

2.6 AMENDMENTS/ADDENDA TO INVITATIONS FOR BIDS

- 2.6.1 Amendments/Addenda shall be binding on Bidder and shall become a part of the Bidding Documents.
- 2.6.2 If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- 2.6.3 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.

2.6.4 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.

2.7 BID QUANTITIES

2.7.1 **Quantities given in the Bid Form – Unit Price 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 Form – Unit Price 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.

2.7.2 **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. The omission of a response or a no-bid or lack of a submitted price may be the basis for the rejection of the submitted bid response. All bids responses received without pricing for all alternates as listed will be considered technically non-responsive and will not be considered for award.

2.8 RESPONSIBILITY OF PROSPECTIVE CONTRACTOR

2.8.1 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:

- Integrity;
- Compliance with public policy;
- Record of past performance;
- Financial and technical resources (including construction and technical equipment); and
- Ability to do work in the State of Tennessee.

2.8.2 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 (2.8.1) above. Failure by the bidder to provide such additional information shall render the bidder non-responsive and ineligible for award.

2.9 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWAL OF BIDS

2.9.1 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:

2.9.1.1 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);

2.9.1.2 Was sent by mail, and it is determined by MDHA that the late receipt was due solely to mishandling by MDHA or Postal Service after receipt at MDHA; or

2.9.1.3 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 bids. The term "working days" excludes weekends and observed holidays.

2.9.2 Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (2.9.1) of this provision.

2.9.3 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.

- 2.9.4 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.
- 2.9.5 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 (2.9.3) 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.
- 2.9.6 Notwithstanding paragraph (2.9.1) 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.
- 2.9.7 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.

2.10 BID OPENING

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read in person or virtually 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. The information to view a bid opening virtually will be provided in the solicitation or amendment(s)/addenda.

2.11 SERVICE OF PROTEST

- 2.11.1 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.

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

**Michael Wegerson, Contracting Officer,
712 South Sixth Street, Nashville, TN 37206.**

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

2.12 CONTRACT AWARD

- 2.12.1 The Owner will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Owner considering only price and any price-related factors specified in the solicitation.
 - 2.12.1.1 Offerors must acknowledge that they understand the SBE/SDVBE/MBE/WBE participation expectations described above by completing Attachments G, and H.
 - 2.12.1.2 Offeror also acknowledges that they understand the consequences of failing to comply with their SBE/SDVBE/MBE/WBE participation commitments. If Contractor fails to comply with their SBE/SDVBE/MBE/WBE businesses participation commitments, or it is determined that their SBE/SDVBE/MBE/WBE status or the SBE/SDVBE/MBE/WBE status of any

subcontractor/subconsultant/supplier, is shown to be false; MDHA may terminate the Contract and charge Contractor for any costs incurred by Metro as a result of the misrepresentation. Misrepresentation may result in debarment.

- 2.12.1.3 Contractor shall enter payments to SBE/SDVBE/MBE/WBE subcontractors/subconsultants/ suppliers as instructed by MDHA. Failure to do so may impact payments to Contractor.
- 2.12.2 If the apparent low bid received in response to this solicitation exceeds MDHA's available funding for the proposed contract work, MDHA may either accept separately priced items (see 2.12.5 below) or use the following procedure to determine contract award. MDHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within MDHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then MDHA shall apply the second deductible item. MDHA shall continue this process until an evaluated low bid, if any, is within MDHA's available funding. If upon the application of all deductibles, no bid is within MDHA's available funding, or if the solicitation does not request separately priced deductibles, MDHA shall follow its written policy and procedures in making any award under this solicitation.
- 2.12.3 In the case of tie low bids, award shall be made in accordance with MDHA's written policy and procedures.
- 2.12.4 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 to Bid.
- 2.12.5 Unless precluded elsewhere in the solicitation, MDHA may accept any item or combination of items bid.
- 2.12.6 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.
- 2.12.7 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.

2.13 BID BOND

- 2.13.1 All bids must be accompanied by a negotiable bid Bond which shall not be less than five percent (5%) of the amount of the bid. The bid bond shall be 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). The bid bond shall insure the execution of the contract and the furnishings of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid bond with the bid shall result in the rejection of the bid. Bid bonds submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.
- 2.13.2 The Bid Bond of the apparent Successful Bidder will be retained until Owner awards the Contract to such Bidder, and such Bidder has executed one (1) copy of the Contract in the form attached herein, furnished the required bonds and insurance, and met the other conditions of the Notice of Award, whereupon the Bid Bond will be released. The Owner shall execute all copies and return one fully executed copy of the Contract to the Successful Bidder within thirty (30) calendar days after receipt of the executed Contract 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 Contract as may be reasonably necessary.
- 2.13.3 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 Bond 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.

- 2.13.4 The Bid Bond 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 Bond furnished by such Bidders will be released.

2.14 ASSURANCE OF COMPLETION

- 2.14.1 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.
- 2.14.2 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.
- 2.14.3 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.
- 2.14.4 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 bond.

2.15 PRECONSTRUCTION CONFERENCE

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.

2.16 COST INCURRED IN RESPONDING

All costs directly or indirectly related to the preparation of a Bid to this Invitation for Bid, or any oral presentation required to supplement and/or clarify the submittal which may be required by MDHA shall be the sole responsibility of, and shall be borne by Bidder(s).

Each firm, by submitting its Bid, 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.

2.17 ORGANIZATIONAL CONFLICTS OF INTEREST

- 2.17.1 The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual, or other interests are such that:
- 2.17.1.1 Award of the contract may result in an unfair competitive advantage; or
- 2.17.1.2 The Contractor's objectivity in performing the contract work may be impaired.
- 2.17.2 The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any work performed under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the

Contractor has taken or intends to take to eliminate or neutralize the conflict. The Owner may, however, terminate the contract for the convenience of the Owner if it would be in the best interest of the Owner.

2.17.3 In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Owner may terminate the contract for default.

2.17.4 The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

2.18 INTEREST OF MEMBERS OF CONGRESS

No member of or delegate to the Congress of the United of America or Resident Commissioner shall be admitted to any share of part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

2.19 GRATUITIES AND KICKBACKS

2.19.1 Gratuities

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy or other particular matter, pertaining to any program requirement or any agreement or subcontract or to any solicitation or proposal therefore.

2.19.2 Kickbacks

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under an agreement to the prime contractor, higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.

2.20 LIMITATIONS ON PAYMENTS MADE TO INFLUENCE CERTAIN FEDERAL FINANCIAL TRANSITIONS

2.20.1 The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) 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 in connection with a Federal contract, grant, loan, or cooperative agreement.

2.21 CONTRACT COMPLIANCE STATEMENT

The Bidder shall state its compliance with all applicable rules and regulations of Federal, State and Local governing entities and attest that it is not excluded from Federal procurement programs. By the act of

submitting your Bid, your Company is agreeing to the terms and conditions contained in this IFB and warrants to the best of its knowledge and belief, no actual conflict of interest exists with regard to your company's possible performance of this procurement as described in the attached AIA Document AIA 133, AIA Document AIA 201 and Supplemental Conditions.

The Bidder shall affirm that it subscribes to a personnel policy which supports Title VI:

Nondiscrimination Requirement

No person shall be excluded from participation in, be denied of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in MDHA's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with MDHA or in the employment practices of MDHA's Contractors. Contractor certifies and warrants that it will comply with this nondiscrimination requirement. Accordingly, all offerors entering into contracts with MDHA shall, upon request, be required to show proof of such discrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

--END OF SECTION 2--

ATTACHMENTS A-K

- Attachment A** - Contractor/Subcontractor License Information Form (when submitting in person place on the outside of your sealed bid envelope)
- Attachment B** - Bid Form
- Attachment C** – AIA Document A310™-2010, Bid Bond
- Attachment D** - Form of Non-Collusive Affidavit (must be notarized)
- Attachment E** - Drug Free Affidavit
- Attachment F** - AIA Document A305™-2020 Contractor's Qualification Statement (must be notarized)
- Attachment G** – DBE Form 2001 – Metropolitan Development and Housing Agency Diversity Business Enterprise Program, Bidder/Proposer DBE Outreach Efforts and Documentation
- Attachment H** – DBE Form 2002 – Metropolitan Development and Housing Agency Diversity Business Enterprise Program, Diversity Business Enterprise Program Utilization Plan
- Attachment I** - HUD Section 3 Bidder/Proposer Certification and Compliance Agreement
- Attachment J** – Fair Employment Practice Statement Affidavit
- Attachment K** – 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 Advertisement 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 1b

The scope of work to include replacement and/or installation of utility systems, sidewalks, roadways, and asphalt restoration within the Cayce Homes Development located at Crutcher Street from South 6th to South 7th Street, South 7th Street from Crutcher Street to Lenore Street, and a portion of Glenview east of South 7th Street., Nashville, TN 37206.

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 accompanies by the Contract and Agreement (C&A) and all required attachments, to cause same to be properly executed and returned to the MDHA within fifteen (15) 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 **One Hundred Eighty (180) consecutive calendar days** after receipt of said Notice to Proceed. Ligated Damages shall be assessed at **\$1,000.00 per day** for each day of un-excusable delay.

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).

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, telegraphed, or delivered to the undersigned within sixty (60) days after the opening therefore, or at any time thereafter before this bid is withdrawn, the undersign agrees to execute and deliver a contract in the prescribed form and furnish the required bond 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 and provisions of the statute T.C.A. 66-11-144, of the State of Tennessee.
4. 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 representations need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)
5. The Bidder acknowledges that he (or she) has received the following Addenda. 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



BID FORM

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

DATE: **6/17/2022**
 KH PROJECT #: **118109016**

BID FORM - UNIT PRICE SCHEDULE						
<i>Note</i>	<i>TDOT Item No.</i>	<i>Item Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Cost</i>	<i>Total</i>
1	105-01	CONSTRUCTION STAKES, LINES, GRADES	LS	1		\$ -
2	202-02.01	REMOVAL OF PIPE (42" STORM)	L.F.	1073		\$ -
2	202-02.02	REMOVAL OF PIPE (12" STORM)	L.F.	125		\$ -
2	202-02.02	REMOVAL OF PIPE (18" STORM)	L.F.	537		\$ -
2	202-02.21	REMOVAL OF PIPE (6" WATER)	L.F.	1580		\$ -
2	202-02.21	REMOVAL OF PIPE (8" WATER)	L.F.	46		\$ -
3	202-03	REMOVAL OF RIGID PAVEMENT, SIDEWALK, ETC.	S.Y.	770		\$ -
3	202-03.01	REMOVAL OF ASPHALT PAVEMENT FULL DEPTH	S.Y.	5550		\$ -
4	202-04.01	REMOVAL OF STRUCTURES (STORM)	EA	16		\$ -
5	202-08.15	REMOVAL OF CURB AND GUTTER	LF	1800		\$ -
6	203-01.29	ROCK EXCAVATION	C.Y.	100		\$ -
7	203-02.01	BORROW EXCAVATION (GRADED SOLID ROCK)	TON	150		\$ -
8	203-05	UNDERCUTTING	C.Y.	100		\$ -
	209-03.21	FILTER SOCK (12 INCH)	L.F.	292		\$ -

	209-08.02	TEMPORARY SILT FENCE (WITH BACKING)	L.F.	1350		\$	-
	209-40.33	CATCH BASIN PROTECTION (TYPE D)	E.A.	22		\$	-
9	303-01	MINERAL AGGREGATE, TYPE A BASE, GRADING D	TON	2500		\$	-
	307-01.08	ASPHALT CONCRETE MIX (PG64-22) (BPMB-HM) GRADING B-M2	TON	700		\$	-
	402-01	BITUMINOUS MATERIAL FOR PRIME COAT (PC)	TON	9		\$	-
	403-01	BITUMINOUS MATERIAL FOR TACK COAT (TC)	TON	2		\$	-
10	407-20.05	SAWCUTTING ASPHALT PAVEMENT	L.F.	700		\$	-
	411-01.10	ACS MIX (PG64-22) GRADING D	TON	550		\$	-
	415-01.01	COLD PLANING BITUMINOUS PAVEMENT	TON	50		\$	-
11	607-02.02	15" RCP CLASS III	LF	260		\$	-
11	607-03.02	18" RCP CLASS III	LF	74		\$	-
11	607-07.02	24" RCP CLASS III	LF	227		\$	-
11	607-09.02	36" RCP CLASS III	LF	347		\$	-
11	607-10.02	54" RCP CLASS III	LF	700		\$	-
11	607-11.03	60" RCP CLASS III	LF	360		\$	-
12	611-01.10	MANHOLES, (60" DIAMETER, 6'-12' DEPTH)	EA	2		\$	-
12	611-01.11	MANHOLES (96" DIAMETER, 12'-16' DEPTH)	EA	2		\$	-
12	611-01.12	MANHOLES (108" DIAMETER, 13' DEPTH)	EA	1		\$	-
12	611-42.02	CATCH BASINS, TYPE 42, > 4' - 8' DEPTH	EA	1		\$	-
12	611-90.01	CATCH BASINS, (SINGLE INLET (METRO NASHVILLE DR-105), 5' - 9' DEPTH)	EA	5		\$	-
12	611-90.02	CATCH BASINS, (DOUBLE INLET (METRO NASHVILLE DR-110), 5'-9' DEPTH)	EA	3		\$	-

12	611-90.03	CATCH BASINS TYPE 12, 4'-8' DEPTH - SINGLE	EA	4		\$	-
12	611-90.04	CATCH BASINS TYPE 12, 8'-12' DEPTH - SINGLE	EA	2		\$	-
12	611-90.05	CATCH BASINS TYPE 12, 8'-12' DEPTH - DOUBLE	EA	3		\$	-
12	611-90.06	CATCH BASINS TYPE 12, 12'-16' DEPTH - SINGLE	EA	2		\$	-
12	611-90.07	CATCH BASINS TYPE 12, 12'-16' DEPTH - DOUBLE	EA	2		\$	-
20	607-25.02	CIPP PIPE LINING (for 36" pipe)	LF	539		\$	-
13	701-01.01	CONCRETE SIDEWALK (4")	SF	9000		\$	-
14	701-02	RESIDENTIAL CONCRETE DRIVEWAY (METRO ST-322)	SF	360		\$	-
15	701-02.03	CONCRETE CURB RAMP	SF	400		\$	-
16	702-03	CONCRETE COMBINED CURB AND GUTTER	CY	100		\$	-
17	712-01.50	MAINTENANCE OF TRAFFIC	LS	1		\$	-
	713-16.20	SIGNS (REGULATORY SIGNS WITH POST AND FOOTER)	EA	5		\$	-
	716-02.05	PLASTIC PAVEMENT MARKING (STOP LINE)	LF	250		\$	-
	716-13.01	SPRAY THERMO PAVEMENT MARKING (60 MIL) (4 IN LINE)	LF	1300		\$	-
	717-01	MOBILIZATION	LS	1		\$	-
11	795-01.05	FURNISH AND INSTALL 8" DIP RESTRAINED JOINT WATER LINE	LF	1630		\$	-
	795-03.02	2 IN PVC WATER LINE	L.F.	100		\$	-
	795-06.04	RECONNECT TO 6" WATER LINE	EA	1		\$	-
	795-06.05	RECONNECT TO 8" WATER LINE	EA	2		\$	-
	795-08.04	6" GATE VALVE ASSEMBLY	EA	2		\$	-
	795-08.05	8" GATE VALVE ASSEMBLY	EA	4		\$	-

	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	750		\$	-
	795-16.22	RECONNECT WATER SERVICE LINES	EA	7		\$	-
		8" X 6" WATERLINE REDUCER	E.A.	1		\$	-
		APCO 400 AIR RELEASE VALVE	E.A.	1		\$	-
		CONNECT TO EXISTING FIRE HYDRANT	EA	1		\$	-
11	797-05.01	8" DI GRAVITY SEWER PIPE	LF	35		\$	-
11	797-05.51	8" PVC GRAVITY SEWER PIPE	LF	400		\$	-
12	797-07.02	48" SANITARY SEWER MANHOLES 4'-6' DEPTH	EA	1		\$	-
12	797-07.05	48" SANITARY SEWER MANHOLES 10'-12' DEPTH	EA	2		\$	-
4	797-07.80	REMOVE SEWER STRUCTURES	E.A.	2		\$	-
3	797-11.35	REMOVE EXISTING SEWER 8IN - 14IN	L.F.	330		\$	-
		CUT, CAP, AND ABANDON SANITARY SEWER LINE IN PLACE	L.F.	137		\$	-
		REPLACE MANHOLE IN PLACE	E.A.	1		\$	-
	801-01	SEEDING (WITH MULCH)	UNIT	5		\$	-
	802-05.01	TEMPORARY TREE PROTECTION	L.F.	74		\$	-
19	920-10.01	CONCRETE TURN DOWN SLAB (0.5' WIDTH)	LF	140		\$	-
						SUBTOTAL BID	\$ -
						CONTINGENCY (10%)	\$ -

TOTAL BID	\$ -
-----------	------

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.
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 and ST-323 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 Crutcher Street, Glenview Drive, and South 7th Street as shown on Sheet C9-00, C9-01, and C9-02.
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 C5-03 for locations and cross sections for heights of turn down.
20	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.

EXHIBIT C

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.

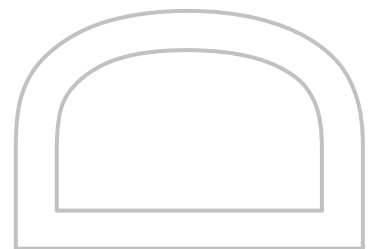
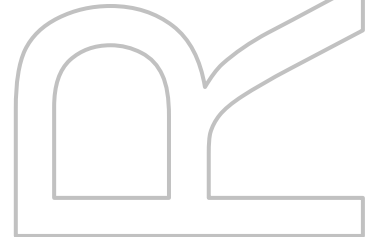
When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement 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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EXHIBIT C

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

(Witness)

(Witness)

« »
(Contractor as Principal) (Seal)

« »
(Title)

« »
(Surety) (Seal)

« »
(Title)



ATTACHMENT E

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__

EXHIBIT F

DRAFT AIA® Document A305™ - 2020

Contractor's Qualification Statement

THE PARTIES SHOULD EXECUTE A SEPARATE CONFIDENTIALITY AGREEMENT IF THEY INTEND FOR ANY OF THE INFORMATION IN THIS A305-2020 TO BE HELD CONFIDENTIAL.

SUBMITTED BY: (Organization name and address.) **SUBMITTED TO:** (Organization name and address.)
« » « »

TYPE OF WORK TYPICALLY PERFORMED
(Indicate the type of work your organization typically performs, such as general contracting, construction manager as constructor services, HVAC contracting, electrical contracting, plumbing contracting, or other.)
« »

THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:
(Check all that apply.)

- Exhibit A – General Information
- Exhibit B – Financial and Performance Information
- Exhibit C – Project-Specific Information
- Exhibit D – Past Project Experience
- Exhibit E – Past Project Experience (Continued)

CONTRACTOR CERTIFICATION
The undersigned certifies under oath that the information provided in this Contractor's Qualification Statement is true and sufficiently complete so as not to be misleading.

Organization's Authorized Representative **Date**
Signature

Printed Name and Title

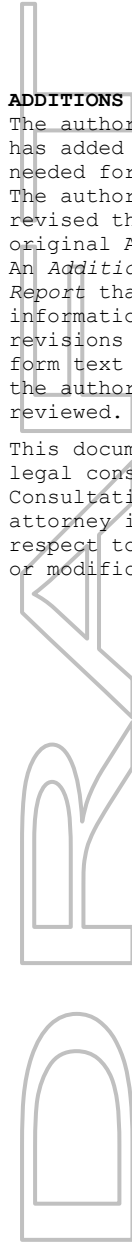
NOTARY
State of: « »
County of: « »
Signed and sworn to before me this « » day of « » « »

Notary Signature

My commission expires: « »

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.



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DRAFT AIA[®] Document A305[™] – 2020

Exhibit A

General Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

§ A.1 ORGANIZATION

§ A.1.1 Name and Location

§ A.1.1.1 Identify the full legal name of your organization.

« »

§ A.1.1.2 List all other names under which your organization currently does business and, for each name, identify jurisdictions in which it is registered to do business under that trade name.

« »

§ A.1.1.3 List all prior names under which your organization has operated and, for each name, indicate the date range and jurisdiction in which it was used.

« »

§ A.1.1.4 Identify the address of your organization's principal place of business and list all office locations out of which your organization conducts business. If your organization has multiple offices, you may attach an exhibit or refer to a website.

« »

§ A.1.2 Legal Status

§ A.1.2.1 Identify the legal status under which your organization does business, such as sole proprietorship, partnership, corporation, limited liability corporation, joint venture, or other.

« »

- .1 If your organization is a corporation, identify the state in which it is incorporated, the date of incorporation, and its four highest-ranking corporate officers and their titles, as applicable.
« »
- .2 If your organization is a partnership, identify its partners and its date of organization.
« »
- .3 If your organization is individually owned, identify its owner and date of organization.
« »

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.

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EXHIBIT F

- 4 If the form of your organization is other than those listed above, describe it and identify its individual leaders:

<< >>

§ A.1.2.2 Does your organization own, in whole or in part, any other construction-related businesses? If so, identify and describe those businesses and specify percentage of ownership.

<< >>

§ A.1.3 Other Information

§ A.1.3.1 How many years has your organization been in business?

<< >>

§ A.1.3.2 How many full-time employees work for your organization?

<< >>

§ A.1.3.3 List your North American Industry Classification System (NAICS) codes and titles. Specify which is your primary NAICS code.

<< >>

§ A.1.3.4 Indicate whether your organization is certified as a governmentally recognized special business class, such as a minority business enterprise, woman business enterprise, service disabled veteran owned small business, woman owned small business, small business in a HUBZone, or a small disadvantaged business in the 8(a) Business Development Program. For each, identify the certifying authority and indicate jurisdictions to which such certification applies.

<< >>

§ A.2 EXPERIENCE

§ A.2.1 Complete Exhibit D to describe up to four projects, either completed or in progress, that are representative of your organization's experience and capabilities.

§ A.2.2 State your organization's total dollar value of work currently under contract.

<< >>

§ A.2.3 Of the amount stated in Section A.2.2, state the dollar value of work that remains to be completed:

<< >>

§ A.2.4 State your organization's average annual dollar value of construction work performed during the last five years.

<< >>

§ A.3 CAPABILITIES

§ A.3.1 List the categories of work that your organization typically self-performs.

<< >>

§ A.3.2 Identify qualities, accreditations, services, skills, or personnel that you believe differentiate your organization from others.

EXHIBIT F

<< >>

§ A.3.3 Does your organization provide design collaboration or pre-construction services? If so, describe those services.

<< >>

§ A.3.4 Does your organization use building information modeling (BIM)? If so, describe how your organization uses BIM and identify BIM software that your organization regularly uses.

<< >>

§ A.3.5 Does your organization use a project management information system? If so, identify that system.

<< >>

§ A.4 REFERENCES

§ A.4.1 Identify three client references:

(Insert name, organization, and contact information)

<< >>

§ A.4.2 Identify three architect references:

(Insert name, organization, and contact information)

<< >>

§ A.4.3 Identify one bank reference:

(Insert name, organization, and contact information)

<< >>

§ A.4.4 Identify three subcontractor or other trade references:

(Insert name, organization, and contact information)

<< >>

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Exhibit B

Financial and Performance Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

§ B.1 FINANCIAL

§ B.1.1 Federal tax identification number:

« »

§ B.1.2 Attach financial statements for the last three years prepared in accordance with Generally Accepted Accounting Principles, including your organization's latest balance sheet and income statement. Also, indicate the name and contact information of the firm that prepared each financial statement.

« »

§ B.1.3 Has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, been the subject of any bankruptcy proceeding within the last ten years?

« »

§ B.1.4 Identify your organization's preferred credit rating agency and identification information.

(Identify rating agency, such as Dun and Bradstreet or Equifax, and insert your organization's identification number or other method of searching your organization's credit rating with such agency.)

« »

§ B.2 DISPUTES AND DISCIPLINARY ACTIONS

§ B.2.1 Are there any pending or outstanding judgments, arbitration proceedings, bond claims, or lawsuits against your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A, Section 1.2, in which the amount in dispute is more than \$75,000?

(If the answer is yes, provide an explanation.)

« »

§ B.2.2 In the last five years has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management:

(If the answer to any of the questions below is yes, provide an explanation.)

- .1 failed to complete work awarded to it?

« »

- .2 been terminated for any reason except for an owners' convenience?

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.

EXHIBIT F

« »

- .3 had any judgments, settlements, or awards pertaining to a construction project in which your organization was responsible for more than \$75,000?

« »

- .4 filed any lawsuits or requested arbitration regarding a construction project?

« »

§ B.2.3 In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management; or any of the individuals listed in Exhibit A Section 1.2:
(If the answer to any of the questions below is yes, provide an explanation.)

- .1 been convicted of, or indicted for, a business-related crime?

« »

- .2 had any business or professional license subjected to disciplinary action?

« »

- .3 been penalized or fined by a state or federal environmental agency?

« »



DRAFT AIA® Document A305™ – 2020 Exhibit C

Project Specific Information

This Exhibit is part of the Contractor’s Qualification Statement, submitted by « » and dated the « » day of « » in the year « »
(In words, indicate day, month and year.)

PROJECT:

(Name and location or address.)

« »
« »

CONTRACTOR’S PROJECT OFFICE:

(Identify the office out of which the contractor proposes to perform the work for the Project.)

« »

TYPE OF WORK SOUGHT

(Indicate the type of work you are seeking for this Project, such as general contracting, construction manager as constructor, design-build, HVAC subcontracting, electrical subcontracting, plumbing subcontracting, etc.)

« »

CONFLICT OF INTEREST

Describe any conflict of interest your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A Section 1.2, may have regarding this Project.

« »

§ C.1 PERFORMANCE OF THE WORK

§ C.1.1 When was the Contractor’s Project Office established?

« »

§ C.1.2 How many full-time field and office staff are respectively employed at the Contractor’s Project Office?

« »

§ C.1.3 List the business license and contractor license or registration numbers for the Contractor’s Project Office that pertain to the Project.

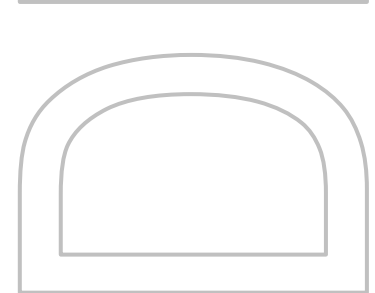
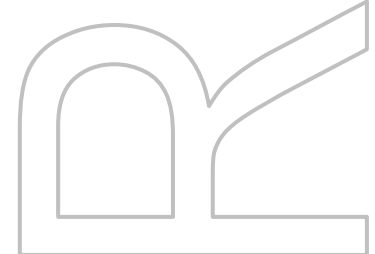
« »

§ C.1.4 Identify key personnel from your organization who will be meaningfully involved with work on this Project and indicate (1) their position on the Project team, (2) their office location, (3) their expertise and experience, and (4) projects similar to the Project on which they have worked.



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.

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EXHIBIT F

<< >>

§ C.1.5 Identify portions of work that you intend to self-perform on this Project.

<< >>

§ C.1.6 To the extent known, list the subcontractors you intend to use for major portions of work on the Project.

<< >>

§ C.2 EXPERIENCE RELATED TO THE PROJECT

§ C.2.1 Complete Exhibit D to describe up to four projects performed by the Contractor's Project Office, either completed or in progress, that are relevant to this Project, such as projects in a similar geographic area or of similar project type. If you have already completed Exhibit D, but want to provide further examples of projects that are relevant to this Project, you may complete Exhibit E.

§ C.2.2 State the total dollar value of work currently under contract at the Contractor's Project Office:

<< >>

§ C.2.3 Of the amount stated in Section C.2.2, state the dollar value of work that remains to be completed:

<< >>

§ C.2.4 State the average annual dollar value of construction work performed by the Contractor's Project Office during the last five years.

<< >>

§ C.2.5 List the total number of projects the Contractor's Project Office has completed in the last five years and state the dollar value of the largest contract the Contractor's Project Office has completed during that time.

<< >>

§ C.3 SAFETY PROGRAM AND RECORD

§ C.3.1 Does the Contractor's Project Office have a written safety program?

<< >>

§ C.3.2 List all safety-related citations and penalties the Contractor's Project Office has received in the last three years.

<< >>

§ C.3.3 Attach the Contractor's Project Office's OSHA 300a Summary of Work-Related Injuries and Illnesses form for the last three years.

§ C.3.4 Attach a copy of your insurance agent's verification letter for your organization's current workers' compensation experience modification rate and rates for the last three years.

§ C.4 INSURANCE

§ C.4.1 Attach current certificates of insurance for your commercial general liability policy, umbrella insurance policy, and professional liability insurance policy, if any. Identify deductibles or self-insured retentions for your commercial general liability policy.

EXHIBIT F

§ C.4.2 If requested, will your organization be able to provide property insurance for the Project written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis?

<< >>

§ C.4.3 Does your commercial general liability policy contain any exclusions or restrictions of coverage that are prohibited in AIA Document A101-2017, Exhibit A, Insurance A.3.2.2.2? If so, identify.

<< >>

§ C.5 SURETY

§ C.5.1 If requested, will your organization be able to provide a performance and payment bond for this Project?

<< >>

§ C.5.2 Surety company name:

<< >>

§ C.5.3 Surety agent name and contact information:

<< >>

§ C.5.4 Total bonding capacity:

<< >>

§ C.5.5 Available bonding capacity as of the date of this qualification statement:

<< >>

EXHIBIT F

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Exhibit D

Contractor's Past Project Experience

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input checked="" type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				

EXHIBIT F

DRAFT AIA® Document A305™ - 2020 Exhibit E

Contractor's Past Project Experience, Continued

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work	Contract Amount Completion Date % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input checked="" type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				

DIVERSITY BUSINESS ENTERPRISE PROGRAM

The mission of MDHA is to provide minority, women, small, and service-disabled veteran business enterprises with fair and equal accessibility to all its procurement opportunities. Collectively we refer to these businesses as "Diversity Business Enterprise (DBE)." MDHA is committed to increasing DBE participation in all aspects of its' contracting and purchasing programs, including but not limited to procurement of equipment, construction and development projects, and professional services.

Diversity Business Enterprise Policy

It is the policy of MDHA to assist provide minority, women, small, and service-disabled veteran business enterprises in their aspirations of viability and growth, which support a more stable economic community. To this extent, we join with community agencies and organizations that support these businesses to create more significant opportunities for these entrepreneurs to attain mutually beneficial social and economic objectives. Accordingly, minority, women, and small business enterprise firms will be given the maximum practicable opportunity, consistent with efficient performance and applicable laws, to compete for and participate in contracts, subcontracts, purchase orders, and other procurement actions. Businesses bidding or proposing procurements are required to comply with MDHA DBE Policy. MDHA prohibits discrimination against any person or business pursuing procurement opportunities based on race, color, sex, religion, disability, or national origin. MDHA will conduct its contracting and purchasing programs to prevent any discrimination and resolve all allegations of discrimination.

Contracting with Minority, Women, Small and Service-Disabled Veteran Business Enterprise Firms

MDHA and its contractors and vendors shall take the following steps to ensure that, whenever possible, prime contracts, subcontracts, and purchase orders are awarded to minority, women, small, and service-disabled veteran business enterprise firms:

- a) Placing qualified minority, women, small, and service-disabled veteran business enterprises on solicitation lists.
- b) Assuring that minority, women, small, and service-disabled veteran business enterprises are solicited whenever they are potential sources.
- c) Dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by minority, women, small, and service-disabled veteran business enterprises.
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by minority, women, small, and service-disabled veteran business enterprises.
- e) Using the services and assistance of State Small Business Development Centers, SBA Administration, Minority Business Development Agency, and State and local government agencies, including community organizations that advocate for minority, women, small, and service-disabled veteran business enterprises.

Diversity Business Enterprise Certifications

Certification ensures that legitimate minority, women, small, and service-disabled veteran businesses benefit from MDHA procurement opportunities. Identifying certified minority, women, small, and service-disabled businesses enables MDHA to evaluate their participation in contracting activity and calculate the percentage of construction and purchases awarded annually to these businesses.

MDHA will accept minority, women, and service-disabled business certifications, including small business approvals from the agencies listed below:

Minority Business Enterprise (MBE) Certifications

Minority group members own, operate, and control at least 51% of the company. Definitions for minority groups include the following categories: Asian, Black, Hispanic/Latino, Native Indian. We accept **MBE** certifications from the following organizations:

- Governor's Office of Diversity Business Enterprise ([GODBE](#))
- Metropolitan Nashville Airport Authority ([MNAA](#))
- Small Business Administration, TN District Office ([SBA](#))
- National Minority Supplier Development Council ([TSMSDC](#))

Women Business Enterprise (WBE) Certifications

Women own, operate, and control at least 51% of the company. We accept **WBE** certifications from the following organizations:

- Governor's Office of Diversity Business Enterprise ([GODBE](#))
- Metropolitan Nashville Airport Authority ([MNAA](#))
- Women Business Enterprise National Council ([WBENC](#))
- National Association of Women Business Owners ([NAWBO](#))

Small Business Enterprise (SBE) Approval

Small businesses are independently owned and operated. The number of employees or the annual sales volume for the applicable industry shall not exceed Metro Nashville Government's established limits and the State of Tennessee SBE established limits. We accept **SBE** approvals and certification from the following organizations:

- Metro Nashville Office of Minority and Women Business Assistance ([BAO](#))
- Governor's Office of Diversity Business Enterprise ([GODBE](#))

Service-Disabled Veteran Business Enterprise (SDVBE) Certification

Service-disabled veterans own, operate, and control at least 51% of the company. We accept **SDVBE** certifications from the organizations listed below.

- Governor's Office of Diversity Business Enterprise ([GODBE](#))

For questions regarding MBE/WBE/SBE/SDVBE Certifications, please contact MDHA Diversity Business Enterprise Program Coordinator at: dbaseheart@nashville-mdha.org

MDHA Diversity Business Enterprise Program Registration Process

To participate in MDHA's Diversity Business Enterprise Program please follow the steps below. Please review the DBE Program Registration [Checklist](#). Gathering the documents listed before beginning the registration will help to speed up completing the process.

Step 1. Please register by completing the DBE Registration Form by using this link:

<https://form.jotform.com/220097933661156>

Step 2. MDHA Marketplace Registration. Please use the following link:

https://ha.internationaleprocurement.com/requests.html?company_id=51162 to register in the MDHA Marketplace procurement program to receive timely notifications of MDHA procurement opportunities for goods and services.

DESCRIPTION OF DIVERSITY BUSINESS ENTERPRISE (DBE) FORMS

DBE FORM 2001

Diversity Business Enterprise Bidder/Proposer DBE Outreach Documentation

This form has two Sections

SECTION I - The bidder/Proposer is to record the names of DBEs that they outreached to and efforts made to solicit their participation. MDHA will review this form to determine if the bidder/proposer complied with DBE program initiatives/requirements to ensure that DBEs are allowed to participate in MDHA procurements. The form also aids in determining compliance with the DBE Program requirements for contractors/suppliers' outreach initiatives. **Failure to complete and return this form will result in a non-responsive bid/proposal mainly because it is a part of the bid or proposal process.**

SECTION II – This Section explains some of the outreach methods the bidder/proposer is to use to show they made efforts to achieve DBE participation. The methods listed in this Section go beyond the standard telephone and email outreach methods to identify DBEs. Proposers that utilize these methods are more successful in achieving some level of DBE participation. Therefore, bidders/proposers are to actively and aggressively seek out DBEs. The list of outreach methods in Section II is not comprehensive, but it provides the bidder/proposer with ideas for their outreach.

DBE FORM 2002

Diversity Business Enterprise Program Proposed Utilization Plan

This form has two Sections

SECTION I – This Section is used to show DBE participation achieved as a result of the bidders/proposers' outreach efforts shown on DBE Form 2001. The information recorded on this form will be reviewed, evaluated, and scored (if scores are assigned to the DBE section of the proposal). This Section determines compliance with the MDHA DBE Program Bidder/Proposer outreach and utilization of DBEs. **Failure to complete and submit this form with the /Bid/Proposal will be considered non-responsive.**

SECTION II – This Section summarizes the bidder's/proposer's DBEs participation achieved and listed in *Section I*. The information recorded on this form will become part of DBE Form 2003 of the successful bidder/proposer. This information will become the bidder/proposer's commitment to award contracts and utilize DBEs. This information will also be incorporated into the successful bidder/proposer's contract and monitored monthly. **Failure to complete and submit this form will be considered non-responsive.**

DBE FORM 2003

Diversity Business Enterprise Program Proposed Utilization

INSTRUCTIONS:

This Form Must Be Completed by the successful bidder/proposer and Submitted To MDHA Contracting Agent/DBE Coordinator before the Contract Award.

The awarded Bidder/Proposer's DBE commitments listed on this form will be incorporated into their contract and monitored monthly. After the contract award, any changes to this form will require the MDHA Contracting Agent/DBE Coordinator and DBE Program Consultant approval. Requests to change or replace the DBE(s) listed on this form will require the bidder/proposer to use DBE Form 2, Section I, and II to show DBE Outreach efforts to modify or replace the original DBE commitment and provide a copy of the updated DBE Form 2 to the MDHA Contracting Agent/DBE Coordinator.

DBE FORM 2004

Record of Payments to Diversity Business Enterprise Firms

INSTRUCTIONS:

This form is used to report payments to DBEs and must be submitted with the successful bidder/proposer MONTHLY APPLICATION for PAYMENT. This form is a record of DBE contract awards, changes to the DBE's original contract, payments to DBEs, and the percentage of work completed by each DBE. The information recorded on this form will be evaluated to determine compliance with your contract commitment indicated on "DBE FORM 2003 Statement of Intent to Utilize Diversity Business Enterprise." Contracts with DBE participation should be subject to monthly monitoring and possible on-site audits. After the contract award, changes to your DBE participation will require the MDHA Contracting Agent/DBE Coordinator approval, and the MDHA DBE Program Consultant will review the information. Failure to submit this report should delay the contractor/supplier's monthly pay application processing until the information is received.

ATTACHMENT G
METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM
Bidder/Proposer DBE Outreach Efforts and Documentation

DBE FORM 2001 SECTION I - INSTRUCTIONS PLEASE SUBMIT THIS FORM, SECTION I & II, WITH THE BID/PROPOSAL. Use this form to record your outreach efforts to solicit DBE participation. The information recorded on this form will be evaluated to determine your compliance with the Diversity Business Enterprise Program requirements for contractors/suppliers' outreach initiatives. Failure to complete and return this form will result in a non-responsive bid/proposal.	Prime Bidder/Proposer Company Name: Bid/RFQ/RFI/RFP # and Title: Street Address City/State/Zip: Contact Name: Contact Telephone Number: Date:			
PLEASE INDICATE IF YOUR FIRM IS A DBE	YES <input type="checkbox"/> NO <input type="checkbox"/> If yes, provide a copy of certification and check the appropriate DBE Code.	MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/> SDVBE <input type="checkbox"/> *DBE CODE	Certification Attached YES <input type="checkbox"/> NO <input type="checkbox"/>	Certification Agency:

*Racial/Ethnic Codes: MBE 1-Black Americans; 2-Native Americans; 3- Hispanic Americans; 4-Asian/Pacific Americans; 5-WBE; 6-SBE; 7-SDVBE (Example: Hispanic Firm - MBE/3)

1. DBE Name	*DBE Codes	Name of Person Contacted	Date Contacted	Type of Supplies/Services
Method of Communication <input type="checkbox"/> Telephone DBE Telephone Number:		Method of Communication <input type="checkbox"/> Email DBE Email Address:	Method of Communication: <input type="checkbox"/> Face-to-Face Meeting Date of Meeting:	DBE Response: Bidding <input type="checkbox"/> Yes <input type="checkbox"/> No* Submitted Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No * Valid Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No* *If no, provide reason(s) for "non-acceptance."
2. DBE Name	*DBE Codes	Name of Person Contacted	Date Contacted	Type of Supplies/Services
Method of Communication <input type="checkbox"/> Telephone DBE Telephone Number:		Method of Communication <input type="checkbox"/> Email DBE Email Address:	Method of Communication: <input type="checkbox"/> Face-to-Face Meeting Date:	DBE Response: Bidding <input type="checkbox"/> Yes <input type="checkbox"/> No* Submitted Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No * Valid Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No* *If no, provide reason(s) for "non-acceptance."

ATTACHMENT G

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM Bidder/Proposer DBE Outreach Efforts and Documentation

SECTION I - INSTRUCTIONS PLEASE SUBMIT THIS FORM, SECTION I & II, WITH THE BID/PROPOSAL. Use this form to record your outreach efforts to solicit DBE participation.	Prime Bidder/Proposer Company Name: _____ Date: _____			
Bid/RFQ/RFI/RFP # and Title: _____				
3. DBE Name	*DBE Codes	Name of Person Contacted	Date Contacted	Type of Supplies/Services
Method of Communication Telephone <input type="checkbox"/> DBE Telephone Number: _____	Method of Communication Email <input type="checkbox"/> DBE Email Address: _____	Method of Communication: Face-to-Face Meeting <input type="checkbox"/> Date: _____	DBE Response: Bidding <input type="checkbox"/> Yes <input type="checkbox"/> No* Submitted Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No * Valid Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No* *If no, provide reason(s) for "non-acceptance"	
4. DBE Name	*DBE Codes	Name of Person Contacted	Date Contacted	Type of Supplies/Services
Method of Communication Telephone <input type="checkbox"/> DBE Telephone Number: _____	Method of Communication Email <input type="checkbox"/> DBE Email Address: _____	Method of Communication: Face-to-Face Meeting <input type="checkbox"/> Date: _____	DBE Response: Bidding <input type="checkbox"/> Yes <input type="checkbox"/> No* Submitted Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No * Valid Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No* *If no, provide reason(s) for "non-acceptance"	
5. DBE Name	*DBE Codes	Name of Person Contacted	Date Contacted	Type of Supplies/Services
Method of Communication Telephone <input type="checkbox"/> DBE Telephone Number: _____	Method of Communication Email <input type="checkbox"/> DBE Email Address: _____	Method of Communication: Face-to-Face Meeting <input type="checkbox"/> Date: _____	DBE Response: Bidding <input type="checkbox"/> Yes <input type="checkbox"/> No* Submitted Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No * Valid Bid: <input type="checkbox"/> Yes <input type="checkbox"/> No* *If no, provide reason(s) for "non-acceptance"	

ATTACHMENT G

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM Bidder/Proposer DBE Outreach Efforts and Documentation

SECTION II - INSTRUCTIONS

MDHA DBE PROGRAM REQUIREMENTS: BIDDERS/PROPOSERS ARE EXPECTED to go beyond the standard telephone and email outreach methods to identify DBEs. Bidders/proposers should actively and aggressively seek out DBEs. There are many ways to make the best effort possible to achieve DBE participation. The list of outreach initiatives below is not comprehensive, but it will give you an idea of where to start. Successful Bidders/Proposers will be required to provide documentation that supports their efforts. Please answer the questions below and indicate the details of your company's actions taken concerning these questions. Feel free to attach additional documentation to explain your outreach initiatives. This form, along with information recorded on the preceding pages, will be used to evaluate the bidder/proposer's efforts to achieve DBE participation.

RECOMMENDED DBE OUTREACH METHODS

1. The bidder/proposer conducted a pre-bid meeting to inform DBEs of subcontracting opportunities and discussed the plans, specifications, and other bid requirements to solicit DBE bidders. If yes, provide the Date of Pre-bid Meeting:	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The bidder/proposer met face-to-face with interested DBEs to discuss information about the plans, specifications, and requirements of the bid/proposal.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The bidder/proposer provided interested DBEs with adequate information about the bid/proposal's plans, specifications, and requirements of the bid/proposal. Information provided:	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The bidder/proposer selected specific portions of the work to be performed by DBEs to increase the likelihood of achieving DBE participation (including breaking down more significant pieces of work into smaller units to facilitate DBE participation)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. The bidder/proposer followed up with DBEs who initially expressed interest by contacting those DBEs to determine with certainty if they remained interested in bidding.	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. The bidder/proposer took the necessary steps to provide written notice in a reasonable time frame to inform DBEs of subcontracting opportunities and allowed enough time for them to participate effectively.	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. The bidder/proposer utilized the MDHA Diversity Business Enterprise Directory and other directories such as The Metro Nashville's Office of Minority and Women Business Assistance, the State Go-DBE, Metro Airport TDOT to identify DBE firms as potential bidders.	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. If DBE bids/proposals were received and rejected, you must attach the rejected bid/proposal documentation and the reason for rejecting (i.e., memos, telephone calls, meetings, etc.) the bid. In addition, a statement including any reasons for concluding that the DBE was unqualified to perform the job). Is the documentation attached?	<input type="checkbox"/> Yes <input type="checkbox"/> No

By signing below, I certify that all information provided is accurate. I agree to provide Metropolitan Development and Housing Agency with a completed copy of all required forms and documentation to support my claims for DBE outreach. I understand that if I fail to provide all the required forms and documents, my bid may be deemed "non-responsive," and I may be denied the contract award.

Name of Company: _____

Date: _____

Signature of Certifying Official of Company: _____ Title: _____

ATTACHMENT H
METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM
Diversity Business Enterprise Program Proposed Utilization Plan

DBE FORM 2002 INSTRUCTIONS: PLEASE SUBMIT SECTION I AND SECTION II OF THIS FORM WITH THE BID/PROPOSAL.	DIVERSITY BUSINESS ENTERPRISE PARTICIPATION COMMITTED			
Bidder/Proposer must complete and submit <i>Section I and Section II</i> with the bid/proposal to show DBE participation achieved as a result of their outreach efforts. The information recorded on this form will be evaluated and scored to determine your compliance with the MDHA Diversity Business Enterprise Program requirements for Bidder/Proposer outreach and utilization of DBEs. Failure to complete and submit this form with the /Bid/Proposal will be considered non-responsive. Please Note: The Awarded Bidder's/Proposer DBE commitments will be incorporated into the contract and monitored monthly, including monthly reports that validate DBE utilization and possible on-site audits.	Bidder/Proposer Company Name:			
	Bid/RFP Number:	Name of Bid/Request for Proposal:	Bidder/Proposer Estimated Total Dollar Bid/ Proposal: \$	
	Submission Date:	Total DBE Percentage: %	Total DBE Dollars: \$	Percentage of Self-Performed Work: %
*Bidder/Proposer Company Contact Name:	Telephone:	Email Address:		

*Name of person to contact for information and documentation regarding this form and DBE participation proposed

Please indicate the DBE Ethnicity Code:

**Racial/Ethnic Codes: MBE 1-Black Americans; 2-Native Americans; 3- Hispanic Americans; 4-Asian/Pacific Americans; 5-WBE; 6-SBE; 7-SDVBE (Example: Hispanic Firm - MBE/3)

SECTION 1 - PROPOSED DIVERSITY BUSINESS ENTERPRISE			
INSTRUCTIONS: Record each DBE that you proposed to use for the above referenced Bid/RFP. Your response to the requested information below will be evaluated and scored based on this form's completeness. If additional space is needed to record your DBE contacts, you may duplicate this form.			
1. DBE Company Name	**DBE Ethnic Code	Supplies/Services Provided	
Address/City/State/Zip:	Telephone:	\$ Value of Supplies/Services:	DBE % of Total Bid/Proposal:
JOINT VENTURE <input type="checkbox"/> Yes <input type="checkbox"/> No PARTNERING AGREEMENT <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please provide legal agreement and other documents to support this claim with the finalized version)	Name of DBE Current Certification Agency:		Certification Attached YES <input type="checkbox"/> NO <input type="checkbox"/> Certification Expiration Date:

2. DBE Company Name	**DBE Ethnic Code	Supplies/Services Provided	
Address/City/State/Zip:	Telephone:	\$ Value of Supplies/ Services	DBE % of Total Bid/Proposal:
JOINT VENTURE <input type="checkbox"/> Yes <input type="checkbox"/> No	Name of DBE Current Certification Agency:		Certification Attached YES <input type="checkbox"/> NO <input type="checkbox"/>

ATTACHMENT H

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM
Diversity Business Enterprise Program Proposed Utilization Plan**

PARTNERING AGREEMENT <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please provide legal agreement and other documents to support this claim with the finalized version)			Certification Expiration Date:
3. DBE Company Name	**DBE Ethnic Code	Supplies/Services Provided	
Address/City/State/Zip:	Telephone:	\$ Value of Supplies/Services	DBE % of Total Bid/Proposal:
JOINT VENTURE <input type="checkbox"/> Yes <input type="checkbox"/> No PARTNERING AGREEMENT <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please provide legal agreement and other documents to support this claim with the finalized version)	Name of DBE Current Certification Agency:		Certification Attached YES <input type="checkbox"/> NO <input type="checkbox"/> Certification Expiration Date:

4. DBE Company Name	**DBE Ethnic Code	Supplies/Services Provided	
Address/City/State/Zip:	Telephone:	\$ Value of Supplies/Services	DBE % of Total Bid/Proposal:
JOINT VENTURE <input type="checkbox"/> Yes <input type="checkbox"/> No PARTNERING AGREEMENT <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please provide legal agreement and other documents to support this claim with the finalized version)	Name of DBE Current Certification Agency:		Certification Attached YES <input type="checkbox"/> NO <input type="checkbox"/> Certification Expiration Date:

5. DBE Company Name	**DBE Ethnic Code	Supplies/Services Provided	
Address/City/State/Zip:	Telephone:	\$ Value of Supplies/Services	DBE % of Total Bid/Proposal:
Joint Venture <input type="checkbox"/> Yes <input type="checkbox"/> No	Name of DBE Current Certification Agency:		Certification Attached YES <input type="checkbox"/> NO <input type="checkbox"/> Certification Expiration Date:

ATTACHMENT H

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM
Diversity Business Enterprise Program Proposed Utilization Plan

Partnering Agreement <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please provide legal agreement and other documents to support this claim with the finalized version)		Certification Expiration Date:
--	--	--------------------------------

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM
 Diversity Business Enterprise Program Proposed Utilization Plan

SECTION II DBE CONTRACT AWARDS INSTRUCTIONS	SUMMARY - DBE CONTRACT AWARDS	
BIDDER/PROPOSER MUST COMPLETE THIS SECTION SUMMARIZING DBE AWARDS. Use this form to summarize and record proposed DBEs listed on this form in <i>Section I</i> . The information recorded on this form will be evaluated and scored to determine your compliance with the MDHA Diversity Business Program requirements for Bidder/Proposer commitment to utilizing DBEs. Failure to complete and submit this form will be considered non-responsive.	Bid/RFP Title:	Date Submitted:
	Company Name (Bidder/Proposer)	*Name of Company Contact:
	Address City/State/Zip:	Contact Telephone:

*Name of person to contact for information and documentation regarding this form and DBE Finalized Commitment

MBE Name	Estimated Dollar Value	WBE Name	Estimated Dollar Value	SBE Name	Estimated Dollar Value	SDVBE	Estimated Dollar Value
Total MBE Dollars		Total WBE Dollars		Total SBE Dollars		Total SDVBE Dollars	
Total MBE % of Bid		Total WBE % of Bid		Total SBE % of Bid		Total SDVBE% of Bid	
TOTAL VALUE OF BID/PROPOSAL:			TOTAL DBE PARTICIPATION DOLLARS:			TOTAL DBE PERCENTAGE:	
\$			\$			%	

By signing below, I confirm that the information provided herein to MDHA is true and correct. I understand that if I fail to provide all the required documents, my Bid may be deemed “non-responsive,” and I may be denied the contract award.

Name of Company: _____ Date: _____

Signature of Certifying Official of Company: _____ Title: _____

ATTACHMENT I

HUD SECTION 3 BIDDER/ RESPONDER CERTIFICATION AND COMPLIANCE AGREEMENT

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

___ Is a Section 3 Business concern in accordance with HUD “Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low- Income Persons and Eligible Businesses” and the HUD Act of 1968, as amended 12 U.S.C. 1701u) (Section 3) 24 CFR Part 75. A Section 3 Business concern means a business that has met at least one of the following criteria documented within the last six (6) month period and anticipates that they will continue to meet at least one of the following criteria after submitting their bid/response:

1. At least 51% owned and controlled by low-or very-low income persons;
2. Over 75% of the labor hours performed for the business over the prior three (3) month period were performed by low or very low-income persons; or
3. It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8 assisted housing.

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

1. Engaging in outreach efforts to generate job applicants who are Targeted Section 3 workers.
2. Providing training or apprenticeship opportunities.
3. Providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
4. Providing or connecting Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
5. Holding one or more job fairs.
6. Providing or referring Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, and child care).
7. Providing assistance to apply for/or attend community college, a four-year educational institution, or vocational/ technical training.
8. Assisting Section 3 workers to obtain financial literacy training and/or coaching.
9. Engaging in outreach efforts to identify and secure bids from Section 3 business concerns.
10. Providing technical assistance to help Section 3 business concerns understand and bid on contracts.
11. Dividing contracts into smaller jobs to facilitate participation by Section 3 business concerns.
12. Providing bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
13. Promoting use of business registries designed to create opportunities for disadvantaged and small businesses.
14. Seeking outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.
15. 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.
16. 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 or proposals.

17. By following up with Section 3 business concerns that have expressed interest in the contracting opportunities.
18. 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.
19. 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.
20. 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.
21. Where appropriate, by breaking out contract work into economically feasible units to facilitate participation by Section 3 businesses.
22. By developing and utilizing a list of eligible Section 3 business concerns.
23. By actively supporting and undertaking joint ventures with Section 3 businesses.
24. By establishing training programs, which are consistent with the requirements of the Department of Labor, specifically for Section 3 residents in the building trades.
25. 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.
26. By arranging interviews and conducting interviews on the job site.
27. 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 J

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 K

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

EXHIBIT A

DRAFT 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)

«
« »
« »
« »

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

«Cayce Utility Phase 1b »
« Project location Crutcher Street from S 6th Street to S 7th Street, S 7th Street from
Crutcher Street to Lenore Street, and a portion of Glenview east of S 7th Street, Nashville,
TN 37206. See Drawings and Specifications for further detail.

The 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.

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.

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-~~2017~~2007, 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.



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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:

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

EXHIBIT A

[~~« X »~~] Not later than « one hundred eighty days » (~~« 180 »~~) consecutive calendar days from the date of commencement of the Work.

[~~« »~~] By the following date: ~~« »~~

Due to the limited scope Substantial Completion shall be the same as Final Completion as defined by AIA A201 General Conditions of the Contract for Construction.

§ 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

§ 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 « TBD » (\$ « »), 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 to 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.

§ 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

EXHIBIT A

- 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 NOT USED

§ 4.2.1 NOT USED

§ 4.2.2 NOT USED

§ 4.3 NOT USED Allowances

§ 4.4 NOT USED Unit prices

§ 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 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 Owner's Representative by the Contractor and Certificates for Payment issued by the 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 Owner's Representative not later than the «first» day of a month, and by the Owner by the seventh 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 Owner's Representative after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty» («30 ») days after the Owner 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

EXHIBIT A

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 **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 Diversified Business Enterprise (DBE) Form 2004 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 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, 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;~~ and 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 determines, in the '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 **Engineer** has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .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 **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; 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%) »

EXHIBIT A

§ 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»

§ 5.1.8 ~~If final completion of the Work 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. 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 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, and to satisfy other requirements, if any, which extend beyond final payment;
- .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 Engineer;
- .34 Consent of Surety is received; and
- .4-5 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 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

EXHIBIT A

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 Engineer will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, 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 Engineer.)

»

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, 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.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, 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.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 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)

« Michael Wegerson Contracting Officer
Dr. Troy White, Executive Director»
«Bradley Muckel, Senior Project Manager »
«701 S Sixth Street »

EXHIBIT A

«[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

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in [AIA A201-2017 General Conditions of the Contract for Construction Article 11](#), 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, below and elsewhere in the Contract Documents.~~

§ 8.5.2 The Contractor shall provide bonds as set forth in [AIA A201-2017 General Conditions of the Contract for Construction Article 11](#), in ~~AIA Document A101™ 2017 2007 Exhibit A below, and elsewhere in the Contract Documents.~~

§ 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: **NOT USED**
(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.)

« »

§ 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 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

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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 of A201–2017, 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~~
- .3 AIA Document A201™–2017, 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
- .7 Addenda, if any:

Number

Date

Pages

EXHIBIT A

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.

.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 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- Diversity Business Enterprise \(DBE\) Forms 2001, 2002, 2003, 2004](#)

[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 IFB](#)

[Attachment A – Contractor/Subcontractor License Information Form](#)

[Attachment B – Bid Form](#)

[Attachment C – AIA Document A310™-2010, Bid Bond](#)

[Attachment D – Form of Non-Collusive Affidavit-\(must be notarized\)](#)

[Attachment E - Drug Free Affidavit](#)

[Attachment F – AIA Document A305™-2020, Contractor's Qualification Statement](#)

[Attachment G – DBE Form 2001 – Metropolitan Development and Housing Agency Diversity Business Program, Bidder/Proposer Outreach Efforts and Documentation](#)

[Attachment H - DBE Form 2002- Metropolitan and Housing Agency Diversity Business Enterprise Program Utilization Plan](#)

[Attachment I- HUD Section 3 Bidder/Proposer Certification and Compliance Agreement](#)

[Attachment J - Fair Employment Practice Statement Affidavit](#)

[Attachment K- Contingent Fees Statement](#)

»

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

OWNER (Signature)

«-Dr. Troy White
Executive Director

(Printed name and title)

CONTRACTOR (Signature)

»« TBD »

(Printed name and title)

EXHIBIT B

AIA A201-2017

General Conditions of the Contract for Construction

Modified by MDHA

EXHIBIT B

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

«Cayce Utility Phase 1b
Project location is Crutcher Street from S 6th Street to S 7th Street, S 7th Street from
Crutcher Street to Lenore Street, and a portion of Glenview east of S 7th Street,
Nashville, TN 37206. »

THE OWNER:
(Name, legal status and address)

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

THE ENGINEER:
(Name, legal status and address)

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

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- 3 CONTRACTOR
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- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
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- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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8.3, 15.1.6.2

Work, Definition of

1.1.3

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1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,

13.2, 13.3.2, 15.4.4.2

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1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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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), (references to Contractor herein shall mean "Construction Manager.") 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 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 or proposal 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 Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Engineer or the Engineer's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the 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, 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 requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 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 Engineer and the 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. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 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 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.

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§ 1.2.1.1 Severability. The provisions of the Agreement are severable in that should any provision be held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the legality, validity and enforceability of the other provisions herein shall not be affected, but they shall remain in full force and effect.

§ 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 Architect 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 Engineers.

§ 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 Engineer and 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Engineer's or Engineer's consultants', and the Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Engineer, and the Engineer's consultants.

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

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

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, 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.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 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.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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 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 Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 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 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 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in

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that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information, after seven (7) days' notice to the Owner, to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

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

§ 2.3.3 If the employment of the Engineer terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

§ 2.3.4 At Contractor's reasonable request. The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The 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.

§ 2.3.5 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.

§ 2.3.6 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.

§ 2.4 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 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.

§ 2.5 Owner's Right to Carry Out the Work

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 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 default or neglect. Such action by the Owner and amounts charged

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to the Contractor are both subject to prior approval of the Engineer and the Engineer may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Engineer, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor 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 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. References to Contractor herein shall mean "Construction Manager."

§ 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 Architect-Engineer promptly for an interpretation before proceeding with the Work. § 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer in the 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 2.3.4, 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 Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the 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 Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the 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 submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, 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 Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions

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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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Engineer, and shall propose alternative means, methods, techniques, sequences, or procedures. The Engineer shall evaluate the proposed alternative solely for conformity with the design intent for the completed construction. Unless the Engineer objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative 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 ~~Architect~~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; and
- .4 If the Contractor proposes alternative procedures which the Contractor is willing to warrant.
- .5 If any specified 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 ~~Architect~~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 approved by the Engineer in accordance with Section 3.12.8 or ordered by the Engineer in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the 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.

§ 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 ~~Architect~~ 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.

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§ 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

§ 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 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, within thirty (30) days after the date of Substantial Completion and prior to 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 within thirty (30) days after the date of Substantial Completion and prior to final payment to Contractor.

§ 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.

§ 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

Refer to Supplemental Conditions to the Construction Contract.

§ 3.7.5 Not Used

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§ 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 notify in writing the Owner and Architect-Engineer of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect-Engineer may notify the Contractor in writing, stating whether the Owner or the Architect-Engineer (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect-Engineer to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 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 and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's Engineer's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project with written approval from the Owner.

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

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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, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the ~~Architect's~~Engineer's approval. The ~~Architect's~~Engineer's approval shall not be unreasonably 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, or fails to provide submittals in accordance with the approved 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.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the ~~Architect-Engineer~~ and Owner, and 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 how 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.

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§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, ~~approve,~~ and indicate approval with the Contractors' stamp, date, and signature, and submit to the ~~Architect~~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 two 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-reviewed~~ by the Architect their consultants, and the Owner.

§ 3.12.8 The Work shall be in accordance with ~~approved-reviewed~~ submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the ~~Architect~~Engineer's ~~approval-review~~ of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the in writing ArchitectEngineer 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~~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 ~~notice~~, the ~~Architect~~Engineer's ~~approval-review~~ of a resubmission shall not apply to such revisions.

§ 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and ~~Architect~~Engineer have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the ~~Architect~~Engineer will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the ~~Architect~~Engineer at the time and in the form specified by the ~~Architect~~Engineer.

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

§ 3.12.12 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.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, 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.

~~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 shall leave all public spaces in as good condition (or better), as it was prior to commencement of the Work.~~

§ 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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.

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

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 ArchitectEngineer harmless from loss on account thereof, but shall not be responsible for 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 ArchitectEngineer. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ArchitectEngineer.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ArchitectEngineer, ArchitectEngineer'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.

§ 3.19 Additional Close-Out Documents

§ 3.19.1 By the date of Substantial Completion, the Contractor shall provide Owner with an affidavit notarized by a notary public which certifies that no polychlorinated biphenyl (PCB's) or asbestos have been used in the materials for construction of the Project provided that such materials are not specified in the Contract Documents.

§ 3.19.2 By the date of Substantial Completion, the Contractor shall provide Owner with an affidavit notarized by a notary public which certifies that all material containing Volatile Organic Components (VOC) are in strict compliance with VOC requirements and regulations of the Environmental Protection Agency (EPA), Occupational Safety Health Administration (OSHA), State, County, City and Local Air Control District.

§ 3.19.3 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.

ARTICLE 4 ARCHITECTENGINEER

§ 4.1 General

§ 4.1.1 The ArchitectEngineer is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

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§ 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.

§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) 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

The Owner and Contractor shall include the Architect/Engineer in all communications that relate to or affect the Architect/Engineer's services or professional responsibilities. The Owner shall promptly notify the Architect/Engineer of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.4.1 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.

§ 4.2.4.2 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 13.4.2 and 13.4.3, whether or not the 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, 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

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the ArchitectEngineer'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 ArchitectEngineer'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 ArchitectEngineer's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The ArchitectEngineer'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 ArchitectEngineer will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The ArchitectEngineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The ArchitectEngineer 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 ArchitectEngineer agree, the ArchitectEngineer will provide one or more Project representatives to assist in carrying out the ArchitectEngineer's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project Representatives.

§ 4.2.11 The ArchitectEngineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The ArchitectEngineer'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 ArchitectEngineer 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 ArchitectEngineer 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.

§ 4.2.13 The ArchitectEngineer'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 ArchitectEngineer will review and respond to requests for information about the Contract Documents. The ArchitectEngineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the ArchitectEngineer 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 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 the 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 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.

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§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify in writing to the Owner and Architect/Engineer of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect/Engineer may notify in writing to the Contractor whether the Owner or the Architect/Engineer (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect/Engineer to provide notice within the 14-day period shall constitute notice of no reasonable objection. Work shall not be started until objections have been resolved in writing.

§ 5.2.1.1 If requested, the Contractor shall furnish evidence satisfactory to the Engineer and Owner showing each principal portion of the Work was bid reasonably and competitively. The cost of Work proposed by each Subcontractor or Sub-Subcontractor shall be reported.

§ 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 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 Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or 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 for one previously selected if the Owner or Engineer makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate 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, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and 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 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

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- .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 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 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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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.

§ 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 notify the Engineer of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Engineer of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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

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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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor 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 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 Engineer. A Construction Change Directive requires agreement by the Owner and 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 Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, 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 Engineer and signed by the Owner, Contractor, and 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, material, equipment, and indirect costs (taxes, permit fees, overhead, profit, and premiums for Bonds and Insurance).

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and 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 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 7.3.4.

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§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Engineer shall determine 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 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 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Engineer;
- .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, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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.

§ 7.3.7 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.

§ 7.3.8 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 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.

~~§ 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 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 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 Engineer may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Engineer's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Engineer and Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Engineer's order for a minor change without prior notice to the Engineer that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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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.

§ 8.1.3 The date of Substantial Completion is the date certified by the 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. 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.

~~The Contractor and Owner agree to establish and incorporate a Contract Time as part of the amendment incorporating the GMP into the Contract. Time limits stated in the Contract Documents are of the essence of the Contract. 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 amendment incorporating Contract Time into the Contract, the Contractor confirms that the Contract Time is an acceptable period of performing the Work.~~

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 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 (1) an act or neglect of the Owner or Engineer, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Engineer determines, justify delay, then, as provided above, the Contract Time shall be extended by Change Order for such reasonable time as the 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.

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~~§ 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

§ 9.1.1 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed-so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or, the Contractor shall submit a schedule of values to the Engineer and Owner before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Engineer and Owner. This schedule, unless objected to by the Engineer or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Engineer and Owner and supported by such data to substantiate its accuracy as the Engineer or Owner may require, and unless objected to by the Engineer or Owner, shall be used as a basis for reviewing the Contractor's subsequent 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 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Engineer require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 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.

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§ 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, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Engineer determines is properly due, and notify the Contractor and Owner in writing of the Engineer's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Engineer's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data in the Application for Payment, that, to the best of the Engineer's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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 Engineer. However, the issuance of a Certificate for Payment will not be a representation that the 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 Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The 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 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 suppliers 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 failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Engineer's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the 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 supplier to whom the Contractor failed to make

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payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Engineer and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the 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 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 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 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 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 and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Engineer shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, 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 The Contractor's payments to 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any

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tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the 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 fourteen days after the date established in the Contract Documents, the amount certified by the Engineer or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and 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 shutdown, 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 finally complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Furthermore, as a condition precedent to Substantial Completion, the Owner requires the following:

- .1 Owner has received all final certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority, having jurisdiction, necessary for the beneficial occupancy of the Project, or a designated portion thereof;
- .2 The Owner has received completed operations and maintenance manuals;
- .3 For residential projects: incomplete and nonconforming Work at unit interiors shall be completed or corrected, including items that are exterior to a unit, but must be accessed through the unit;
- .4 Other incomplete and nonconforming Work shall be within thirty (30) days of being completed or corrected, except where extensions are requested by the Contractor in writing and approved by the Owner.

§ 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 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 Engineer along with the Owner, will make an initial inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's , and Owner determine 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 Engineer. In such case, the Contractor shall then submit a request for 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 Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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

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§ 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 and authorized by public authorities having jurisdiction over the 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 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 Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and 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 notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection. When the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with 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 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 final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer and Owner (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 notice has been given to the Owner, (3) a written statement that the Contractor knows of no 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 (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, and (7) other items required in the 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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 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, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if

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bonds have been furnished, the written consent of the 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.

§ 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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, a Subcontractor, or a Sub-subcontractor; 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or **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 **Engineer**.

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§ 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.

§ 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, notice of the 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 and Substances- Refer to Supplemental Conditions

~~§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.~~

~~§ 10.3.2 Upon receipt of the Contractor's 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 the material or substance or who are to perform the task of removal or safe containment of the 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 by the amount of the Contractor's reasonable additional costs of shutdown, 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/Engineer, Architect/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 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. The Contractor agrees that: (1) no hazardous substance, wastes or materials (collectively "hazardous materials") will be brought onto the site by Contractor, Subcontractor, Sub-subcontractor, materialman or supplier, or person or entity for whom they are responsible, except as required by the Contract Documents or otherwise required for the Work and in full compliance with applicable laws, (2) no asbestos containing material, lead based paint or other hazardous materials will be incorporated into the Work, and (3) without Owner's prior written consent, no underground or above ground storage tanks will be placed on the site. In the event suspected hazardous materials are encountered at the site during the conduct of the Work, Contractor shall: (a) stop the Work in the area where suspected hazardous materials are encountered until receipt of notification from Owner that Work shall proceed, (b) promptly notify Owner of such encounter and consult with Owner, and (c) take reasonable precautions in accordance with applicable law to prevent or contain the movement, spread or disturbance of such hazardous materials and to protect persons and property. To the fullest extent allowed by law, the Contractor shall indemnify and hold harmless Owner for liability, damages and expenses, including attorneys' fees, resulting from breach of this Paragraph 10.3.3.~~

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous 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 hazardous 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.~~

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~~§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 reimburse 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.

ARTICLE 11 INSURANCE AND BONDS

~~§ 11.1 Contractor's Insurance and Bonds~~

~~§ 11.1.1 The Contractor shall purchase 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 or 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 in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~

~~§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~

~~§ 11.1.3 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.~~

~~§ 11.2 Owner's Insurance~~

~~§ 11.2.1 The Owner shall purchase 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 or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~

~~§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

~~§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract~~

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~~Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

~~§ 11.3 Waivers of Subrogation~~

~~§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

~~§ 11.3.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance~~

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

~~§ 11.5 Adjustment and Settlement of Insured Loss~~

~~§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

§ 11.1 Contractor's Insurance and Bonds General Provisions

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§ 11.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article 11 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. Included with certificates of insurance shall be a copy of Professional Liability including Errors and Omissions Coverage, 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. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section 11.2.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§11.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§11.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect'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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations.

§ 11.2 Property Insurance.

§ 11.2.1 Unless otherwise provided, 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. This insurance shall include interests of the Owner, the Lender, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.2.2 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- Owner's services and expenses required as a result of such insured loss.

§ 11.3 Contractor Required Insurance Coverage

§ 11.3.1 The Contractor shall purchase 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 or 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 in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 hereof. The insurance policy 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.

.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~one million dollars~~ » (\$ ~~1,000,000.00~~ ») each occurrence, ~~two million dollars~~» (\$ ~~2,000,000.00~~ ») general aggregate, and ~~two million dollars~~» (\$ ~~2,000,000.00~~ ») aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;

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.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

.4 bodily injury or property damage arising out of completed operations; and

.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than «one million dollars» (\$ «1,000,000.00») combined single limit each, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

.3 Workers' Compensation at statutory limits. In addition, the Contractor waives and Subcontractors shall waive rights of subrogation against the Owner with respect 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.

.4 Employers' Liability with policy limits not less than «one million dollars» (\$ «1,000,000.00») per each accident, «one million dollars» (\$ «1,000,000.00») disease policy limit, and «one million dollars» (\$«1,000,000.00») disease each employee.

.5 Professional Liability insurance covering performance of the professional services, with policy limits of not less than «NA» (\$ «NA») per claim and «NA» (\$«NA») in the aggregate.

.6 Pollution Liability insurance, with policy limits of not less than «one million dollars» (\$«1,000,000.00 ») per occurrence .

.7 Boiler and Machinery insurance, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.

.8 Railroad Protective Liability insurance, with policy limits of not less than «NA» (\$ «NA») per claim and «NA» (\$ «NA») in the aggregate, for Work within fifty (50) feet of railroad property.

.9 Asbestos Abatement Liability insurance, with policy limits of not less than «NA» (\$ «NA») per claim and «NA» (\$ «NA») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials. This policy is only required if asbestos is found by the environmental engineer.

.10 Lead Abatement Liability insurance, with policy limits of not less than «NA» (\$ «NA») per claim and «NA» (\$ «NA») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of lead-containing materials. This policy is only required if lead is found by the environmental engineer.

§ 11.3.1.2 The Contractor may achieve the required limits and coverage for insurance through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under this section, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. The inadequacy of coverage or absence of coverage does not relieve the contractor or its subcontractors of liability that would have been otherwise covered by the required insurance.

§ 11.3.1.3 The insurance required by Section 11.1.1 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

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- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .10 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.
- .11 Claims related to physical damage to property while it is in storage and in transit to the construction site.

§11.3.1.4 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.

§ 11.4.2 Performance Bond and Payment Bond

§ 11.4.2.1 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required below in form and substance satisfactory to Owner. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

<u>Type</u>	<u>Penal Sum (\$0.00)</u>
<u>Payment Bond</u>	<u>In the full amount of the Contract Price</u>
<u>Performance Bond</u>	<u>In the full amount of the Contract Price</u>

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

§ 11.4.2.2 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.

§ 11.5 Owner's Insurance

§ 11.5.1 The Owner shall purchase 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 or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.5.2 Intentionally Omitted.

~~Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

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§ 11.5.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.6 Waivers of Subrogation

§ 11.6.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.6.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance:

§ 11.7 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. ~~The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

§ 11.8 Adjustment and Settlement of Insured Loss

§ 11.8.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The fiduciary shall pay the other parties their just shares of insurance proceeds received by the fiduciary, and by appropriate agreements the other parties shall make payments to their separate contractors, consultants, and Subcontractors in similar manner.

§ 11.8.2 Prior to settlement of an insured loss, and where the Owner is the fiduciary, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to

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Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§11.9 Partial Occupancy. 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.

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 Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Engineer, be uncovered for the 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 Engineer has not specifically requested to examine prior to its being covered, the 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, discovered before 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 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 any 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 promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such specific 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 Engineer, the Owner may correct it in accordance with Section 2.5.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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§ 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, excluding that if jurisdiction's choice of law rules. if 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 Jurisdiction and Venue: In the event of a Contract dispute or litigation arising out of said Contract, it is understood and agreed that this Contract was executed and performed in Davidson County, Tennessee, and, as such, it is agreed by both parties that venue for said litigation, including an action of Declaratory Judgement, will be in Davidson County, Tennessee.

§ 13.1.2 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 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 No action or failure to act by the Owner, 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 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 Engineer timely notice of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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§ 13.4.2 If the Engineer, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the 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 Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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 Engineer's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 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 Engineer and Owner.

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 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 reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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' notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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' notice to the Owner and the 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

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- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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~~ 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.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Engineer that sufficient cause exists to justify such action, the Owner 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' 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 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 under 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 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.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor including fee for Work properly executed; costs incurred by reason of the termination-including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

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, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the 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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Engineer, if the Engineer is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Engineer will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 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 is established and incorporated in the Specifications to the Agreement. No additional costs will be considered for days added to the contract time for approved weather days above the baseline established by the Specifications.

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§ 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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 the 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 Engineer, if the 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 receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation

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within 30 days after receipt thereof, 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 15.1-7, 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.~~

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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.~~

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§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 those of the Owner and Contractor under this Agreement.

ARTICLE 16 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 C

Supplemental Conditions to the Construction Contract

EXHIBIT C

SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions supplement AIA A201 – 2017 General Conditions and are based on Article 5 of EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The AIA A201 – 2017 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

Supplementary Conditions of the Construction Contract.

Based on Article 5 of EJCDC® C-700, Standard General Conditions of the Construction Contract.

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that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action, 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:
 1. the Engineer's Drawings and Specifications;
 2. the Geotechnical Report provided as an Exhibit to the Agreement.
 - B. Underground Facilities: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

Supplementary Conditions of the Construction Contract.

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- 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.
- 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), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. **Engineer's Review:** After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. **Owner's Statement to Contractor Regarding Site Condition:** After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the

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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 the Agreement; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of 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:
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;

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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), notify Owner and Engineer in writing regarding such Underground Facility.
- C. Engineer's Review: Engineer will:
 1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. Owner's Statement to Contractor Regarding Underground Facility: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. Early Resumption of Work: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. Possible Price and Times Adjustments
 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

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- 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 the Agreement;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of 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 Hazardous Environmental Conditions at or adjacent to the Site;
- 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 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.
- 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.

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- 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); 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 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 the Agreement. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with 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 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,

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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

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

EXHIBIT D

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

Geotechnical Engineering Report

Cayce Homes Stormwater Outfall ■ Nashville, Davidson County, TN

February 6, 2020 ■ Terracon Project No. 18195125

**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

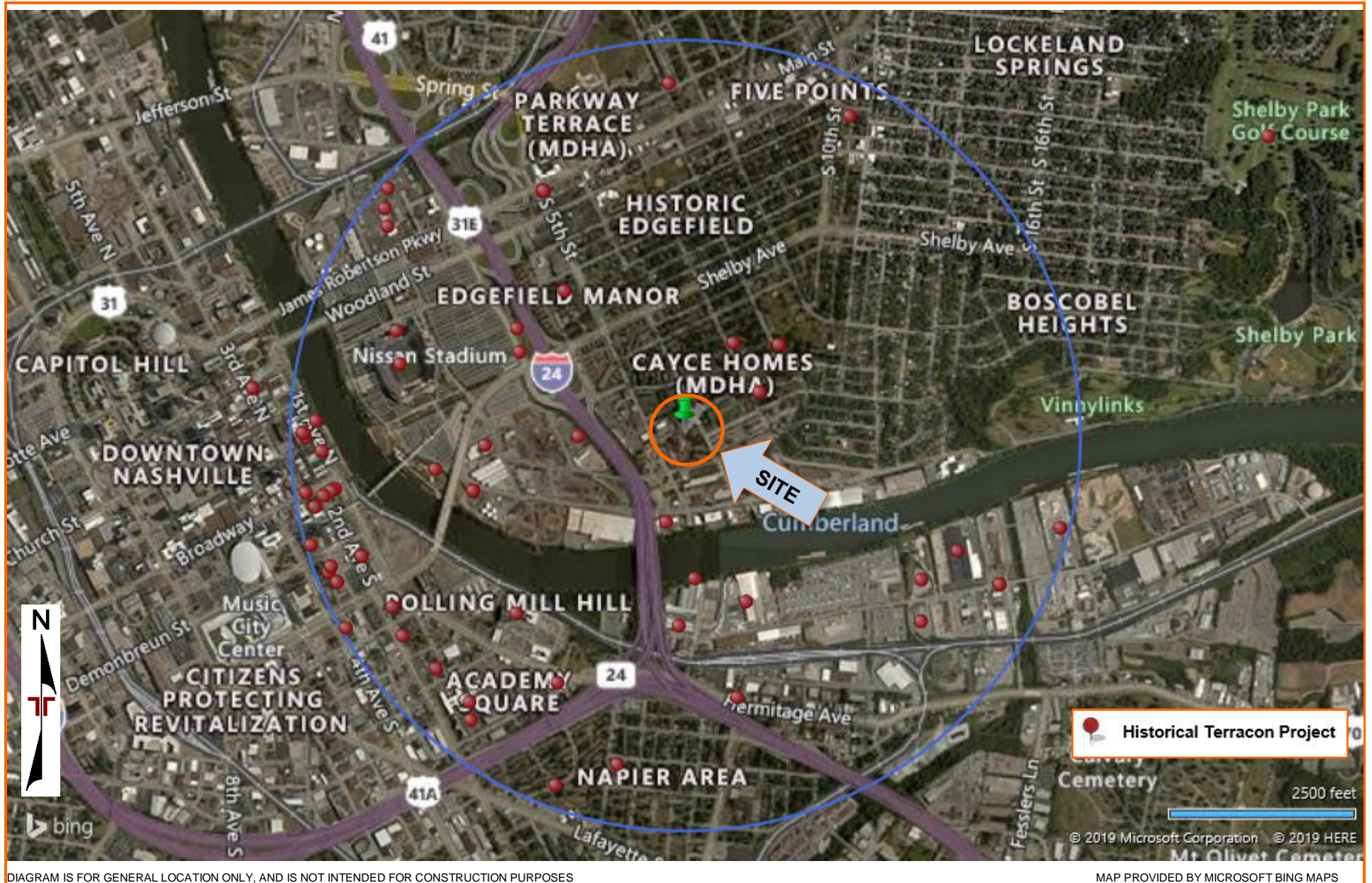


EXHIBIT D

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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Project Manager: WM	Drawn by: KJS
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Scale: N.T.S.	

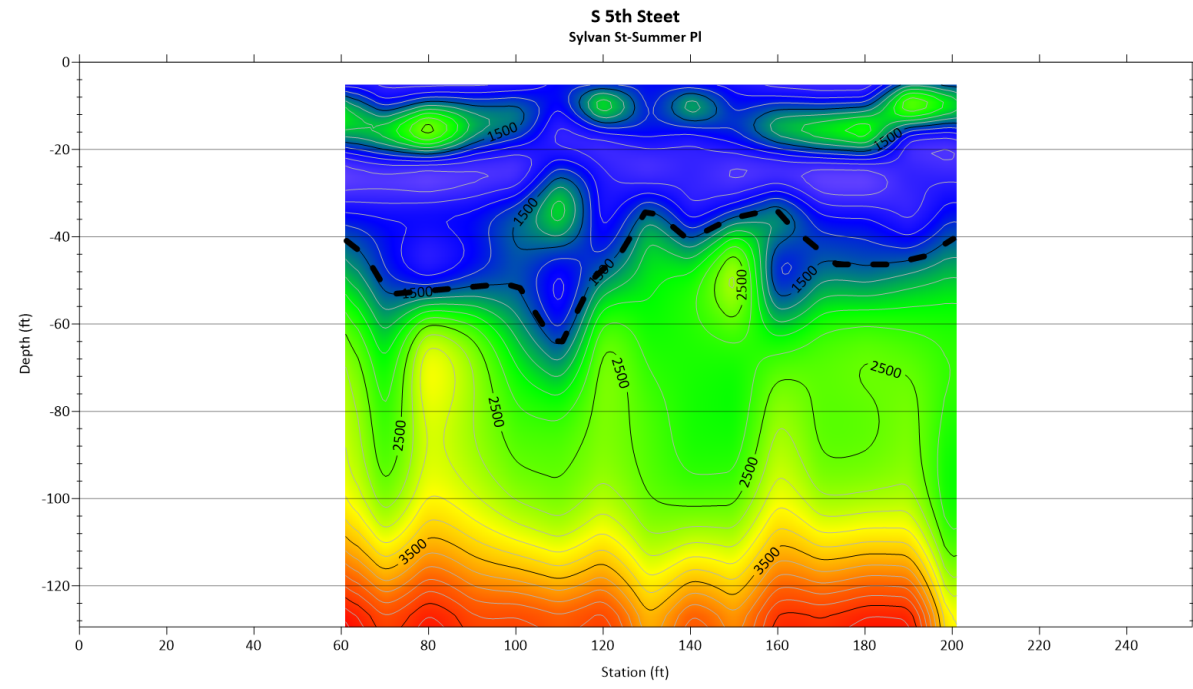
Terracon
Consulting Engineers & Scientists

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

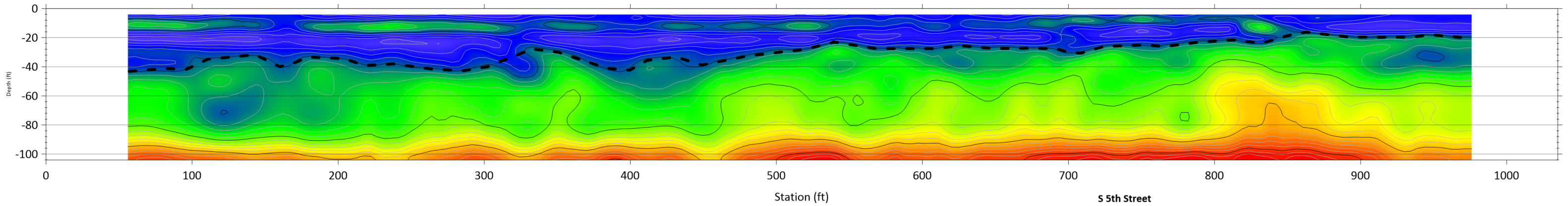
MASW Site Survey Plan
Cayce Homes Stormwater Outfall
Nashville, Tennessee

Exhibit
1

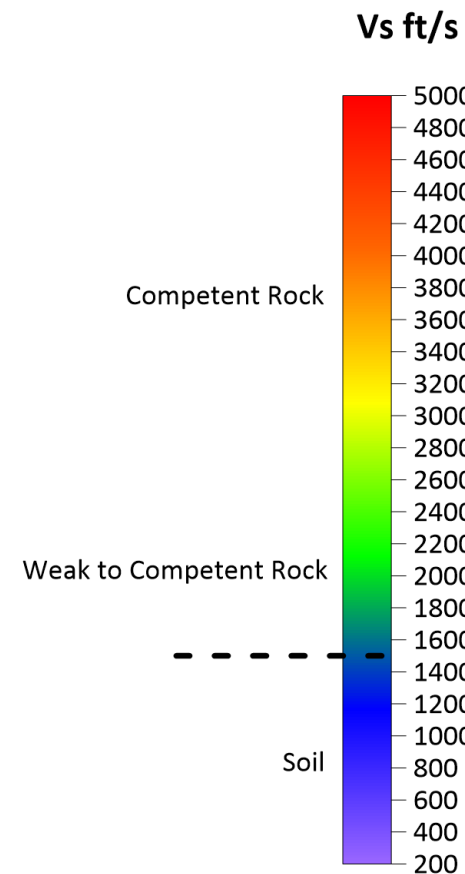
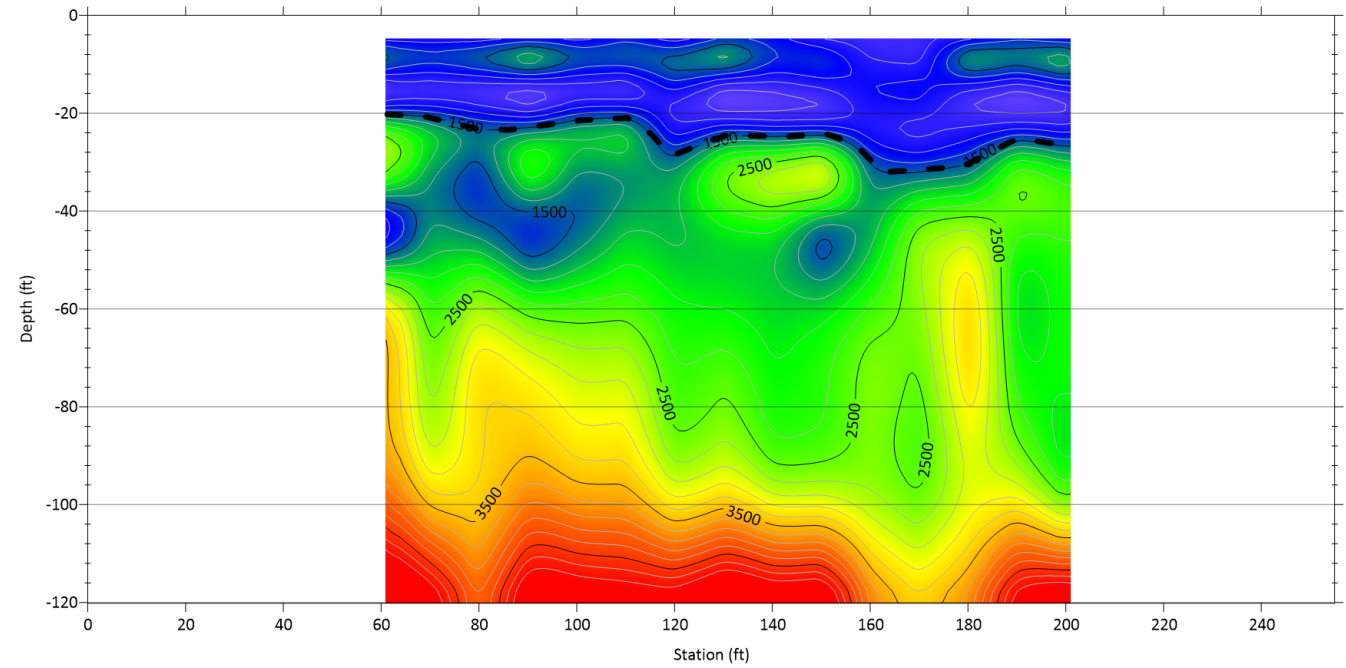
EXHIBIT D



S 5th Street
Summer PI-Crutcher St



S 5th Street
Crutcher St-Music City Bikeway



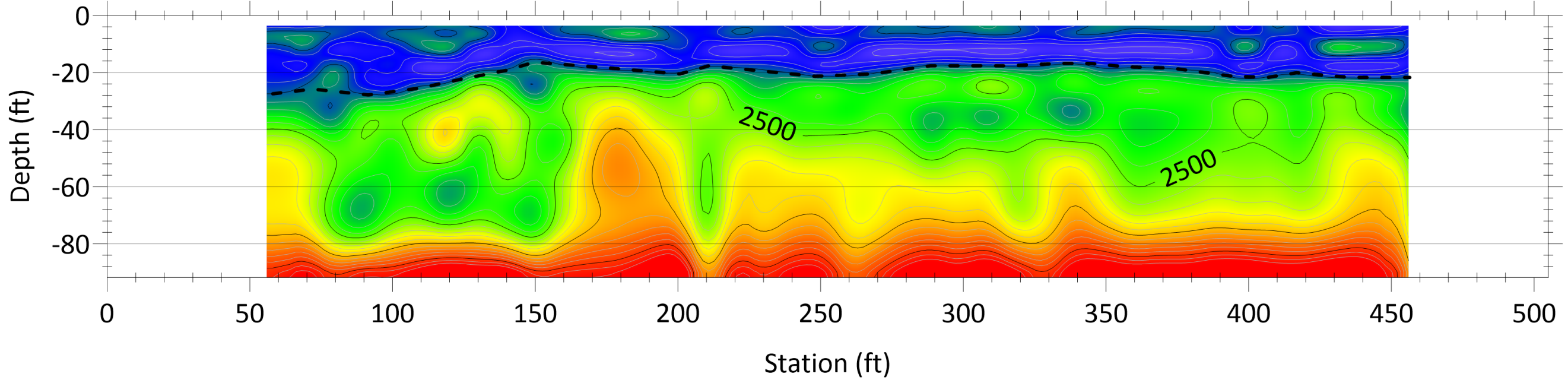
Project Manager:	JEA	Project No.:	18195125
Drawn by:	KJS	Scale:	As Shown
Checked by:	JA	File Name:	map
Approved by:	JEA	Date:	12/11/2019

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

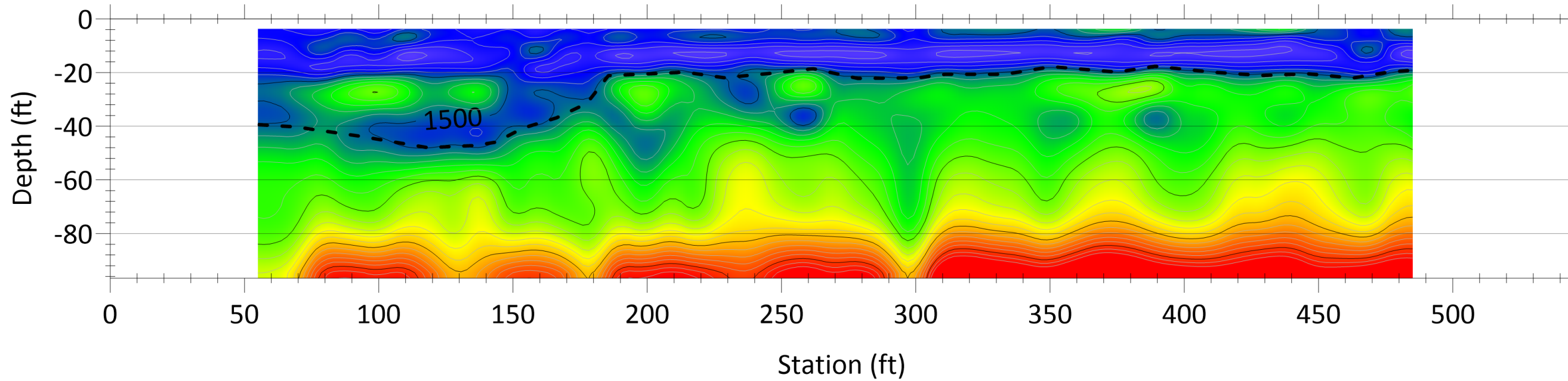
LINE 1 MASW CROSS-SECTIONS
CAYCE HOMES STORMWATER OUTFALL
KIMLEY-HORN & ASSOCIATES, INC.
NASHVILLE, DAVIDSON COUNTY, TN

Approximate Top of Bedrock

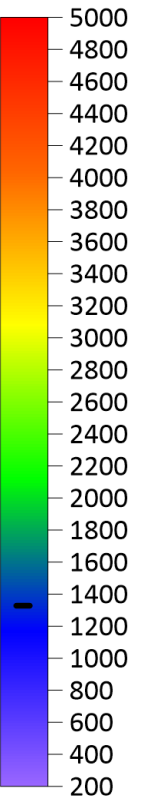
Crutcher Street S 5th St-S 6th St



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

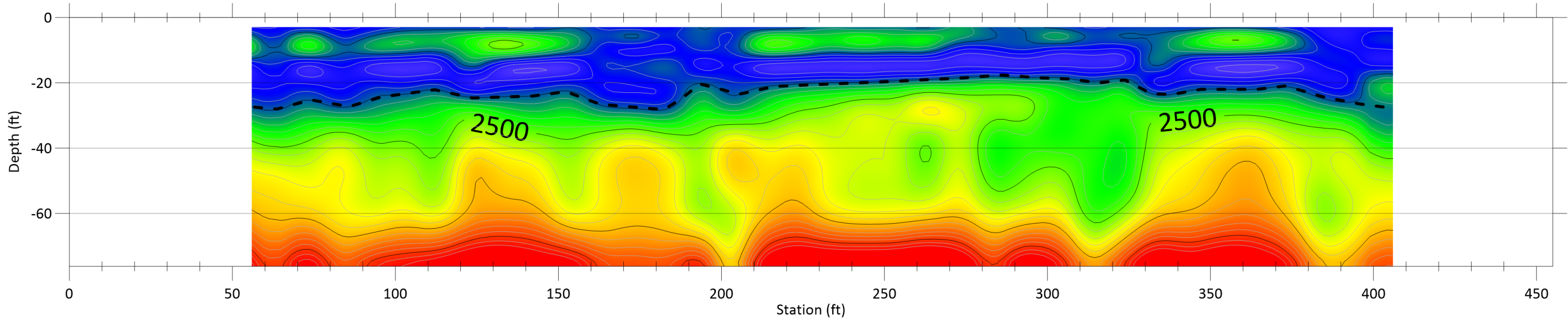
Terracon
Consulting Engineers & Scientists
611 Lunken Park Drive
Cincinnati, Ohio 45226

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

EXHIBIT
3

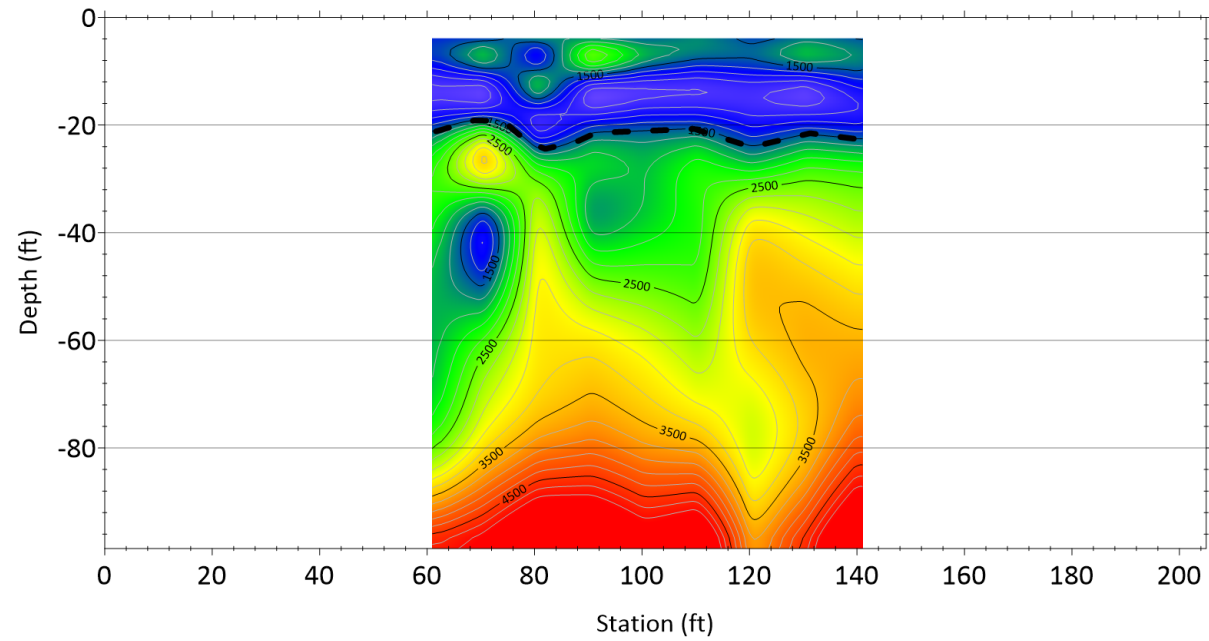
Line 3

S 6th Street Crutcher St-Music City Bikeway

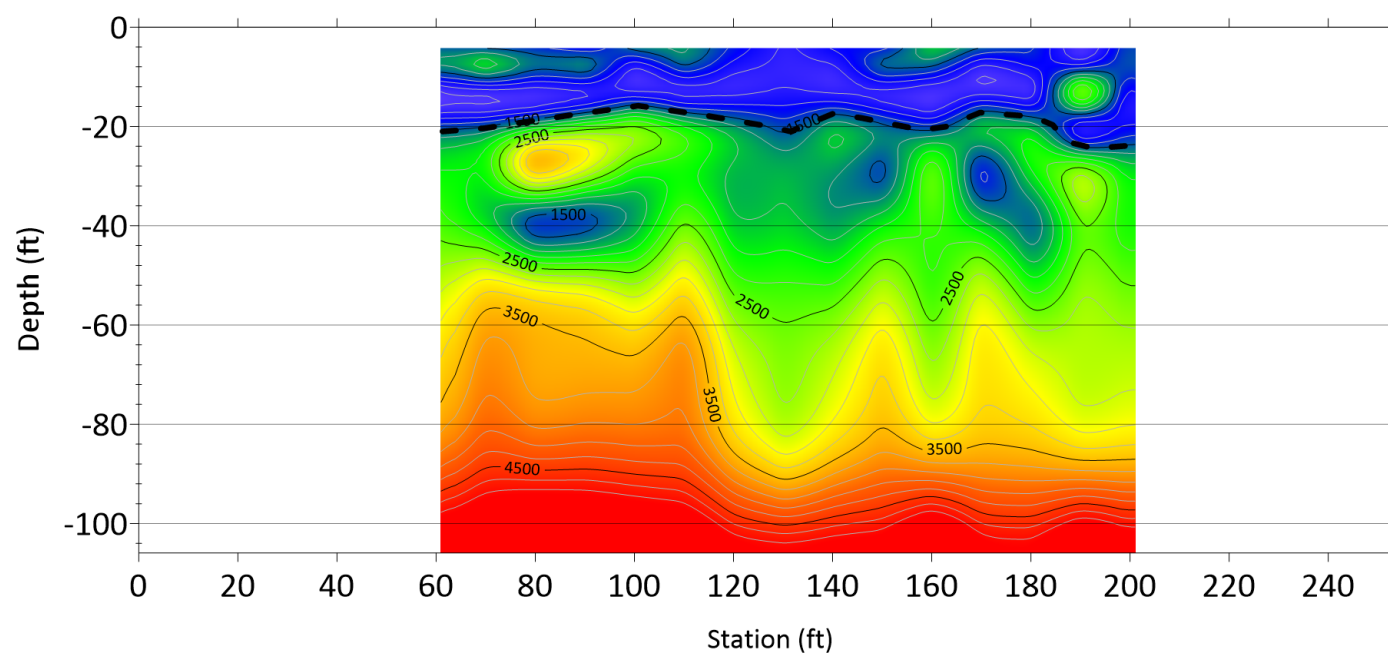


Line 4

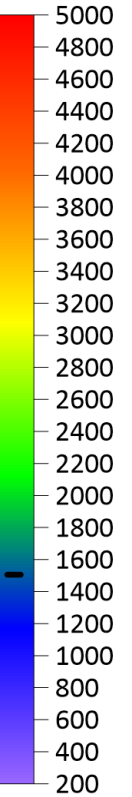
S 6th Street Lenore St-Crutcher St



S 7th Street Lenore St-Crutcher St



Vs ft/s



Competent Rock

Weak to Competent Rock

Soil

Approximate Top of Bedrock

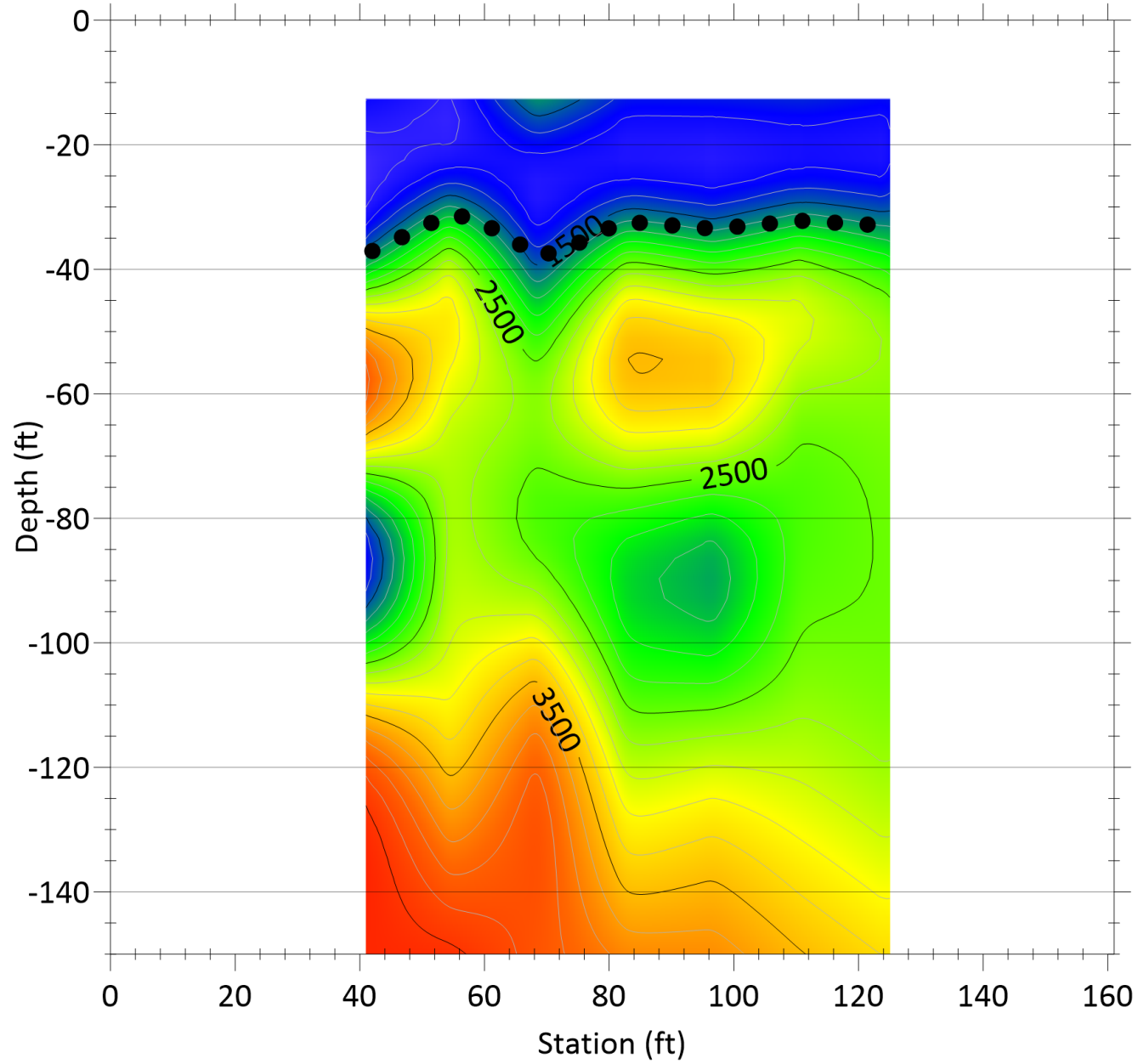
Project Manager:	JEA	Project No.	18195125
Drawn by:	KJS	Scale:	As Shown
Checked by:	JA	File Name:	map
Approved by:	JEA	Date:	12/11/2019

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

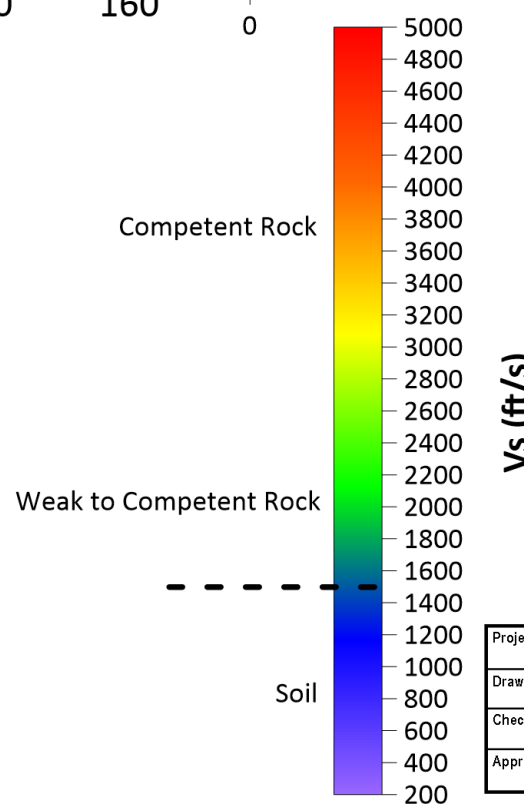
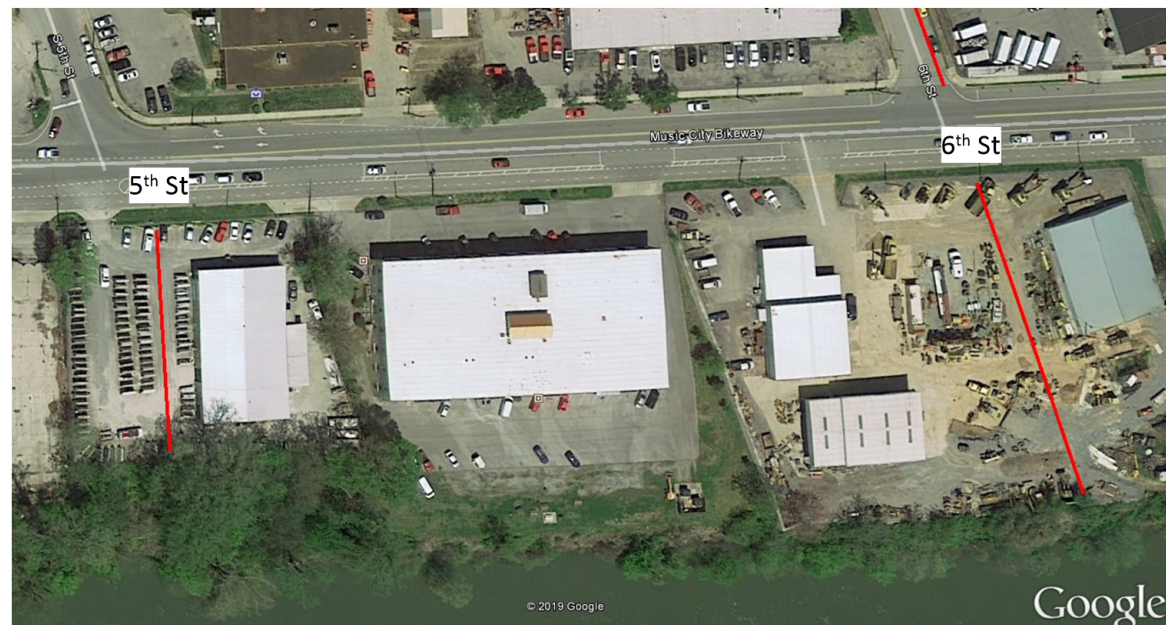
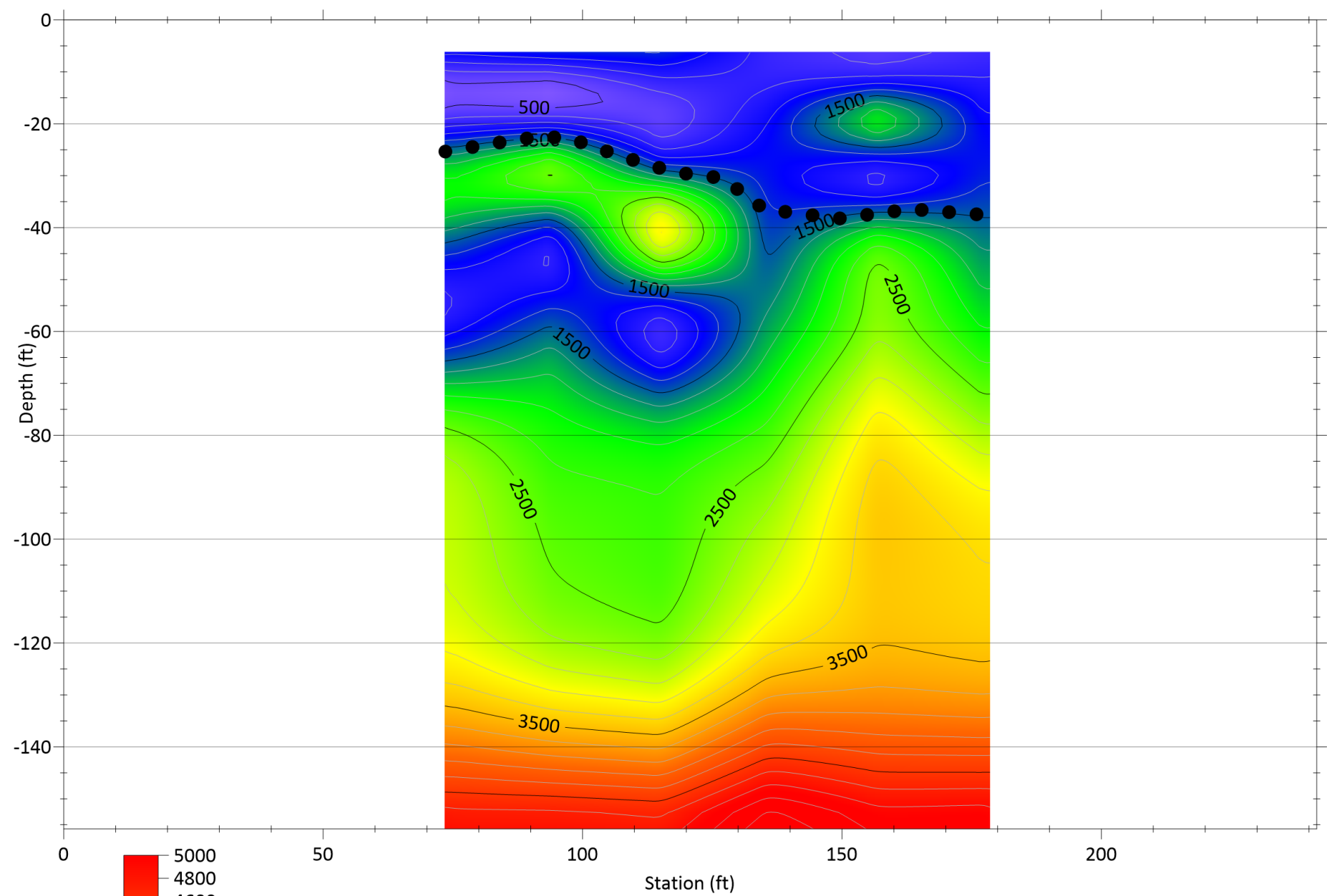
LINES 3 - 4 MASW CROSS-SECTIONS
CAYCE HOMES STORMWATER OUTFALL
KIMLEY-HORN & ASSOCIATES, INC.
NASHVILLE, DAVIDSON COUNTY, TN

EXHIBIT
4

S 5th Street (N-S)



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	DEPTH (Ft.)	WATER LEVEL OBSERVATIONS	SAMPLE TYPE	FIELD TEST RESULTS	WATER CONTENT (%)	ATTERBERG LIMITS	
	See Exploration Plan Latitude: 1° Longitude: 1°						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			
30.0		30		X	4-3-4 N=7			
	Boring Terminated at 30 Feet							

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

EXHIBIT D

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	▽	X				
	Boring Terminated at 30 Feet							

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	N Standard Penetration Test Resistance (Blows/Ft.)
	 Water Level After a Specified Period of Time	(HP) Hand Penetrometer
	 Water Level After a Specified Period of Time	(T) Torvane
	 Cave In Encountered	(DCP) Dynamic Cone Penetrometer
	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.	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.

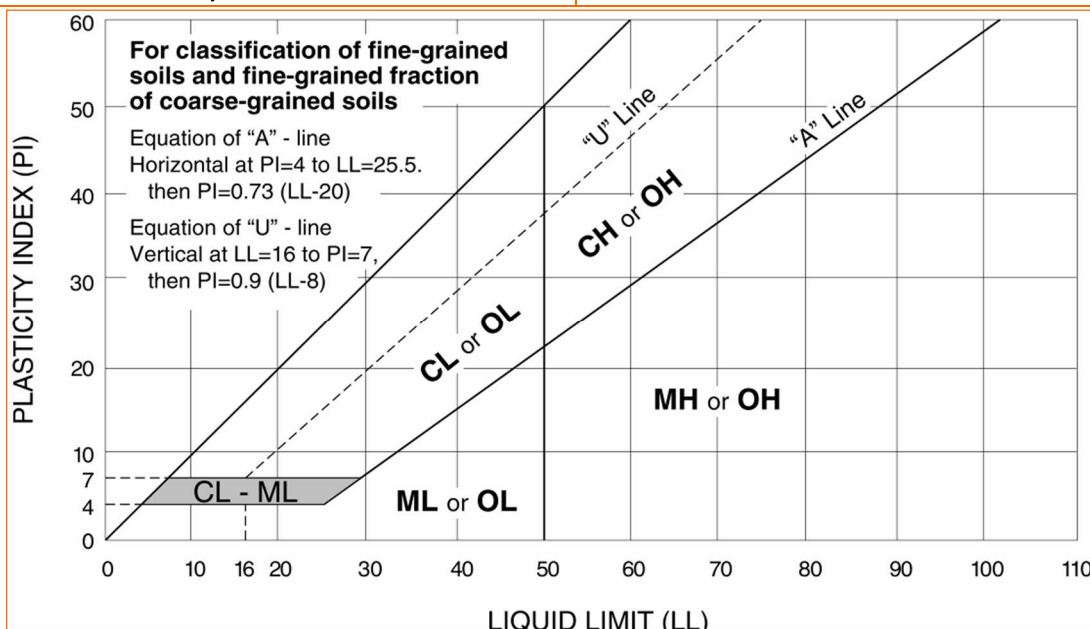


EXHIBIT E

Exhibits to the Agreement

Exhibit A- List of Drawings and Specifications

Exhibit B- Insurance Certificate

Exhibit C- Diversity Business Enterprise (DBE) Forms 2003, 2004

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 E

EXHIBIT A to the AIA Agreement

List of Drawings and Specifications

EXHIBIT E

Sheet List Table	
Sheet Number	Sheet Title
C0-00	COVER
C0-01	GENERAL NOTES
C1-00	OVERALL KEY MAP
C1-01	OVERALL UTILITY LAYOUT
C1-02	DRAINAGE MAP
C1-03	DRAINAGE MAP TABLES
C1-10	DEMOLITION PLAN
C1-11	DEMOLITION PLAN
C1-12	DEMOLITION PLAN
C2-01	STORM PLAN AND PROFILE
C2-01A	STORM PLAN AND PROFILE
C2-02	STORM PLAN AND PROFILE
C2-03	STORM PLAN AND PROFILE
C2-04	STORM PLAN AND PROFILE S - S 7TH ST CONNECTIONS
C2-05	STORM PLAN AND PROFILE S - CRUTCHER ST CONNECTIONS
C2-06	STORM PLAN AND PROFILE S - GLENVIEW DR CONNECTIONS
C2-07	STORM STRUCTURE AND PIPE TABLES
C2-08	PIPE LINING BID ALTERNATE
C3-01	SANITARY SEWER PLAN AND PROFILE
C4-01	WATER PLAN AND PROFILE
C4-02	WATER PLAN AND PROFILE
C4-03	WATER PLAN AND PROFILE
C5-01	ROADWAY TYPICAL SECTIONS
C5-02	ROADWAY PLAN AND PROFILE - GLENVIEW DRIVE
C5-03	ROADWAY PLAN AND PROFILE - S 7TH STREET
C5-04	ROADWAY PLAN AND PROFILE - CRUTCHER STREET
C6-01	S 7TH STREET CROSS SECTIONS
C6-02	CRUTCHER STREET CROSS SECTIONS
C6-03	CRUTCHER STREET CROSS SECTIONS
C6-04	CRUTCHER STREET CROSS SECTIONS
C7-10	EROSION CONTROL PLAN - PHASE 1
C7-11	EROSION CONTROL PLAN - PHASE 1
C7-12	EROSION CONTROL PLAN - PHASE 1
C7-20	EROSION CONTROL PLAN - PHASE 2
C7-21	EROSION CONTROL PLAN - PHASE 2
C7-22	EROSION CONTROL PLAN - PHASE 2
C8-00	STORMWATER DETAILS
C8-01A	WATER AND SEWER DETAILS
C8-01B	WATER AND SEWER DETAILS
C8-02A	ROADWAY DETAILS
C8-02B	ROADWAY DETAILS
C8-02C	ROADWAY DETAILS
C8-03	EROSION CONTROL DETAILS
C9-00	CONSTRUCTION PHASING
C9-01	MAINTENANCE OF TRAFFIC
C9-02	MAINTENANCE OF TRAFFIC

EXHIBIT E

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	March 2022
012200 – Unit Prices	March 2022
012500 – Substitution Procedures	March 2022
012600 – Contract Modification Procedures.....	March 2022
012664 – Weather Delays	March 2022
012900 – Payment Procedures.....	March 2022
013100 – Project Management and Coordination.....	March 2022
013200 – Construction Progress Documentation	March 2022
013300 – Submittal Procedures.....	March 2022
014000 – Quality Requirements.....	March 2022
014200 – References	March 2022
015639 – Temporary Tree and Plant Protection.....	March 2022
017700 – Closeout Procedures.....	March 2022
017839 – Project Record Documents.....	March 2022
330130 – Post-rehabilitation Sanitary Sewer CCTV Inspection.....	March 2022
330140 – Cured-in-place Pipe Lining	March 2022
330151 – Pre-rehabilitation Sanitary Sewer CCTV Inspection.....	March 2022
333520 – Sewer Cleaning for Preparation of Sewer Rehabilitation	March 2022

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
---	------------

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 SPECIFICATIONS, AND SPECIAL PROVISIONS

Standard Specifications for Road and Bridge Construction

January 1, 2021

EXHIBIT E

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	<u>Revision Date</u>
Supplemental Specifications to The Standard Specifications	
Supplemental Specification to Section 100.....	12/15/21
Supplemental Specification to Section 400.....	12/15/21
Supplemental Specification to Section 600.....	12/15/21
Supplemental Specification to Section 700.....	12/15/21
Supplemental Specification to Section 900.....	12/15/21

Project Documents

Cayce Utility Phase 1 Bid Set, by Kimley-Horn and Associates, Inc., dated **March 15, 2022**

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 E

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01 20 00 Measurement and Payment	3	4	Water	Sewer
01 31 00 Coordination and Meetings	2	7	Water	Sewer
01 32 16 Construction Progress Schedule	2	9	Water	Sewer
01 32 33 Photographic Documentation	2	11	Water	Sewer
01 33 00 Submittal Procedures	2	13	Water	Sewer
01 35 23 Health and Safety	3	15	Water	Sewer
01 41 00 Regulatory Requirements	2	18	Water	Sewer
01 45 00 Quality Assurance and Quality Control	3	20	Water	Sewer
01 51 00 Temporary Utilities	2	23	Water	Sewer
01 52 00 Temporary Facilities	2	25	Water	Sewer
01 55 26 Traffic Control	2	27	Water	Sewer
01 57 19 Environmental Controls	5	29	Water	Sewer
01 58 00 Temporary Project Identification	3	34	Water	Sewer
01 66 00 Product Storage and Handling	2	37	Water	Sewer
01 77 00 Closeout Procedures	2	39	Water	Sewer
01 78 39 Project Record Documents	1	41	Water	Sewer
03 30 00 Cast In Place Concrete	11	42	Water	Sewer
31 50 00 Trench Safety Systems	2	53	Water	Sewer
32 10 00 Paving and Roadway Restoration	2	55	Water	Sewer
32 16 13 Concrete Curb and Gutter	1	57	Water	Sewer
32 16 23 Concrete Sidewalk, Driveway, and Median	1	58	Water	Sewer
32 17 26 Detectable Warnings	1	59	Water	Sewer
32 90 00 Landscaping	3	60	Water	Sewer
33 00 01 Water Mains	10	63	Water	
33 05 16.17 Valve Boxes, Meter Boxes, and Vaults	2	73	Water	Sewer
33 11 00.11 Polyvinyl Chloride (PVC) Pipe and Fittings	3	75	Water	Sewer
33 11 13.13 Ductile Iron Pipe and Fittings	5	78	Water	Sewer
33 12 13 Water Service Lines and Connections	3	83	Water	
33 12 16.07 Blow Off Valves	2	86	Water	
33 12 16.09 Pressure Reducing Valves	2	88	Water	
33 12 16.11 Gate Valves	3	90	Water	
33 12 16.17 Tapping Sleeve and Valve	2	93	Water	
33 12 16.19 Air Release and Vacuum Relief Valves	2	95	Water	Sewer
33 12 16.21 Altitude Valves	2	97	Water	
33 12 16.23 Corporation Stops	1	99	Water	
33 12 16.25 Check Valves	2	100	Water	
33 12 19 Fire Hydrant Assembly	5	102	Water	
33 12 33 Water Meters	5	107	Water	
33 13 10 Disinfection of Water Mains	1	112	Water	
33 14 13 Acceptance Testing for Water	3	113	Water	
33 31 00 Gravity Sewer Mains	9	116		Sewer
33 31 13.17 Reinforced Concrete Pipe and Fittings	3	125		Sewer
33 31 51 Bypass Pumping	6	128		Sewer
33 31 61 Acceptance Testing for Sanitary Sewers	11	134		Sewer
33 33 00 Low Pressure Sanitary Sewers	10	145		Sewer
33 33 13 Grinder Pumps	3	155		Sewer
33 34 00 Sewer Force Mains	8	158		Sewer
33 39 13 Manholes	9	166	Water	Sewer

EXHIBIT E

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EXHIBIT E

EXHIBIT B to the AIA Agreement
Insurance Certificate

**Insurance Certificate from the Selected Bidder will be Entered
Here Prior to Execution of the Contract**

EXHIBIT E

EXHIBIT C to the AIA Agreement

**Diversity Business Enterprise (DBE)
Forms 2003, 2004**

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY
Statement of Intent to Utilize Diversity Business Enterprise Firms

DBE FORM 2003 INSTRUCTIONS

THIS FORM MUST BE COMPLETED AND SUBMITTED TO MDHA CONTRACTING AGENT/DBE COORDINATOR PRIOR TO CONTRACT AWARD.

Please Note: The awarded Bidder/Proposer's DBE commitments listed below will be incorporated into the awarded Contract and monitored monthly, including monthly reports that validate DBE utilization and payments with possible on-site audits. After the contract award, changes to this form will require the MDHA Contracting Agent/DBE Coordinator and DBE Program Consultant approval. Requests to change or replace the DBE(s) listed below must use DBE Form 2, Section I, and II to show DBE Outreach efforts to modify or replace the original DBE commitment.

* Company Name, Address, Zip		Telephone:				Contract Title:					Date Submitted:		
DBE Contract Award Information		Ethnic Minority-Owned Businesses/Contract Awards				Women-Owned Businesses/Contract Awards					Non-Minority Businesses/Contract Awards		
DBE Name Address/Telephone	Description of Services	African American Male	Hispanic Male	Asian Dollars Male	Native American Male	African American Female	Hispanic Female	Asian Female	Native American Female	Caucasian Female	SBE Dollars	SDVBE Dollars	DBE % of Contract
Sonny Asphalt -618 Even Street, New Hill, New Jersey	Asphalt Materials	\$275,000.00											
MDHA Contracting Agent Review and Approval Date:	Total DBE Dollars	\$275,000.00											
	DBE Percentages	55%											
MDHA Official Initials:	Summary					Total DBE Dollars		\$275,000.00			Total DBE Percentage		55%

The undersigned swears that the preceding statements and information recorded above are correct and that each of the representations herein set forth is true. "Any misrepresentations will be grounds for contract termination and for initiating actions under Federal or State laws concerning false statements.

Name of Company: _____ Date: _____ Telephone: _____

Signature of Certifying Official of Company: _____ Title: _____

EXHIBIT E

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM

Record of Payments to Diversity Business Enterprise Firms

DBE FORM 2004 PLEASE COMPLETE AND SUBMIT THIS REPORT WITH YOUR MONTHLY APPLICATION for PAYMENT. Use this form to record DBE contract awards, changes to the DBE's original contract, payments to DBEs, and percentage of work completed by each DBE. The information recorded on this form will be evaluated to determine compliance with your contract commitment indicated on "DBE FORM 2003 Statement of Intent to Utilize Diversity Business Enterprise." Please Note: Contracts with DBE participation are subject to monthly monitoring and possible on-site audits. After the contract award, changes to your DBE participation will require the MDHA Contracting Agent/DBE Coordinator approval and MDHA DBE Program Consultant's Review. Failure to submit this report will delay your monthly pay application processing until all information is received.

CONTRACTOR NAME/ADDRESS:					CONTRACT TITLE/NUMBER:			
DBE Payment Report From: (Month,Date,Year)	DBE Payment Report To: (Month,Date,Year)	TOTAL CONTRACT DOLLARS	TOTAL DBE CONTRACTS DOLLARS AWARDED	TOTAL DBE PERCENTAGE	TOTAL DBE DOLLARS PAID	TOTAL DBE PERCENTAGE	COMPANY CONTACT NAME (Person to call with question regarding this report)	TELEPHONE

DBE FORM 2004 SECTION I INSTRUCTIONS: Please provide information on your Diversity Business Enterprise participation in this section. Information recorded in this section should reflect DBE commitments as indicated on your DBE Form 2003. Any changes to the original DBE dollars should also be recorded in this section.

DIVERSITY BUSINESS ENTERPRISE PARTICIPATION/CERTIFICATION STATUS AND TYPE OF GOODS AND SERVICES PROVIDED						DBE DOLLARS AWARDED/CHANGE ORDERS AND CURRENT CONTRACT TOTAL		
DBE COMPANY NAME	CITY/STATE	CERTIFICATION STATUS	EXPIRATION DATE	AGENCY	GOOD AND SERVICES PROVIDED	ORIGINAL CONTRACT	Change Orders Dollars (+/-)	Current DBE Contract Dollars
TOTALS								
PERCENTAGE								

EXHIBIT E

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY DIVERSITY BUSINESS ENTERPRISE PROGRAM
Record of Payments to Diversity Business Enterprise Firms**

DBE FORM 2004 PLEASE COMPLETE AND SUBMIT THIS REPORT WITH YOUR MONTHLY APPLICATION for PAYMENT. Use this form to record DBE contract awards, changes to the DBE's original contract, payments to DBEs, and percentage of work completed by each DBE. The information recorded on this form will be evaluated to determine compliance with your contract commitment indicated on "DBE FORM 2003 Statement of Intent to Utilize Diversity Business Enterprise." Please Note: Contracts with DBE participation are subject to monthly monitoring and possible on-site audits. After the contract award, changes to your DBE participation will require the MDHA Contracting Agent/DBE Coordinator approval and MDHA DBE Program Consultant's Review. Failure to submit this report will delay your monthly pay application processing until all information is received.

CONTRACTOR NAME/ADDRESS:					CONTRACT TITLE/NUMBER:			
DBE Payment Report From: (Month,Date,Year)	DBE Payment Report To: (Month,Date,Year)	TOTAL CONTRACT DOLLARS	TOTAL DBE CONTRACTS DOLLARS AWARDED	TOTAL DBE PERCENTAGE	TOTAL DBE DOLLARS PAID	TOTAL DBE PERCENTAGE	COMPANY CONTACT NAME (Person to call with question regarding this report)	TELEPHONE

DBE FORM 2004 SECTION II INSTRUCTIONS: Please record payments to Diversity Business Enterprise firms in this section.													
DBE Utilization		Ethnic Minority Dollars Paid				Women Dollars Paid					Non-Minority Dollars Paid		REMAINING DOLLARS TO BE PAID
Name	Participation Dollars	African American Male	Hispanic Male	Asian Male	Native American Male	African American Female	Hispanic Female	Asian Male	Native American Female	Other Female	SBE	SDVBE	
SIMS	\$100,000.00												

The undersigned swears that the preceding statements and information recorded above are correct and that each of the representations herein set forth is true. "Any misrepresentations will be grounds for termination of contract and for initiating actions under Federal or State laws concerning false statements.

Name of Company: _____ Date: _____

Signature of Certifying Official of Company: _____ Title: _____

EXHIBIT E

EXHIBIT D to the AIA Agreement

**Standard Form Partial Release of Liens and Final Release of Liens
Contractor**

EXHIBIT E

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: _____

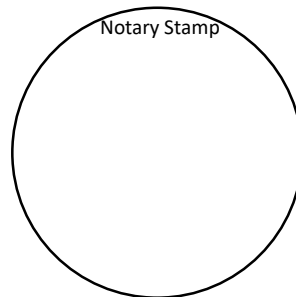


EXHIBIT E

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.

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.

In addition, the undersigned further certifies that all work required under this Contract has been performed in accordance with the terms thereof, and that there are no claims of laborers or mechanics for unpaid wages arising out of the performance of this Contract, and that the wage rates paid by the Contractor and all Subcontractors were in conformity with the contract provisions relating to said wage rates if applicable.

Certified Payroll Applicable: YES: _____ NO: _____

CONTRACTOR: _____

BY: _____
(MUST BE AN OFFICER OF THE COMPANY)

TITLE: _____

DATE: _____

EXHIBIT E

STATE OF: TENNESSEE _____.
COUNTY OF: DAVIDSON _____.

Appeared and subscribed before me, this _____ day of
_____, 20_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

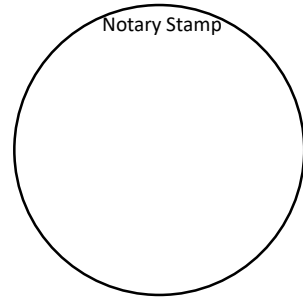


EXHIBIT E

EXHIBIT E to the AIA Agreement

**Standard Form Partial Release of Liens and Final Release of Liens
Subcontractor**

EXHIBIT E

EXHIBIT E 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: _____

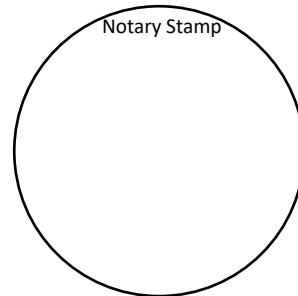


EXHIBIT E

EXHIBIT F

Contractor's License

Contractor's License from the Successful Bidder will be Entered Here Prior to Execution of the Contract

EXHIBIT E

EXHIBIT G

Attachments from RFP

Completed Attachments from the Successful Bidder will be Entered Here Prior to Execution of the Contract