

**QUONSET DEVELOPMENT CORPORATION  
QUONSET BUSINESS PARK**

**Improvements to At-Grade Railroad Crossings – Quonset Development Corporation**  
Compass Circle (DOT 943-189R) - Moscrip Avenue (DOT 943-182T) - Casey Avenue (DOT 943-193F) – Compass Rose Beach (DOT 943-200N) – All American Way (DOT 943-188J) – Romano Vineyard Way (DOT 943-182L)

**ADDENDUM NO. 1**  
Contract Number 2023-013  
RIFAP No.: STP-0203-153  
RIC No.: 2022-CS-061

To all Planholders:

The attention of bidders submitting proposals for the above-referenced project is called to the following Addendum to the Request for Proposals indicated above. The items set forth herein, whether of omission, addition, substitution, or other change, are all included in, and form a part of the proposed Contract Documents for the work as fully and completely as if the same were fully set forth therein.

Inclusion of this Addendum must be acknowledged in the spaces provided in the document entitled “Bidding Documents – Project Manual – Specifications – Improvements to At-Grade Railroad Crossings – Quonset Development Corporation.” Failure to acknowledge any and all addenda in the above specified bid form may be cause for rejection of the bids by the Owner on the grounds that it is not responsive.

This Addendum consists of ONE HUNDRED THIRTY (130) pages total.

The following Documents are included within this Addendum are as follows:

**A.) REVISED DRAWINGS**

- 1.) Drawing G-1 – Cover Sheet: Project title has been revised to reflect grant project title. RIFAP and RIC No.’s have been added.

**B.) REVISED PLANS & SPECIFICATIONS (APPENDED HERETO)**

- 1.) Front Cover: Project title has been revised to reflect grant project title. RIFAP and RIC No.’s have been added.

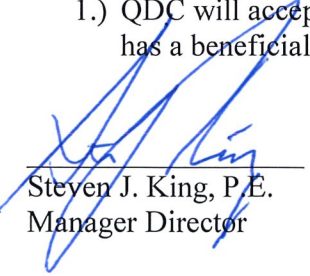
- 2.) Section 00005 – Table of Contents: Section 75675.5810 removed from contract.
- 3.) Section 00410- Bid Proposal: Bid Form and Article 5 revised.
  - a. 22 qty changed to 235
  - b. 31 qty changed to 288
  - c. 52 qty changed to 224
  - d. 61 qty changed to 262
  - e. 68 line item added (changes numbering going forward)
  - f. New line item 84 (old 83) qty changed to 199
  - g. New line item 93 (old 92) qty changed to 249
  - h. 98 line item added (changed numbering going forward)
  - i. 114 line item (old 112) qty changed to 160
  - j. 123 line item (old 121) qty changed to 250
  - k. 140 line item (old 137) qty changed to 297
  - l. 171 line item (old 168) qty changed to 300
  - m. 179 line item (old 175) qty changed to 300
  - n. New line item 186 (numbering changes going forward)
- 4.) Section 00410 – Bid Proposal: Bid Form and Article 7.02 revised.
- 5.) Section 00410 – Bid Proposal: Article 7.04 added.
- 6.) Section 00700 – Standard General Conditions: Article 6.05 removed from contract.
- 7.) Section 01100 – Summary – Article 1.3.C revised.
- 8.) Section 75675.2216 – Furnish and Install New Jointed Rail: Basis of Payment changed to Linear Foot.
- 9.) 75675.5600 – Install Compromise Rail Joint Assembly: Title of Section Changed to be consistent with Bid Form.

C.) OTHER DOCUMENTS

- 1.) Questions and Responses
- 2.) Sign-In Sheet for Pre-Bid Meeting held July 20, 2023

D.) CLARIFICATION

- 1.) QDC will accept rail which exceeds the specified weight of 115 lb. if the substitution has a beneficial impact on the schedule and cost of the project.

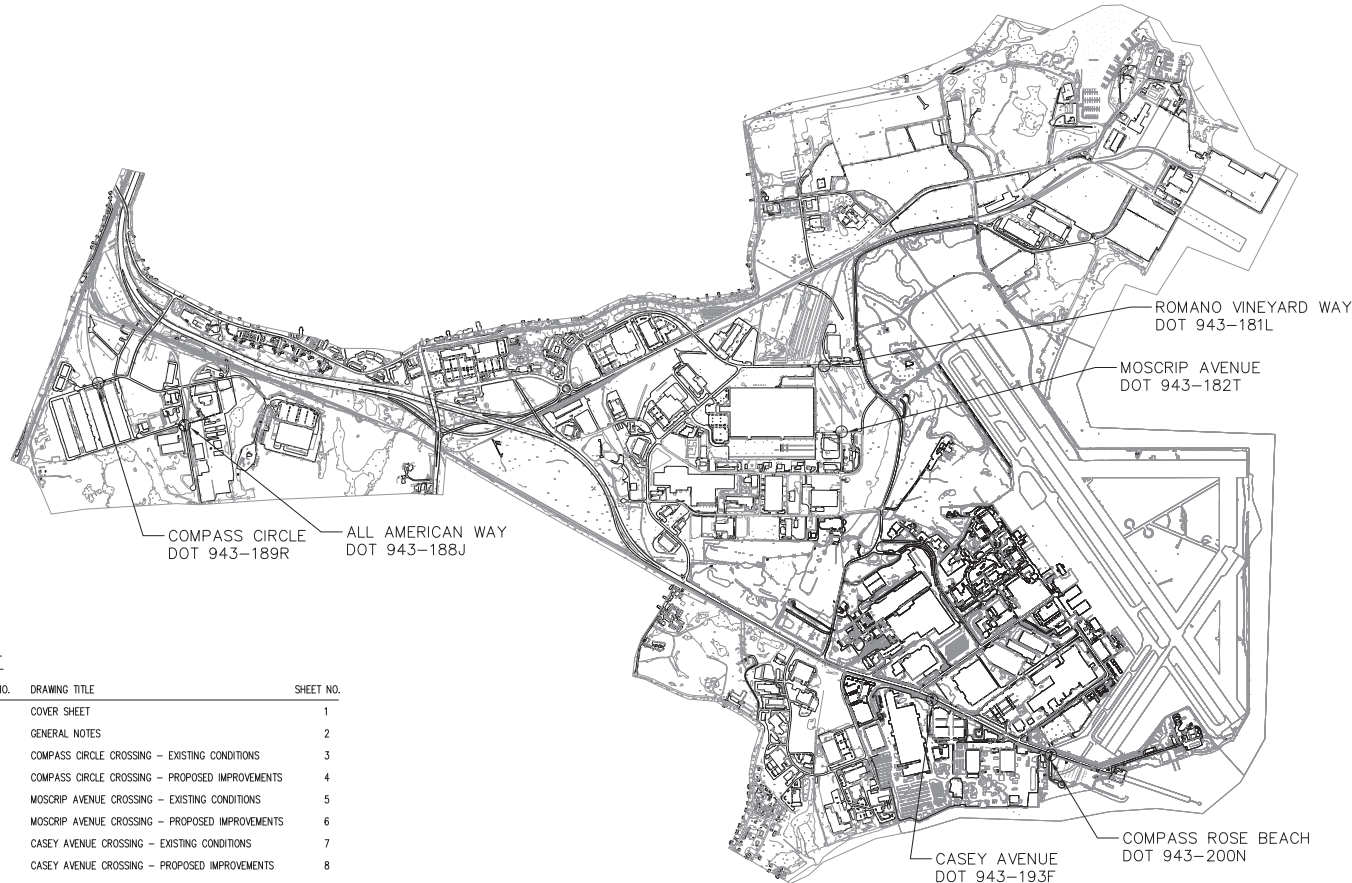
  
Steven J. King, P.E.  
Manager Director

# IMPROVEMENTS TO AT-GRADE RAILROAD CROSSINGS QUONSET DEVELOPMENT CORPORATION NORTH KINGSTOWN, RHODE ISLAND

QDC CONTRACT NO. 2023-013  
RIFAP No.: STP-0203-153  
RIC No.: 2022-CS-061



Technical Support Services  
30 Enterprise Drive  
North Kingstown, RI 02882  
Tel: (401) 295-0044  
Fax: (401) 268-9885

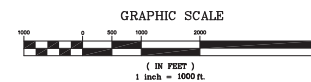


## DRAWING LIST

DWG. NO.	REV. NO.	DRAWING TITLE	SHEET NO.
G-1	4	COVER SHEET	1
G-2	1	GENERAL NOTES	2
C-1	0	COMPASS CIRCLE CROSSING - EXISTING CONDITIONS	3
C-2	3	COMPASS CIRCLE CROSSING - PROPOSED IMPROVEMENTS	4
C-3	0	MOSCRIP AVENUE CROSSING - EXISTING CONDITIONS	5
C-4	2	MOSCRIP AVENUE CROSSING - PROPOSED IMPROVEMENTS	6
C-5	0	CASEY AVENUE CROSSING - EXISTING CONDITIONS	7
C-6	3	CASEY AVENUE CROSSING - PROPOSED IMPROVEMENTS	8
C-7	0	COMPASS ROSE BEACH CROSSING - EXISTING CONDITIONS	9
C-8	3	COMPASS ROSE BEACH CROSSING - PROPOSED IMPROVEMENTS	10
C-9	1	ALL AMERICAN WAY CROSSING - EXISTING CONDITIONS	11
C-10	2	ALL AMERICAN WAY CROSSING - PROPOSED CONDITIONS	12
C-11	1	ROMANO VINEYARD WAY CROSSING - EXISTING CONDITIONS	13
C-12	2	ROMANO VINEYARD WAY CROSSING - PROPOSED CONDITIONS	14
C-13	2	DETAILS	15
C-14	1	TRAFFIC MANAGEMENT DETAILS	16

SEPTEMBER 9, 2022

**FOR RIDOT  
REVIEW ONLY**



4	PROJECT TITLE, RIFAP & RIC No.'s	09/09/2022	RPH
3	EXISTING RAIL SIZE, STOP BAR AT CASEY	06/01/2022	RPH
2	RESPONSE TO MSP COMMENTS DATED 06/09/22	06/01/2022	RPH
1	ADDED TRIP AND PHOTOGRAPHS	06/01/2022	GJC
NO.	REVISION	DATE	APP.
DESIGN BY:	RPH	CHECKED BY:	GJC
DRAWN BY:	RPH	ENGINEER	
SCALE	1"= 1000'	PROJECT NO.:	N/A
CONTRACT NO.: 2023-013			
FILE NAME:			
APPROVED			
GREGORY J. COREN, P.E. Q.D.C. MANAGER OF ENGINEERING DATE: 09-09-2022			

DRAWING TITLE	
<b>COVER SHEET</b>	
Quonset Business Park®	

SHEET NO.	DRAWING NO.
<b>1</b>	<b>G-1</b>
OF 16 SHEETS	

**BIDDING DOCUMENTS  
PROJECT MANUAL  
SPECIFICATIONS**

***Improvements to At-Grade Railroad  
Crossings – Quonset Development  
Corporation***

***Compass Circle (DOT # 943-189R)***

***Moscip Avenue (DOT # 943-182T)***

***Casey Avenue (DOT # 943-193F)***

***Compass Rose Beach Access (DOT # 943-200N)***

***All American Way (DOT # 943-188J)***

***Romano Vineyard Way (DOT # 943-182T)***

**at**

**Quonset Business Park**

**North Kingstown, Rhode Island**

**Contract Number 2023-013**

**RIFAP No.: STP-0203-153**

**RIC No.: 2022-CS-061**

**July 2023**



***PLANNING & DEVELOPMENT***

**Section 00005**  
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**Section 00410**  
**Bid Proposal**  
**(Addendum No. 1)**

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### Bid Proposals to Include:

- Required Contract Provisions for Federal-Aid Construction Projects including all listed forms
- Bid Bond (Section 00430)
- Qualifications Statement (00451)

## ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Quonset Development Corporation  
Quonset Business Park  
95 Cripe Street  
North Kingstown, RI 02852

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

1.03 IMPORTANT NOTICE TO BIDDERS: The Bid Form, including the “Quonset Development Corporation/Rhode Island State Equal Opportunity Office General Contractor Compliance Certificate and Agreement”, is comprised of 7 pages. Please ensure that a complete proposal is submitted for consideration. Failure to do so may result in rejection of your bid.

## ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

## ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions, if any, at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent

to the Site that have been identified in the Contract Documents, especially with respect to Technical Data in such reports and drawings.

- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

##### **4.01 Bidder certifies that:**

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price. Price includes furnishing and installing.

ITEM NO.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
GENERAL REQUIREMENTS					
1	General Conditions	1	LS		
2	936.0100 – Mobilization & Demobilization	1	LS		
3	914.5010 – Flagpersons	1	allowance	\$6,000.00	\$6,000.00
4	937.0200 – Maintenance & Movement of Traffic (Traffic Protection)/Traffic Management Plan (TMP)	1	LS		
5	Police Details	1	allowance	\$15,000.00	\$15,000.00
6	Erosion & Sediment Control, Stormwater Management	1	LS		
TOTAL GENERAL REQUIRMENTS (Total Bid Items 1 through 6)				\$	
COMPASS CIRCLE CROSSING (DOT 943-198R)					
7	201.0321 – Clearing and Grubbing	95	SY		
8	201.0409 – R&D Flexible Pavement	765	SY		
9	Milling & Overlay Pavement	113	SY		
10	202.0300 – Unclassified Excavation	145	CY		
11	207.10 – Furnish & Install Geotextile Fabric for Underdrain	363	SY		

12	401.1000 – Class 19.0 HMA	166	TON		
13	401.2000 – Class 12.5 HMA	83	TON		
14	403.0300 – Class 9.5 HMA	83	TON		
15	403.3000 – Asphalt Emulsion Tack Coat	2300	SY		
16	703.0608 – 8" Perforated Corrugated Polyethylene Pipe M252 Underdrain with Filter Material STD 1.1.0	250	LF		
17	Core Manhole, Grout Annular Space	1	LS		
18	932.0200 – Full-Depth Saw Cut of Bit. Pavement	125	LF		
19	75675.0101 – Track Removal	138	TF		
20	75675.0103 – Grade Crossing Surface Removal	96	TF		
21	75675.1500 – Furnish & Place Ballast	180	TON		
22	75675.2216 – Furnish & Install Welded Rail (115RE)	235	TF		
23	75675.3000 – Remove, Furnish & Install Wood Cross Ties (Outside of Crossing)	28	EACH		
24	75675.3100 – Furnish & Install Wood Cross Timbers 7" x 9" x 10' (Within Crossing)	65	EACH		
25	75675.5000 – Furnish & Install Tie Plates	138	EACH		
26	75675.5100 – Furnish & Install Rail Anchors	45	EACH		
27	75675.5200 – Furnish & Install Bolt Sets	10	EACH		
28	75675.5600 – Compromise Rail Joint Assembly	4	EACH		
29	75675.8100 – Furnish & Install Full Depth Rubber Grade Crossing Panels	96	TF		

30	75675.8300 – Gaging	138	TF		
31	75675.8500 – Raise, Align & Surface Track	288	TF		
32	L01.0104 – Plantable Soil 4 Inches Deep	100	SY		
33	L02.0101 – General Highway Seeding (Type 1)	100	SY		
34	T20.2404 – 4 Inch White Epoxy Pavement Marking Paint	180	LF		
35	T20.2424 – 24 Inch White Epoxy Pavement Marking Paint	50	LF		
36	T20.2804 – 4 Inch Yellow Epoxy Pavement Marking Paint	150	LF		
37	Railroad Crossing Pavement Marking (White Epoxy)	2	EACH		
TOTAL COMPASS CIRCLE CROSSING (Total Bid Items 7 through 37)				\$	
MOSCRIP AVENUE CIRCLE CROSSING (DOT 943-182T)					
38	201.0321 – Clearing and Grubbing	317	SY		
39	201.0409 – R&D Flexible Pavement	575	SY		
40	Milling & Overlay Pavement	159	SY		
41	202.0300 – Unclassified Excavation	136	CY		
42	207.10 – Furnish & Install Geotextile Fabric for Underdrain	384	SY		
43	401.1000 – Class 19.0 HMA	125	TON		
44	401.2000 – Class 12.5 HMA	63	TON		
45	403.0300 – Class 9.5 HMA	63	TON		
46	403.3000 – Asphalt Emulsion Tack Coat	1734	SY		
47	703.0608 – 8” Perforated Corrugated Polyethylene Pipe M252 Underdrain with Filter Material STD 1.1.0	346	LF		

48	932.0200 – Full-Depth Saw Cut of Bit. Pavement	75	LF		
49	75675.0101 – Track Removal	112	TF		
50	75675.0103 – Grade Crossing Surface Removal	36	TF		
51	75675.1500 – Furnish & Place Ballast	146	TON		
52	75675.2216 – Furnish & Install Welded Rail (115RE)	224	TF		
53	75675.3000 – Remove, Furnish & Install Wood Cross Ties (Outside of Crossing)	50	EACH		
54	75675.3100 – Furnish & Install Wood Cross Timbers 7" x 9" x 10' (Within Crossing)	24	EACH		
55	75675.5000 – Furnish & Install Tie Plates	112	EACH		
56	75675.5100 – Furnish & Install Rail Anchors	28	EACH		
57	75675.5200 – Furnish & Install Bolt Sets	10	EACH		
58	75675.5800 – Furnish & Install Factory Assembled Bonded Insulated Joint	4	EACH		
59	75675.8100 – Furnish & Install Full Depth Rubber Grade Crossing Panels	36	TF		
60	75675.8300 – Gaging	112	TF		
61	75675.8500 – Raise, Align & Surface Track	262	TF		
62	L01.0104 – Plantable Soil 4 Inches Deep	317	SY		
63	L02.0101 – General Highway Seeding (Type 1)	317	SY		
64	T20.2404 – 4 Inch White Epoxy Pavement Marking Paint	404	LF		

65	T20.2424 – 24 Inch White Epoxy Pavement Marking Paint	30	LF		
66	T20.2804 – 4 Inch Yellow Epoxy Pavement Marking Paint	454	LF		
67	Railroad Crossing Pavement Marking (White Epoxy)	2	EA		
68	Reconnect and Test Crossing Signal	1	LS		
TOTAL MOSCRIP AVENUE CROSSING (Total Bid Items 38 through 68)				\$	
CASEY AVENUE CROSSING (DOT 943-193F)					
69	201.0321 – Clearing and Grubbing	117	SY		
70	201.0409 – R&D Flexible Pavement	205	SY		
71	Milling & Overlay Pavement	36	SY		
72	Remove and Dispose Existing Rubber Gauge Assembly	66	TF		
73	202.0300 – Unclassified Excavation	107	CY		
74	207.10 – Furnish & Install Geotextile Fabric for Underdrain	249	SY		
75	401.1000 – Class 19.0 HMA	45	TON		
76	401.2000 – Class 12.5 HMA	22	TON		
77	403.0300 – Class 9.5 HMA	22	TON		
78	403.3000 – Asphalt Emulsion Tack Coat	615	SY		
79	703.0608 – 8" Perforated Corrugated Polyethylene Pipe M252 Underdrain with Filter Material STD 1.1.0	181	LF		
80	Core Manhole, Grout Annular Space	1	LS		
81	932.0200 – Full-Depth Saw Cut of Bit. Pavement	125	LF		
82	75675.0101 – Track Removal	162	TF		
83	75675.1500 – Furnish & Place Ballast	130	TON		

84	75675.2216 – Furnish & Install Welded Rail (115RE)	199	LF		
85	75675.3000 – Remove, Furnish & Install Wood Cross Ties (Outside of Crossing)	22	EACH		
86	75675.3100 – Furnish & Install Wood Cross Timbers 7” x 9” x 10’ (Within Crossing)	44	EACH		
87	75675.5000 – Furnish &Install Tie Plates	99	EACH		
88	75675.5100 – Furnish & Install Rail Anchors	25	EACH		
89	75675.5200 – Furnish & Install Bolt Sets	10	EACH		
90	75675.5800 – Furnish & Install Factory Assembled Bonded Insulated Joint	4	EACH		
91	75675.8100 – Furnish & Install Full Depth Rubber Grade Crossing Panels	66	TF		
92	75675.8300 – Gaging	99	TF		
93	75675.8500 – Raise, Align & Surface Track	249	TF		
94	L01.0104 – Plantable Soil 4 Inches Deep	117	SY		
95	L02.0101 – General Highway Seeding (Type 1)	117	SY		
96	T20.2424 – 24 Inch White Epoxy Pavement Marking Paint	25	LF		
97	Railroad Crossing Pavement Marking (White Epoxy)	1	EA		
98	Reconnect and Test Crossing Signal	1	LS		
TOTAL CASEY AVENUE CROSSING (Total Bid Items 69 through 98)				\$	
COMPASS ROSE BEACH CROSSING (DOT 943-200N)					
99	201.0321 – Clearing and Grubbing	73	SY		

100	201.0409 – R&D Flexible Pavement	60	SY		
101	Milling & Overlay Pavement	31	SY		
102	202.0300 – Unclassified Excavation	71	CY		
103	207.10 – Furnish & Install Geotextile Fabric for Underdrain	113	SY		
104	401.1000 – Class 19.0 HMA	13	TON		
105	401.2000 – Class 12.5 HMA	7	TON		
106	403.0300 – Class 9.5 HMA	7	TON		
107	403.3000 – Asphalt Emulsion Tack Coat	180	SY		
108	703.0608 – 8" Perforated Corrugated Polyethylene Pipe M252 Underdrain with Filter Material STD 1.1.0	120	LF		
109	Core Manhole, Grout Annular Space	1	LS		
110	932.0200 – Full-Depth Saw Cut of Bit. Pavement	53	LF		
111	75675.0101 – Track Removal	100	TF		
112	75675.0103 – Grade Crossing Surface Removal	30	TF		
113	75675.1500 – Furnish & Place Ballast	130	TON		
114	75675.2216 – Furnish & Install Welded Rail (115RE)	160	TF		
115	75675.3000 – Remove, Furnish & Install Wood Cross Ties (Outside of Crossing)	47	EACH		
116	75675.3100 – Furnish & Install Wood Cross Timbers 7" x 9" x 10' (Within Crossing)	20	EACH		
117	75675.5000 – Furnish & Install Tie Plates	100	EACH		
118	75675.5100 – Furnish & Install Rail Anchors	25	EACH		

119	75675.5200 – Furnish & Install Bolt Sets	10	EACH		
120	75675.5600 – Compromise Rail Joint Assembly	4	EACH		
121	75675.8100 – Furnish & Install Full Depth Rubber Grade Crossing Panels	30	TF		
122	75675.8300 – Gaging	100	TF		
123	75675.8500 – Raise, Align & Surface Track	250	TF		
124	L01.0104 – Plantable Soil 4 Inches Deep	73	SY		
125	L02.0101 – General Highway Seeding (Type 1)	73	SY		
126	T20.2424 – 24 Inch White Epoxy Pavement Marking Paint	25	LF		
127	Railroad Crossing Pavement Marking (White Epoxy)	1	EA		
TOTAL COMPASS ROSE BEACH CROSSING (Total Bid Items 99 through 127)				\$	
ALL AMERICAN WAY CROSSING (DOT 943-188J)					
128	201.0321 – Clearing and Grubbing	270	SY		
129	201.0409 – R&D Flexible Pavement	910	SY		
130	Milling & Overlay Pavement	103	SY		
131	202.0300 – Unclassified Excavation	55	CY		
132	401.1000 – Class 19.0 HMA	190	TON		
133	401.2000 – Class 12.5 HMA	95	TON		
134	403.0300 – Class 9.5 HMA	95	TON		
135	403.3000 – Asphalt Emulsion Tack Coat	2700	SY		
136	932.0200 – Full-Depth Saw Cut of Bit. Pavement	90	LF		

137	75675.0101 – Track Removal	148	TF		
138	75675.0103 - Grade Crossing Surface Removal	78	TF		
139	75675.1500 – Furnish & Place Ballast	192	TON		
140	75675.2216 – Furnish & Install Welded Rail (115RE)	297	LF		
141	75675.3000 – Remove, Furnish & Install Wood Cross Ties (Outside of Crossing)	47	EACH		
142	75675.3100 – Furnish & Install Wood Cross Timbers 7" x 9" x 10' (Within Crossing)	52	EACH		
143	75675.5000 – Furnish & Install Tie Plates	148	EACH		
144	75675.5100 – Furnish & Install Rail Anchors	37	EACH		
145	75675.5200 – Furnish & Install Bolt Sets	10	EACH		
146	75675.5600 – Compromise Rail Joint Assembly	4	EACH		
147	75675.8100 – Furnish & Install Full Depth Rubber Grade Crossing Panels	78	TF		
148	75675.8300 – Gaging	148	TF		
149	75675.8500 – Raise, Align & Surface Track	148	TF		
150	L01.0104 – Plantable Soil 4 Inches Deep	270	SY		
151	L02.0101 – General Highway Seeding (Type 1)	270	SY		
152	T20.2404 – 4 Inch White Epoxy Pavement Marking Paint	452	LF		
153	T20.2424 – 24 Inch White Epoxy Pavement Marking Paint	75	LF		

154	T20.2804 – 4 Inch Yellow Epoxy Pavement Marking Paint	260	LF		
155	Railroad Crossing Pavement Marking (White Epoxy)	2	EA		
TOTAL ALL AMERICAN WAY CROSSING (Total Bid Items 128 through 155)				\$	
ROMANO VINEYARD WAY CROSSING (DOT 943-182T)					
156	201.0321 – Clearing and Grubbing	650	SY		
157	201.0409 – R&D Flexible Pavement	172	SY		
158	Milling & Overlay Pavement	79	SY		
159	202.0300 – Unclassified Excavation	150	CY		
160	207.10 – Furnish & Install Geotextile Fabric for Underdrain	400	SY		
161	401.1000 – Class 19.0 HMA	40	TON		
162	401.2000 – Class 12.5 HMA	20	TON		
163	403.0300 – Class 9.5 HMA	20	TON		
164	403.3000 – Asphalt Emulsion Tack Coat	516	SY		
165	703.0608 – 8" Perforated Corrugated Polyethylene Pipe M252 Underdrain with Filter Material STD 1.1.0	140	LF		
166	Core Manhole, Grout Annular Space	1	LS		
167	932.0200 – Full-Depth Saw Cut of Bit. Pavement	60	LF		
168	75675.0101 – Track Removal	150	TF		
169	75675.0103 – Grade Crossing Surface Removal	30	TF		
170	75675.1500 – Furnish & Place Ballast	195	TON		
171	75675.2216 – Furnish & Install Welded Rail (115RE)	300	LF		

172	75675.3000 – Remove, Furnish & Install Wood Cross Ties (Outside of Crossing)	64	EACH		
173	75675.3100 – Furnish & Install Wood Cross Timbers 7" x 9" x 10' (Within Crossing)	36	EACH		
174	75675.5000 – Furnish & Install Tie Plates	150	EACH		
175	75675.5100 – Furnish & Install Rail Anchors	40	EACH		
176	75675.5200 – Furnish & Install Bolt Sets	10	EACH		
177	75675.8100 – Furnish & Install Full Depth Rubber Grade Crossing Panels	54	TF		
178	75675.8300 – Gaging	150	TF		
179	75675.8500 – Raise, Align & Surface Track	300	TF		
180	L01.0104 – Plantable Soil 4 Inches Deep	650	SY		
181	L02.0101 – General Highway Seeding (Type 1)	650	SY		
182	T20.2404 – 4 Inch White Epoxy Pavement Marking Paint	30	LF		
183	T20.2424 – 24 Inch White Epoxy Pavement Marking Paint	30	LF		
184	T20.2804 – 4 Inch Yellow Epoxy Pavement Marking Paint	60	LF		
185	Railroad Crossing Pavement Marking (White Epoxy)	2	EA		
186	Reconnect and Test Crossing Signal	1	LS		
TOTAL ROMANO VINEYARD WAY BEACH CROSSING (Total Bid Items 156 through 186)				\$	
<b>TOTAL PROJECT SUM BID ITEMS 1 through 186:</b>				\$	

## 5.02 DEDUCT ALTERNATIVES

There are no DEDUCT ALTERNATIVES for this Bid.

## ARTICLE 6 – BASIS OF CONTRACT AWARD

- 6.01 The Basis of Award will be determined by the available funding for the project which will be declared at the time and date stipulated for Bid Closing and immediately prior to opening any bids received.
- 6.02 If responsive Base Bids are received within the available project funding, all Bidders will be first evaluated for award on the Base Bid.
- 6.03 If the lowest responsive Base Bid exceeds the available project funding, the Owner will evaluate the DEDUCT ALTERNATIVES (if applicable). At that point, the Owner will select the lowest responsive Bidder, with the inclusion of accepted DEDUCT ALTERNATIVES, that is within the available funding for the project.

## ARTICLE 7 – TIME OF COMPLETION

- 7.01 Bidder agrees that Milestone 1, all work associated with the Romano Vineyard Way crossing, will be substantially complete prior to September 30, 2023.



- 7.02 Bidder agrees that all remaining Work will be substantially complete as provided in Paragraph 4.01 of the General Conditions prior to December 1, 2023, and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions prior to December 31, 2023.

- 7.03 Bidder accepts the provisions of the Agreement as to liquidated damages.



- 7.04 QDC and successful Bidder may negotiate the above dates based upon the date Notice to Proceed is issued and lead times for items such as, but not limited to, rubberized panels for the crossings and bonded insulated joints.

## ARTICLE 8 – ATTACHMENTS TO THIS BID

- 8.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Contract Provisions for Federal-Aid Construction Projects
- B. Bid Bond (Section 00430)
- C. Qualifications Statement (Section 00451)
- D. Public Bid Copy

## ARTICLE 9 – DEFINED TERMS

- 9.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

## ARTICLE 10 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

---

By:

[Signature] \_\_\_\_\_

[Printed name] \_\_\_\_\_

*(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

[Signature] \_\_\_\_\_

[Printed name] \_\_\_\_\_

Title: \_\_\_\_\_

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

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Contact Name and e-mail address: \_\_\_\_\_

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THIS  
DEPARTMENT OF ADMINISTRATION  
RI STATE EQUAL OPPORTUNITY OFFICE  
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE OF COMPLIANCE

The undersigned contractor agrees and certified that it is in compliance with applicable requirements of Federal Executive Order #11246, as amended - Certification of Non-Segregated Facilities, State of Rhode Island General Law 28-5.1-10, and other regulations as issued by the Rhode Island Economic Development Corporation, as set forth below, or will take steps to comply with such requirements prior to acceptance of any contract from the State of Rhode Island.

EQUAL OPPORTUNITY CLAUSE

- A. The contractor will not discriminate against any employee or applicant for employment because race, age, handicap/disability, color, religion, sex, national origin or veteran status. The contractor will take affirmative action to ensure that applicants for employment and employees are treated equitably, without regard to their race, age, handicap/disability, color, religion, sex, national origin or veteran status.
- B. The contractor will, in all solicitations or advertisements for employees, placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, handicap/disability, color, religion, sex, national origin or veteran status.
- C. The contractor agrees to obtain Compliance Certifications from proposed subcontractors prior to the award of subcontractors exceeding \$10,000.00.

NOTICE TO ALL CONTRACTORS


If it should be determined by the RI State Equal Opportunity Office that any contractor doing business with the State of Rhode Island is guilty of non-compliance with the provisions of this document, said contractor will be given two written warnings, if the said contractor does not comply immediately after the second written notice, then the State Equal Opportunity Office will notify the Rhode Island Economic Development Corporation, who shall have the authority to have the contract revoked and all contractual obligations of the State dealing with the contract in question will be null and void.

SIGNATURE AND TITLE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

COMPANY: \_\_\_\_\_ DATE: \_\_\_\_\_

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Furnish and Install Full Depth Rubber Panels	75675.8100
Gaging Track	75675.8300
Raise, Align and Surface Track	75675.8500

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT (Addendum No. 1)

Prepared by



Issued and Published Jointly by



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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

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

has declined to address. A demand for money or services by a third party is not a Claim.

- 11) *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- 12) *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
- 13) *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
- 14) *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
- 15) *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
- 16) *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
- 17) *Cost of the Work*—See Paragraph 13.01 for definition.
- 18) *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- 19) *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
- 20) *Engineer*—The individual or entity named as such in the Agreement.
- 21) *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- 22) *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
- 23) *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

- 24) *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
- 25) *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
- 26) *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
- 27) *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
- 28) *Owner*— Quonset Development Corporation, being the entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
- 29) *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
- 30) *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
- 31) *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Specifications. The contents of the Project Manual may be bound in one or more volumes.
- 32) *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
- 33) *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- 34) *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
- 35) *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
- 36) *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

- 37) *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
- 38) *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- 39) *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- 40) *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
- 41) *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
- 42) *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
- 43) *Supplier*—A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 44) *Technical Data*—Those items expressly identified as Technical Data in the General Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
- 45) *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- 46) *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 47) *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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

#### 1.02 *Additional Defined Terms*

- 1) The terms “approved”, “required”, and “as directed” refer to and indicate the work or materials that may be approved, required or directed by the Engineer acting as the agent of the Owner.
- 2) The term “building code” and the term “code” refer to regulations of governmental agencies having jurisdiction.
- 3) The term “Limit(s) of Work” means the peripheral boundary line of the area of land as shown upon the drawings within which the specified work is contemplated to be constructed (or removed) in whole or in part under this contract.
- 4) The term “Owner” as used herein means the Quonset Development Corporation, as represented by the Executive Director, General Manager and their authorized representatives. The terms Quonset Development Corporation and/or the QDC shall be synonymous with “Owner”.
- 5) The term “Project Area” means the Quonset Business Park, and any abutting land or easements within which the specified work is contemplated to be constructed (or removed) in whole or in part under this contract.
- 6) The terms “shown”, “indicated”, “detailed”, “noted”, “scheduled”, and terms of similar import, refer to requirements contained in the Contract Documents.
- 7) The term “Non-Resident CONTRACTOR” means:
  - i) A person who is not resident in the State where the proposed construction is to be located, or
  - ii) Any partnership that has not member thereof resident in the State where the proposed construction is to be locate.
  - iii) Any corporation established under laws other than those of the State in which the proposed construction is located.

#### 1.03 *Terminology*

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
  - 1) The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct

the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

- 1) The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

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

- 1) The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
- 2) The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
- 3) The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
- 4) If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

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

## **ARTICLE 2 – PRELIMINARY MATTERS**

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

- A. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the General Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

- C. *Evidence of Owner's Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the General Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.
- D. Any Non-Resident Contractor shall also deliver to Owner written notice of the name of its resident agent and a written power of attorney for such agent, appointed as required by the laws of the State in which the proposed construction is located and having an office or place of business therein. Said agent shall be appointed as Contractor's true and lawful attorney upon whom all lawful processes in any actions or proceedings against him may be served. Such notice shall include said resident agent's written agreement that any lawful process which is served on said attorney shall be of the same legal force and validity as if served on Contractor and that the authority shall continue in force so long as any liability remains outstanding against him in said State. Any non-resident contractor shall also file said power of attorney in the office of the Secretary of State if required, and copies certified by the Secretary shall be sufficient evidence thereof. Such appointment shall continue in force until revoked by an instrument in writing, designating in a like manner some other person upon whom such processes may be served, which instrument shall be filed in the manner provided herein for the original appointment.

## 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Included in the hard copy Drawings provided shall be three (3) sets of large scale contract drawings, maps and specifications. Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review at the office of the Purchasing Agent at the Quonset Development Corporation (QDC) Offices, 95 Cripe Street, North Kingstown, Rhode Island.. Owner may delegate the responsibilities under this provision to Engineer.
- C. Omissions from the drawings or specifications, or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdirected details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.
- D. All work shall conform to the Contract Drawings and maps, all of which are incorporated into the Contract by reference and made part hereof.

## 2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:

- 1) a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract. The progress schedule shall list all significant tasks to be undertaken by Contractor to perform the work, shall forecast the time for doing each such task and shall show the integration and impact of each of those tasks upon the overall project schedule;
- 2) a preliminary Schedule of Submittals; and
- 3) a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

#### 2.05 *Initial Acceptance of Schedules*

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

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other

submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### **ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. The CONTRACTOR represents that it (1) is skilled and experienced in the use and interpretation of plans and specifications, (2) has carefully reviewed the plans and specifications for this project, (3) has found them to be free of ambiguities and sufficient for bid purposes, (4) has carefully examined the site of the work, and from his own observations, has satisfied himself as to the nature and location of the work; the character, quality and quantity of materials; the difficulties likely to be encountered; and other items which may affect the performance of the work and (5) has based his bid solely on these documents and observations and has not relied in any way on any explanation or interpretation, oral or written, from any other source."

#### **3.02 *Reference Standards***

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

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer. In the event of any conflict between the provisions of the Contract Documents and any such referenced provisions, the language of the Contract Documents will take precedence over that of any standard specifications, manual or code, unless (a) the specifications clearly and specifically indicate the extent to which the provisions of the General Conditions or Supplementary Conditions are to be superseded by the referenced provisions or (b) one provision requires a greater level of care, performance or quality than another, in which case the provision requiring the greater level of care, performance or quality shall govern.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

- 1) *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
- 2) *Contractor's Review of Contract Documents:* Before commencing any work, and before commencing any particular portion of the work, Contractor shall carefully check drawings furnished him, including all dimensions shown on the drawings and all other dimensions, details and quantities shown on schedules given to him by the owner. If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly the same to the Owner in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01. Contractor shall not take advantage of any error or omission in the Contract Documents and shall not be entitled to any additional compensation or time for performance arising from a failure to promptly notify Owner or failure determine the existence of any conflict, error, ambiguity, or discrepancy if a reasonable examination of the applicable documents would have revealed the existence of such conflict, error, ambiguity, or discrepancy and allowed Contractor or Owner an opportunity to avoid or mitigate such extra costs or delays. The Owner will furnish all instructions should any such errors or omissions be discovered, and the Contractor shall carry out such instructions as if originally specified and/or indicated.

- 3) Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

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

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1) have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

- 2) have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

#### **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

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

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

##### **4.02 *Starting the Work***

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

##### **4.03 *Reference Points***

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

##### **4.04 *Progress Schedule***

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

##### **4.05 *Delays in Contractor's Progress***

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled

to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference to the extent caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an extension of Contract Times but shall be entitled to no additional compensation. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1) severe and unavoidable natural catastrophes such as fires, floods, epidemics, hurricanes, and earthquakes;
  - 2) abnormal weather conditions;
  - 3) acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  - 4) acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

#### 4.06 *Layout of Work and Surveys*

- A. The Contractor shall complete the layout of the work, establish all necessary control and shall be responsible for all measurements that may be required for the execution of the work to the location, limit marks and depths prescribed on the drawings, as the Owner may require to meet changed conditions, or as a result of necessary modifications to the contract work.

- B. The Contractor shall furnish, at his own expense, such equipment, tools, range marker, and materials and all labor as may be required in laying out any part of the work including ranges and gauges project baseline, and bench marks. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other marks until authorized to remove them, and if such marks are destroyed by the Contractor or through his negligence prior to their authorized removal, they shall be replaced by the Contractor at his expense. The Owner may require that work be suspended at any time when location and limit marks established by the Contractor are not reasonably adequate to permit checking of the work. The Contractor will be held responsible for the execution of all work to the lines and grades as indicated or as may be directed by the Owner.
- C. The Owner may make checks as the work progresses to verify lines and grades established by the Contractor and to determine the conformance of the completed work as it progresses with the requirements of contract specifications and drawings. Such checking by the Owner or his representatives shall not relieve the Contractor of his responsibility to perform all work in accordance with the contract drawings and specifications and the lines and grades given therein, or as directed.
- D. No separate or direct payment will be made to the Contractor for performance of surveys for layout of work, but all costs in connection with all layout and survey shall be considered as incidental to and included in the prices stipulated for the items or work as listed in the bid.

#### 4.07 *Continued Performance in Event of Disputes*

- A. In the event of any dispute in connection with the work or under the terms of this agreement, Contractor shall continue to perform the work regardless of such dispute and shall seek any appropriate relief in accordance with the dispute resolution provisions of this agreement. Failure to continue to perform the work due to the pendency of any dispute, even in the event that Contractor is later determined to be entitled to the relief sought in such dispute, shall constitute a material breach of this agreement and an abandonment of the work and Contractor shall accordingly be liable for any costs and damages incurred by Owner in connection therewith.

### **ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

#### 5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- 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.
- D. Particular attention is hereby directed to the fact that the project site can be accessed by land, only within the limits of properties that are QDC-owned, leased or managed. The Contractor shall be provided the necessary rights of access for construction purposes. The

Contractor shall also be provided a storage area at the site. The Contractor shall be responsible for cooperating with and for coordinating the prosecution of the work of this contract with private property and lessees. Any abuse to private property or lands of the QDC or lessees shall be immediately corrected by the Contractor at his expense to the complete satisfaction of Owner and the affected abutting owners, and Contractor shall take all precautionary or preventive measures necessary in Owner's sole discretion to prevent further nuisance, interference or inconvenience to the abutting owners.

E. It shall be the Contractor's full responsibility to familiarize himself with the limitations imposed on the work of construction by the daily operations at the facility by private lessees. All provisions for control of work within the work site shall also apply to work within or adjacent to other users of the project site and all property abutting thereto.

## 5.02 *Use of Site and Other Areas*

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

- 1) Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2) If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, 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 at law; 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 shall conform to applicable Laws and Regulations.

- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site 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.
- E. The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Owner. All prescribed identification shall immediately be delivered to the Owner for cancellation upon the release of any employee.
- F. The Contractor shall take adequate precautions to protect existing structures, pavements, utilities, foundations, adjoining property and such incidentals and to avoid damage thereto. The Contractor shall completely repair any damage caused by his operations at no additional expense to the Owner.
- G. The Contractor shall conduct the operations so that there will be minimal interference with existing structures. Access shall be maintained to existing loading docks, walkways, exists or other facilities used by occupants of existing buildings. Do not interrupt existing utilities servicing adjacent buildings and structures. Erect temporary protection, such as walks, fences, railings to provide access to existing structures. Provide and maintain shoring, bracing, or structural support to preserve stability and prevent unexpected movement or collapse of existing structures.
- H. The work, during its progress and at its completion, shall conform to the lines and grades shown on the drawings and to the directions given by the Owner's Representative from time to time, subject to such modifications or additions as he shall determine to be necessary during the execution of the work; and in no case will any work be paid for outside of applicable project limits.
- I. If land equipment is used, it will be necessary to use public roads and streets for transporting materials to the vicinity of the work site. The Contractor shall obtain all necessary permits for the use of roads and streets, and shall comply with all regulations governing speed, load limits, and safety requirements established by regulatory authorities. Any damage to highways, roads, streets, and appurtenances caused by the Contractor's operations, shall be completely repaired by the Contractor without cost to the Owner. Operations on roads and streets shall be conducted with maximum safety for the public, both pedestrian and vehicular. Traffic control officers, positive "STOP" signs, and conservative speed limits will be maintained as directed by the Owner's Representative to assure that heavy-duty hauling traffic causes no interference with public or private ways. One-way roads, may be required if selected roads are too narrow for safe two-way traffic, considering parking, private egress, and vehicular density. Cost or traffic control safety will be a subsidiary obligation of the Contractor and no separate or additional payment therefore will be made.

#### 5.03 *Subsurface and Physical Conditions*

- A. The subsurface and physical conditions indicated in the Contract Documents, Drawings and Specifications are taken from original Navy design drawings obtained from the Quonset

Development Corporation and may differ from the actual present conditions. Except as may be expressly stated in the Contract Documents, Owner makes no warranty, express or implied, as to the accuracy of information furnished to the Contractor and Contractor hereby waives any and all claims or rights to make claims in connection with differences between the actual conditions encountered on the site and the information contained in such documents.

- B. Subsurface investigations have not been made for this project at the site. Bidders are expected to examine the site.
- C. The following reports of explorations and tests of subsurface conditions at or adjacent to the Site are known to Owner:
  - 1) None
- D. Variations in existing ground conditions differing from those indicated on the contract drawings shall not, under any conditions, constitute grounds for changes in Contract Price or completion dates of this Contract.
- E. Upon notification to the Owner, the Bidders will be allowed the right to make any subsurface explorations they deem necessary to satisfy themselves of the existing ground conditions.
- F. *Reports and Drawings:* The General Conditions identify:
  - 1) Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site:
    - None
  - 2) Technical Data contained in such reports and drawings.
- G. *Limited Reliance by Contractor on Technical Data:*
  - 1) Owner has provided, as Exhibit E to the Contract, a list of drawings of physical conditions relating to existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities) and other Technical Data for the use of the Contractor in preparing its bid but Contractor acknowledges that its right to rely on those drawings is limited as set forth below.
  - 2) Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor, but such reports and drawings are not Contract Documents, and Owner makes no warranties or representations except as expressly set forth in the Contract Documents as to the information contained therein. Accordingly, Contractor may not rely upon and hereby waives any right to make any claim against Owner, or any of Owner's officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
    - a. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
    - b. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

- c. 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 either:
  - 1) is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  - 2) is of such a nature as to require a change in the Drawings or Specifications; or
  - 3) differs materially from that shown or indicated in the Contract Documents; or
  - 4) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining 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 above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
  - 1) Contractor shall be entitled to an equitable adjustment in Contract Price or extension of Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- 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; or
  - 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 as 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, or both, then any such adjustment shall 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, or both, 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.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. The physical conditions indicated on the Drawings and in the Specifications are taken from original Navy design drawings obtained from the Quonset Development Corporation and may differ slightly from the actual present conditions.
- B. Unless it is otherwise expressly provided in the Conditions:
  - 1) Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  - 2) the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

- C. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Notwithstanding any provision in this agreement to the contrary, failure of Contractor to give such notice before such conditions are disturbed shall constitute a waiver of any right to additional compensation or time extensions in connection therewith.
- D. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; 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 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.
- E. *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.
- F. *Possible Price and Times Adjustments:*
- 1) Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - d. 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, or both, then any such adjustment shall 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, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

G. EXISTING UTILITIES OR CONNECTIONS

- 1) The location of existing underground pipes, conduits and structures as shown has been collected from the best collected available sources, but neither Owner, Engineer or any of their consultants or its agents guarantee that the data and information in connection with underground pipes, conduits, structures and such other parts is complete or correct or that such items are located as indicated. Any expense and/or delay occasioned by utilities and structures or damage thereto, including those not shown, shall be the responsibility of the Contractor, at no additional expense to the Owner.
- 2) Before proceeding with construction operation, the Contractor shall make such supplemental investigations as he deems necessary to uncover and determine the exact locations of utilities and structures and shall have no claims for damages due to encountering subsurface structures or utilities in locations other than shown on the drawings, or which are made known to the Contractor prior to construction operations. The Contractor shall be responsible and liable for all damages to the existing utilities and structures.

5.06 *Hazardous Environmental Conditions at Site*

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

- 1) The following reports regarding Hazardous Environmental Conditions adjacent to the Site are known to Owner:

There are no known reports of Hazardous Environmental Conditions at or adjacent to the project.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the General Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. 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; or
- 2) other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
- 3) any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such

removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, 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.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or 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.H shall obligate 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 Indemnitees, as defined herein 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 shall obligate 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.
- L. Notwithstanding any provision of this agreement to the contrary, failure of Contractor to give immediate notice, by email AND orally, in person or by telephone, of discovery of any previously unreported materials which are known, believed or suspected to be hazardous, shall waive Contractor's right to any additional compensation or indemnity in connection therewith.

## **ARTICLE 6 – BONDS AND INSURANCE**

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

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the

Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.
- G. As provided in detail in the General Conditions, all bonds obtained by Contractor in connection with the Project shall inure to the benefit of Owner, State of Rhode Island, Rhode Airport Corporation and Rhode Island Commerce Corporation, who shall be obliges thereunder.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article with Owner as additional insured under each such policy unless expressly agreed in writing to the contrary.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.
- K. If any surety upon any bond furnished in connection with this contract becomes unacceptable to Owner, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by Owner, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of Owner and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.
- L. As provided in detail in the General Conditions, all insurance policies and certificates obtained by Contractor in connection with the Project shall provide additional insured coverage to the State of Rhode Island acting through the Department of Transportation, Seaview Transportation Company, Quonset Development Corporation, Rhode Island Airport Corporation and Rhode Island Commerce Corporation.

#### 6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1) claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2) United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3) claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
  - 4) Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
  - 1) claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.

- 2) claims for damages insured by reasonably available personal injury liability coverage.
  - 3) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
- 1) Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the General Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  - 2) Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  - 3) Broad form property damage coverage.
  - 4) Severability of interest.
  - 5) Underground, explosion, and collapse coverage.
  - 6) Personal injury coverage.
  - 7) Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  - 8) For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Quonset Development Corporation, Seaview Transportation Company, Inc., the State of Rhode Island. Acting through the Department of Transportation, Rhode Island Airport Corporation, and Rhode Island Commerce Corporation and any individuals or

entities identified; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements. In addition to the Quonset Development Corporation, as the Owner, the Contractor's insurance policies shall list the above listed entities as additional insured.

- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
  - 1) include at least the specific coverages provided in this Article.
  - 2) be written for not less than the limits of liability provided in this Article or required by Laws or Regulations, whichever is greater.
  - 3) contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to each insured and additional insured, including Owner and Contractor. Within three days of receipt of any such written notice, Contractor shall also provide a copy of any such notice to Owner, Engineer, and each other insured under the policy.
  - 4) remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  - 5) be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.
- K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations.

Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- 1) Premises Operations (including X-C/U as applicable)
- 2) Independent Contractor's protective
- 3) Products and Completed Operations
- 4) Contractual
- 5) Personal Injury, with Employment Exclusion deleted
- 6) Owned, non-owned, and hired motor vehicles
- 7) Broad Form Property Damage including Completed Operations

The limits of liability for the insurance required by paragraph 6.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation:

- a. State: Statutory
- b. Applicable Federal  
(e.g. Longshoreman's): Statutory
- c. Employer's Liability: \$500,000

2. Comprehensive General Liability:

- a. Bodily Injury & Property Damage (including completed operations and products liability):
  - 1) \$1,000,000 Each Occurrence
  - 2) \$2,000,000 Annual Aggregate
- b. Property Damage:
  - 1) \$1,000,000 Each Occurrence
  - 2) \$2,000,000 Annual Aggregate or;
  - 3) a combined single limit of \$2,000,000
- c. Property Damage Liability insurance will provide Explosion, Collapse and Underground coverages where applicable.
- d. Personal Injury, with employment exclusion deleted
- e. \$1,000,000 Annual Aggregate
  - 1) \$1,000,000 Per Project Aggregate Limit

3. Comprehensive Automobile Liability:

- a. Bodily Injury:
  - 1) \$500,00 Each Person
  - 2) \$1,000,000 Each Occurrence
- b. Property Damage
  - 1) \$1,000,000 Each Occurrence
  - 2) Or combined single limit of \$1,000,000

4. The Contractual Liability required by paragraph 6.04 of the General Conditions shall provide coverage for no less than the following amounts:
  - a. Bodily Injury:
    - 1) \$1,000,000 Each Occurrence
    - 2) \$2,000,000 Annual Aggregate
  - b. Property Damage:
    - 1) \$1,000,000 Each Occurrence
    - 2) \$2,000,000 Annual Aggregate
5. Umbrella
  - a. \$1,000,000 Subject to approval by QDC. Higher limits may be required.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.



~~6.05~~ *Property Insurance*

~~A. **Builder's Risk:** Unless otherwise provided, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts or required by Laws and Regulations). This insurance shall:~~

- ~~1) include the Owner and Rhode Island Commerce Corporation and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."~~
- ~~2) be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available~~

~~under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.~~

- ~~3) cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.~~
  - ~~4) cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).~~
  - ~~5) extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).~~
  - ~~6) extend to cover damage or loss to insured property while in transit.~~
  - ~~7) allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.~~
  - ~~8) allow for the waiver of the insurer's subrogation rights, as set forth below.~~
  - ~~9) provide primary coverage for all losses and damages caused by the perils or causes of loss covered.~~
  - ~~10) not include a co-insurance clause.~~
  - ~~11) include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.~~
  - ~~12) include performance/hot testing and start up.~~
  - ~~13) be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.~~
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk

insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

- E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

#### 6.06 *Marine Insurance*

- 1) The Contractor shall provide evidence of insurance coverage with an insurance carrier acceptable to the Owner in the minimum amount of \$1,000,000 per individual and \$1,000,000 per accident in accordance with the so-called Jones Act, which applies to divers and others working off vessels, barges, or other floating equipment. The certificates of insurance shall be in a form acceptable to the QDC.
- B. Worker's Compensation Insurance shall be augmented with the coverage required by an act of the 92nd Congress entitled, "Longshoremen's and Harbor Worker's Compensation Act" amendments of 1972. The Contractor shall provide evidence as in Subparagraph (A).

#### 6.07 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for:
  - a. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work

caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

- b. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

#### 6.08 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

### **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

#### 7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely

responsible for the means, methods, techniques, sequences, and procedures of construction.

- B. At all times during the progress of the Work, Contractor shall have on the Project site a competent resident superintendent who is capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed, who shall not be replaced without written notice to Owner and Engineer and shall be replaced only under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have full authority to execute orders or directions of the Owner without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendent shall be furnished irrespective of the amount of work sublet. All communications given to or received from the superintendent shall be binding on Contractor."
- C. The Work included in these Contract Documents is to be performed under the responsibility of a single prime contractor. The contractor is responsible for the coordination of all the work, whether performed by its own personnel or its subcontractors, and will maintain such procedures as necessary to keep its workmen and suppliers informed of project progress so as not to unnecessarily delay completion of the Work
- D. The Contractor shall perform on the site and with his own organization, work equivalent to at least 50 percent of the total amount of the work to be performed under the contract. If during progress of the work hereunder, the Contractor requests a reduction in such percentage, and the Owner determines in its sole discretion to allow Contractor to proceed in that manner, the percentage of the work required to be performed by the Contractor may be reduced but only by written change order signed by the Owner.
- E. If Contractor desires to carry on work outside regular hours or on Saturdays, Sundays or Holidays, he shall seek permission to so proceed from Owner, which request shall not be unreasonably denied. Contractor shall, however, allow ample time to enable satisfactory arrangements to be made by Owner for inspecting the work in progress, and for night work Contractor shall provide lighting, safety and other facilities necessary to safely perform the work, subject to Owner's review and approval.

#### 7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.
  - 1) Regular working hours will be 7:00AM to 5:00PM
  - 2) Owner's legal holidays are:
    - New Year's Day (January 1)
    - Dr. Martin Luther King, Jr. Day (third Monday in January)

Memorial Day (last Monday in May)  
Independence Day (July 4)\*  
Victory Day (second Monday in August)  
Labor Day (first Monday in September)  
Columbus Day (second Monday in October)  
Veteran's Day (November 11)\*  
Thanksgiving (fourth Thursday in November)  
Day after Thanksgiving (fourth Friday in November)  
Christmas (December 25)\*

\*unless holiday falls on a weekend, then observed the following Monday

- C. The Contractor shall pay mechanics and laborers employed or working directly at the site of the work wage rates that are not less than those established by the State of Rhode Island for building construction type competitively bid contracts. These minimum wage rates shall be those that are in effect at the time work is performed. It shall be the responsibility of the Contractor to be familiar with the prevailing wage rates for required labor classifications and to take into consideration in his bid such possible contingent wage increases which might be applicable to this work. The Contractor shall submit weekly a certified copy of all payrolls covering work performed at the site, together with payroll affidavits. The payroll records must indicate the name and social security number of employees, classifications, hours worked each day, total hours per week, rate of pay, gross earnings, all deductions and net earnings. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the prevailing rates in force at the time and that the classifications set forth for each laborer or mechanic conform with the work he performs. These documents must be submitted within seven (7) days after the payment for each weekly payroll. Failure to comply with this provision of the contract may retard the processing of payment request.

#### 7.03 *Services, Materials, and Equipment*

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

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
- 1) If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may

request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
- 1) Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  - 2) The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3) Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from that specified, and
      - 2) available engineering, sales, maintenance, repair, and replacement services.
    - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

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

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make

written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Upon request, Contractor shall provide copies Owner with copies of any such subcontracts or purchase orders, although Contractor may redact pricing information therefrom if Owner does not demonstrate a reasonable basis for requiring such information.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
  - 1) shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor

- 2) shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

#### 7.07 *Patent Fees and Royalties*

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

#### 7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work
- B. Attached as Exhibit F to the Contract is a list of all permits/approvals obtained by OWNER for the work along with all permits and approvals believed by the Owner to be necessary for Contractor for the work. It is the responsibility of CONTRACTOR to obtain all such permits and approvals and to determine whether other permits or approvals are required for its work and to obtain those as well, at its sole cost and expense, and Contractor shall be solely responsible for any delays, fines, losses, costs or damages, including attorneys fees, incurred as a result of work performed without required permits or approvals.

#### 7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. Owner is exempt from payment of sales taxes of the State of Rhode Island on all materials to be incorporated into the Work.
  - 1) Owner Tax Exemption No. 76-0772595 can be used by Contractor for use in the purchase materials to be incorporated into the Work.
  - 2) Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.
- C. Contractor shall pay all applicable Federal and Local Government taxes and duties. Materials for use in the work under this contract are exempt for the Rhode Island Sales Tax. Tax Exemption No. 76-0772595

#### 7.10 *Laws and Regulations*

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

#### 7.11 *Record Documents*

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

available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

#### 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1) all persons on the Site or who may be affected by the Work;
  - 2) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
  - 4) The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the Owner, whether or not the same has been covered by partial payments made by the Owner.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The General Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.
- H. Fire extinguishers shall be provided by the Contractor and maintained at the job site on all major pieces of construction equipment utilized.
- I. The Contractor shall provide and be responsible for all scaffolding, ladders, runways, materials, labor, tools, equipment, and appliances, used for the execution of the various portions of the work. All such scaffolding, ladders and runways shall comply with local and State rules and Federal regulations (including OSHA) relating to the same. Contractors shall indemnify, defend and hold harmless the Owner in connection with injury to persons or damage to property due to failure of any such equipment.
- J. The Contractor shall put up and maintain such barriers, lighting and warning lights, danger warning signals and signs and employee watchmen that will prevent accidents during the construction work and protect the work and insure the safety of personnel and the public at all times and places; and the contractor shall indemnify, defend and hold harmless the Owner in every respect from any injury or damage whatsoever caused by any act or neglect or the Contractor or his subcontractors, or their servants or agents.
- K. In addition to the above, when and as necessary, or when required by the Owner, the Contractor shall post signs and employee watchmen or flagmen for the direction of traffic at the site and for excluding at all times unauthorized persons from the work, for which the Contractor will not be paid additional compensation.
- L. The Contractor shall be responsible for preventing any persons not directly connected with the work or authorized by the Owner to be in the work areas from entering or remaining at the Site or from accessing other Owner or tenant controlled areas by way of land under Contractor's control.
- M. The Contractor shall at all times perform all operations in connection with the work of this contract in a manner and shall take such precautionary measures as may be necessary or required to protect existing work, equipment and facilities from damage by reason of failure of the Contractor to provide adequate protection therefore. In the event that any damage arises from failure to employ such precautionary measures such damaged work, equipment and facilities shall be promptly repaired or replaced by the Contractor in a manner satisfactory to the Owner.

#### 7.13 *Safety Representative*

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

#### 7.14 *Hazard Communication Programs*

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

## 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.
- B. Any emergency rising from the interruption of electric, gas, water, or sewer service due to the activities of the Contractor, shall be repaired by the Contractor as quickly as is possible.
- C. If and when, in the opinion of the Owner, the Contractor is not initiating repair work as expeditiously as possible upon notification to do so, the Owner may, at his own option, make the necessary repairs using his own forces or those of others. The cost of such repairs shall be subtracted for the payments due to the Contractor.
- D. Except for the limited purpose of determining entitlement to costs arising from Emergencies, Emergencies shall not include events resulting from negligence of the CONTRACTOR or his subcontractors, nor shall increases in Contract Price be granted for costs related to CONTRACTOR's or subcontractor's negligence in dealing with emergencies.

## 7.16 *Shop Drawings, Samples, and Other Submittals*

- A. *Shop Drawing and Sample Submittal Requirements:*
  - 1) Before submitting a Shop Drawing or Sample, Contractor shall have:
    - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  - 2) Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
  - 3) With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

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

- 5) Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
  - 6) Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  - 7) Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
  - 8) Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. Approval by the Owner or Engineer of any submittal or request under the terms of this agreement shall not relieve the Contractor from responsibility or liability for (a) the Contractor's duty to ensure that the submittal or request is correct and can be engineered or constructed in a safe and appropriate manner, (b) the Contractor's obligation to determine the means and methods for performing the work, or (c) the Contractor's duty to perform the work in a safe, timely and reasonable manner and in accordance with the Contract Documents, all applicable laws and regulations and best industry practices. Approval of submittals shall be for the sole purpose of allowing the Contractor to proceed with the work in accordance therewith and shall not constitute any assumption of responsibility or liability of any kind for the contents or results thereof.
- F. *Resubmittal Procedures:*
- 1) Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
  - 2) Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
  - 3) If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

#### 7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1) abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2) normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  - 1) observations by Engineer;
  - 2) recommendation by Engineer or payment by Owner of any progress or final payment;
  - 3) the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  - 4) use or occupancy of the Work or any part thereof by Owner;
  - 5) any review and approval of a Shop Drawing or Sample submittal;
  - 6) the issuance of a notice of acceptability by Engineer;
  - 7) any inspection, test, or approval by others; or
  - 8) any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner, Engineer, and the Rhode Island Commerce Corporation, along with the respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them (the "Owner Indemnitees") from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, or from actual or alleged environmental damage or violations of law or fines, penalties or costs arising therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any party's right to or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

- B. In any and all claims against any Owner Indemnitee by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. Any obligation set forth in the agreement for Contractor to indemnify, defend and hold harmless any Owner Indemnitee shall be construed to include as indemnified parties all officers, directors, members, partners, employees, agents, representatives, consultants and subcontractors of the Owner and of the Engineer.
- D. All indemnity and defense required hereunder shall be provided by Contractor at its sole cost and expense, and Contractor shall reimburse any Owner Indemnitee for any attorneys' fees or costs incurred with respect to any such defense. Contractor shall provide such defense and indemnity whether such claims or actions are rightfully or wrongfully brought and irrespective of the merits or defenses with regard thereto. In the event that any insurance coverage is insufficient to ensure that no Owner Indemnitee will be exposed to damages arising from any indemnified claim, Owner may direct, and Contractor shall provide evidence of its ability to pay any judgment which may arise from any such claim. In the event that Owner, in its sole discretion, determines that those assets are insufficient for the protection of the Owner Indemnitees, Owner may require Contractor to provide defense through counsel chosen and directed by Owner at the sole expense of Contractor. In that event, Owner, at its sole option, shall have sole authority for direction of the defense, and shall be sole judge of acceptability of any compromise or settlement of any claims against it.

#### 7.19 *Delegation of Professional Design Services*

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

performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

7.20 *Special Provisions for Marine Construction (if required)*

- A. Interface With Navigation. The Contractor shall conduct his operations in conformance with all requirements of the Department of the Army and the controlling authorities for the State of Rhode Island, and in a manner so as to interfere as little as possible with the use of channel's berthing spaces, fairways and passage. The Contractor shall interrupt his operations, shift or move his plant and do such other work as may be necessary to prevent interference with navigation and to comply with the requirements of controlling authorities; the Contractor will not be entitled to compensation for complying with the above requirements except as specifically provided for under the contract. Upon this completion of the work, the Contractor shall promptly remove his plant, including ranges, buoys, piles and other marks placed by him under the contract in navigable water or on the shore.
- B. Protection Of Water Resources. The Contractor shall not pollute the shorefront with fuels, oils, bitumens, calcium chloride, acids, paint or other harmful materials. It is the responsibility of the Contractor to comply with all applicable Federal, State, County and Municipal laws concerning pollution of water, land, or the shorefront. All work under this contract shall be performed in such a manner that objectionable conditions will not be created through or adjacent to the project area.
- C. Spillages and Pollution of the Waters. At all times of the year, special measures shall be taken to prevent chemicals, fuels, oils, greases, bituminous materials, waste washings, herbicides, insecticides, cement and surface drainage, and other harmful materials from entering public waters. Special care shall be taken to prevent contamination or interfering in any way with bodies of water along the line or work. No waste matter of any kind will be allowed to discharge into any bodies or water.
- D. Protection Of Fish and Wildlife. The Contractor shall at all times perform all work and take such steps required to prevent any interference or disturbance to fish and wildlife. The Contractor will not be permitted to alter water flows or otherwise disturb the native habitat adjacent to the project area which in the opinion of the Owner, are critical to fish or wildlife. Fouling or polluting of water will not be permitted. Wash waters and wastes shall be processed, filtered, or otherwise properly treated prior to their legal disposal.
- E. Misplaced Material Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink or misplace any material, plant, machinery or appliance which, in the opinion of the controlling authorities or the Owner, may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Owner, and shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect or delay compliance with the above requirements, such obstructions may be removed by the Owner, and the cost of such removal may be deducted from any money due or to become due the Contractor or may recovered under his bond. The liability of a Contractor for removal of a vessel wrecked or sunk without fault

or negligence shall be limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of 3 March, 1899.

- F. Signal Lights. The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Army and of the Coast Guard governing lights and signals to be displayed by vessels, dredges, in submarine operations and by other floating plant. The Contractor shall be responsible for all injury and damages resulting from any neglect or failure to provide signal lights and other precautionary measures on or about his plant and the work.
- G. Marine Regulations (if required)
  - 1) Floating equipment, barges, boats, lighter, etc., shall be properly lighted, buoyed or otherwise marked during the progress of the work in conformance with U.S. Coast Guard and U.S. Corps of Engineers requirements and regulations.
  - 2) The Port of Davisville is an active facility and is presently utilized by various shipping lines calling at the Port. The Contractor shall be aware of the Port's schedules via coordination with the QDC's representative. The Contractor may continue work during the use of the facility by shipping. Ships visiting the port to load or unload cargo will have first priority over the pier facility. The Contractor may continue to operate provided he maintains adequate clearances between his equipment and the visiting ship. All work during ship visits must be coordinated with the QDC representative.
- H. Transportation. The Contractor shall furnish the Owner and his representatives transportation and other services as follows, in connection with the inspection of the contract work, the use of such boats, boatmen, laborers and material forming a part of the ordinary and usual equipment and crew of the Contractor as may be reasonably necessary in inspecting all of the work under this contract.

#### 7.21 Contractor Quality Control

*The Contractor shall provide and maintain an effective quality control program.*

- A. The Contractor shall establish a quality control system to perform sufficient inspection and tests of all items of work, including that of any subcontractors, to ensure performance to applicable specifications and drawings with respect to the materials, workmanship, construction, finish, functional performance and identification.
- B. The Contractor's quality control system shall be the means by which he assures himself that his construction complies with the requirements of the contract plans and specifications. The controls shall be adequate to cover all construction operations and should be keyed to the proposed construction sequence.
- C. The Contractor's job supervisory staff may be used for quality control supplemented as necessary by additional personnel for surveillance, special technicians, or testing facilities to provide capability for the controls required by the technical provisions of the specifications.
- D. The Contractor shall furnish to the Inspector within five (5) days after receipt of the Notice to Proceed a quality control plan, which shall include the procedures, instructions, and reports to be used. This document shall include as a minimum:
  - 1) The quality control organization.
  - 2) Number and qualifications of personnel to be used for this purpose.

- 3) Authority and responsibilities of quality control personnel.
  - 4) Methods of quality control including that for the subcontractor's work.
  - 5) Method of documenting quality control operations, inspection, and testing.
  - 6) Safety inspection procedures.
  - 7) A copy of a letter of direction to the Contractor's representative responsible for quality control, outlining his duties and responsibilities, and signed by a responsible officer of the firm.
- E. After the contract is awarded and before construction operations are started, the Contractor shall meet with the Inspector or representative and discuss quality control requirements. The meeting shall develop mutual understanding relative to details of the system, including the forms to be used for recording the quality control operations, inspections, administration of the system, and the interrelationship of Contractor, Owner and Engineer.
  - F. Unless specifically authorized by the Owner, no construction will be started until the Contractor's quality control plan is approved in writing.
  - G. Failure of the Contractor to comply with the requirements of this paragraph shall be grounds for determination by the Inspector that the Contractor is not prosecuting the work as required by the specifications. Approval or progress payment estimate will be withheld until such time as the Contractor complies with the provisions of this paragraph and an amount will be deducted from the contract price equal to the value of the services not furnished."

#### 7.22 *Quantity Survey*

- A. The Contractor shall make such surveys and computations as are necessary to determine the quantities of work performed or placed during each period for which a progress payment is to be made. All original field notes, computations, and other records taken by the Contractor for the purpose of progress surveys shall be furnished promptly to the representative of the Owner, and shall be used to the extent necessary in determining the proper amount of progress payments due to the contractor. Unless waived in each specific case, quantity surveys made by the Contractor shall be made under the direction of the Owner's Representative.

#### 7.23 *Environmental Regulations*

- A. In order to prevent and to provide abatement and control of, any environmental pollution arising from the construction activities of the Contractor and his subcontractors in the performance of this contract, they shall comply with all applicable Federal, State, and local laws, and regulations concerning environmental pollution control and abatement, and all applicable provisions of the Corps of Engineers Manual, EM 385-1-1, entitled "General Safety Requirements", in effect on the date of solicitation, as well as the specific requirements stated elsewhere in the contract specifications.
- B. The Owner will notify the Contractor in writing of any non-compliance with the foregoing provisions on environmental regulations and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his authorized representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Owner may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such orders shall be made the

subject of a claim for extension of time or for excess costs or damages by the Contractor unless it was later determined that the Contractor was in compliance. Compliance with these provisions by subcontractors will be the responsibility of the Contractor.

- C. AIR POLLUTION. No material shall be burned at the site of the project. Materials shall be legally disposed of by the Contractor by removal to approved landfill sites.
- D. DUST CONTROL. The Contractor will be required to maintain all work areas within or without the project boundaries free from dust, which would cause a hazardous air pollution or nuisance to others. Approved temporary methods of stabilization consisting of sprinkling with water, or other similar methods will be permitted to control dust. Sprinkling, to be approved, must be repeated at such intervals as to keep all parts of the disturbed area at least damp at all times, and the Contractor must have sufficient competent equipment on the job to accomplish this if sprinkling is used. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs. No separate or direct payment will be made for dust control and the cost thereof shall be considered incidental to and included in the contract prices for excavation and embankments.

#### 7.24 *Disposal of Waste*

- A. If any material, trash, garbage, oil, grease, chemicals or other harmful material, is dumped in unauthorized areas, the Contractor shall remove the materials and restore the area to the conditions of the adjacent undisturbed area. If necessary, contaminated ground shall be excavated, disposed of as directed by the Owner, and replaced with suitable fill material.

#### 7.25 *Recording and Preserving Historical & Archaeological Interests*

- A. All items having an apparent historical or archaeological interest which are discovered in the course of any construction activities shall be carefully preserved. The Contractor shall leave the archaeological find undisturbed and shall immediately report the find to the Owner's representative so that the proper authorities may be notified.

### **ARTICLE 8 – OTHER WORK AT THE SITE**

#### 8.01 *Related Work at Site*

- A. Owner shall give Contractor written notice thereof prior to starting any such other work. The Owner reserves the right to do any work at or adjacent to the Project site, whether or not related to the Project, which work may connect with, or become a part of the work required by this contract, and may perform such work with Owner's employees, through other contractors, through utility owners or otherwise. The Contractor shall not interfere with or obstruct in any way the work of such other persons as the Owner may employ and shall execute his own work in such manner as to aid in the executing of work by others as may be required. If such work by others is not noted in the Contract Documents, then
- B. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor

may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1) the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2) an itemization of the specific matters to be covered by such authority and responsibility; and
  - 3) the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.
- C. An extension of the Contract Time shall be Contractor's exclusive remedy for any delay, disruption, interference, or hindrance caused by any separate contractor. This paragraph does not prevent recovery from Owner or Engineer for activities that are their respective responsibilities."

#### 8.03 *Legal Relationships*

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

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

## **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

### **9.01    *Communications to Contractor***

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

### **9.02    *Replacement of Engineer***

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

### **9.03    *Furnish Data***

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

### **9.04    *Pay When Due***

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

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

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

## 10.02 *Visits to Site*

- A. Unless otherwise noted herein, Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

## 10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the General Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the General Conditions.
- B. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
  - 1) General: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2) Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
  - 3) Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.
  - 4) Liaison:

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
- 5) Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
- 6) Shop Drawings and Samples:
- a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
- 7) Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8) Review of Work and Rejection of Defective Work:
- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 9) Inspections, Tests, and System Start-ups:
- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
  - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- 10) Records:
- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative

to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11) Reports:

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12) Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13) Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14) Completion:

- a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
- b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

C. The Project Representative shall not:

- 1) Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2) Exceed limitations of Engineer's authority as set forth in the Contract Documents.

- 3) Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
- 4) Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
- 5) Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
- 6) Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- 7) Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 8) Authorize Owner to occupy the Project in whole or in part.

#### 10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

#### 10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

#### 10.06 *Determinations for Unit Price Work*

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

#### 10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

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

#### 10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will

not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

#### 10.09 *Compliance with Safety Program*

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

### **ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

#### 11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1) *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
  - 2) *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

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

#### 11.02 *Owner-Authorized Changes in the Work*

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

#### 11.03 *Unauthorized Changes in the Work*

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

#### 11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order issued in writing and signed by an authorized representative of Owner. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1) where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  - 2) where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  - 3) where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
- 1) a mutually acceptable fixed fee; or
  - 2) if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.
- C. Notwithstanding any other provisions of this contract, the Owner shall have the right to determine the extent, if any, by which a change in plans or specifications or excusable delay will cause delay in the completion of various elements of construction. The Owner may unilaterally provide in a change order that a contract completion date will be extended only for those specific elements so delayed and the remaining contract completion date (s) for all other portions of the work would not be altered. To the extent otherwise allowed under the terms of this agreement or applicable law, any Contractor objection to such determination shall be addressed through the claims and disputes provisions hereof.

## 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
- 1) *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  - 2) *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  - 3) *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

## 11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
- 1) changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2) changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3) changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work

involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

- 4) changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notification to Surety*

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

### ARTICLE 12 – CLAIMS

#### 12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
- 1) Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  - 2) Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  - 3) Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* Contractor shall submit any Claim to the Owner promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* Owner shall review Contractor's Claim thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
- 1) At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.

- 2) If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.
  - 3) Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

### 13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
- 1) To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  - 2) To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
- 1) Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the

Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

- 2) Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
- 3) Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
- 4) If approved in advance in writing, costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work, but excluding any costs arising from disputes as to whether the applicable work is compensable,.
- 5) Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Construction Equipment and Machinery:
    - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
    - 2) Costs for equipment and machinery owned by Contractor will be paid at a rate shown for such equipment in the Construction Equipment Rental Rate Blue Book maintained by EquipmentWatch.com. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will

include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools and shall not be paid by Owner.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

- 1) Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2) Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4) Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

- 5) Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B, including but not limited to "Eichleay" damages or other "home office overhead" calculations.
- D. *Contractor's Fee*: When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

### 13.02 Allowances

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

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. Only such quantities of the respective items of work actually performed and accepted will be paid for.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
  - 1) The quantities listed in the bid proposal are approximate and given for use in preparing bids. Under the Contract, the Owner reserves the right to increase or decrease the approximate quantities or to omit entirely any of the items as listed in

the bid. Such increase or diminution shall in no way violate this Contract, nor shall any such increase or diminution give cause for claims or liability for damage.

- 2) An increase or decrease in the quantity for any item shall not be regarded as grounds for an increase or decrease in the bid prices. However, for contract items having original values of 5 percent or more of the Contract Price, should the increase or decrease exceed twenty-five (25) percent of the quantities listed in the proposal, either Owner or Contractor shall be entitled, upon written request, to an equitable adjustment as to those quantities which actually exceed that 25% over-run or under-run threshold.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  - 1) the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2) there is no corresponding adjustment with respect to any other item of Work; and
  - 3) Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

## **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **14.01 Access to Work**

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

### **14.02 Tests, Inspections, and Approvals**

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

- B. Contractor shall employ and pay for the services of an independent testing laboratory to perform inspection, tests, or approvals required by the Contract Documents including but not limited to:

Field Density Tests

Concrete Tests

Pressure Tests

Water Quality Tests

- C. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- D. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- E. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
- 1) by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2) to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - 3) by manufacturers of equipment furnished under the Contract Documents;
  - 4) for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5) for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- F. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- G. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.
- H. QDC Representative will monitor and direct the Contractor to maintain the gages, ranges, bench marks, location marks and limit marks in proper order and position, but the presence or absence of the QDC's Representative shall not relieve the Contractor of responsibility for the proper execution of the work in accordance with the specifications.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

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

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1) If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2) If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

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

#### 14.07 *Owner May Correct Defective Work*

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

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

## **ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

### **15.01 *Payments to Contractor***

- A. Any and all payments due to the Contractor, under the terms of this Contract or otherwise in connection with this Project, shall be paid by Quonset Development Corporation as Owner, and Quonset Development Corporation shall be the sole party responsible for payment to the contrary in this Contract, Contractor agrees to look solely to Quonset Development Corporation for payment in connection with the Project, and hereby irrevocably waives, releases, discharges, relinquishes and remises any and all claims for compensation or damages of any kind, nature and description, in law, admiralty or equity, including any and all future claims or rights of claim, against the State of Rhode Island, Rhode Island Airport Corporation or Rhode Island Commerce Corporation, and their respective officers, directors, agents, employees, attorneys, sureties, guarantors, successors, administrators and assigns in connection with the Project.

### **15.02 *Progress Payments***

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 and attached to the Contract as Exhibit H will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
- 1) At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 2) With each Application for Payment, Contractor shall submit a Lien and Claim Waiver and Release in the form attached as Exhibit I, executed by the Contractor and by each subcontractor with a subcontract value in excess of Ten Thousand Dollars who has performed work in the applicable pay period.
  - 3) The amount of retainage with respect to progress payments will be as stipulated in the Agreement which shall be 5% of the amount of each estimate for all Contractors except for Non-Resident Contractors, for whom an additional 3%, or a total of 8%. Said 3% shall be withheld pursuant to Section 44-1-6 of the General Laws of Rhode

Island, under the terms of which Owner is required to withhold 3% of the contract price from non-resident contractors to secure payment of any sales and use tax or income tax withheld, or both, that may be due to the State of Rhode Island in carrying out the contract. Said 5% retainage shall be withheld until the work is substantially complete and accepted by the Owner, except that Owner may, in its sole discretion, if he considers the amount retained to be in excess of the amount adequate for the protection of the QDC, at his discretion, release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefore without retention of a percentage. The 3% shall be withheld until evidence of payment of sales, use and income tax has been furnished.

C. *Review of Applications:*

- 1) Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
- 2) Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
- 3) By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
- 4) Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
- 5) Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
- 6) Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
  - f. Owner has a reasonable basis to believe that the Contractor has failed to make payment to Subcontractors or Suppliers or for labor.
  - g. Liquidated damages have or are expected to be incurred by Contractor.
  - h. CONTRACTOR has not delivered, or Engineer has not been given sufficient time to review such submittals and other documentation as final shop drawings; warranties; installation, operation and maintenance manuals; test reports, certifications; start-up reports and other documentation required by the Contract Documents

**D. *Payment Becomes Due:***

- 1) Thirty days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

**E. *Reductions in Payment by Owner:***

- 1) In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
- a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or

damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. the Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. the Contract Price has been reduced by Change Orders;
  - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - l. there are other items entitling Owner to a set off against the amount recommended.
- 2) If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
- 3) Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

#### 15.03 *Contractor's Warranty of Title*

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

#### 15.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor. Any costs incurred by Owner, including out-of-pocket or salary-allocated costs of inspection or testing, as a result of a premature notice of substantial completion shall be deducted from any sums otherwise due to Contractor under this agreement. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

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

#### 15.05 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1) At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  - 2) At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3) Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4) No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.06 *Final Inspection*

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

#### 15.07 *Final Payment*

- A. *Application for Payment:*
  - 1) After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

- 2) The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3) In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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

- 1) If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

**C. *Completion of Work:*** The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

**D. *Payment Becomes Due:*** Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.08 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.09 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1) correct the defective repairs to the Site or such other adjacent areas;
  - 2) correct such defective Work;
  - 3) if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

#### 15.10 *Assignment of Claims*

- 1) Neither this Contract nor any of the funds due or becoming due hereunder may be assigned or sublet by the Contractor without the prior written consent of the Owner.
- 2) Owner may assign the Contract and Contractor consents to such assignment and to be bound to assignee by the terms hereof.

### **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

#### 16.01 *Owner May Suspend Work*

- A. At any time, with or without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Contractor shall resume the Work when directed by Owner. To the extent that the suspension is determined to have arisen from acts, omissions, discoveries or events for which neither the Contractor nor any persons performing on behalf of the Contractor is responsible, Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

#### 16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1) Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2) Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3) Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  - 4) Contractor's repeated disregard of the authority of Owner or Engineer
  - 5) If the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
  - 6) If the Contractor fails to begin the Work within the time stated in the Notice to Proceed or fails to complete the phases of the Work in accordance with schedules approved by the Owner,
  - 7) If the Contractor discontinues the Work or fails to resume the Work when directed by the Owner, or
  - 8) If the Contractor does not perform the Work in a manner acceptable to the Owner.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1) declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
  - 2) enforce the rights available to Owner under any applicable performance bond.

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

#### 16.03 *Owner May Terminate For Convenience*

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

#### 16.04 *Contractor May Stop Work or Terminate*

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

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

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

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. During the course of the work, any and all disputes shall be submitted in writing to the opposing party in accordance with any procedures set forth in this agreement or, if no such procedures are applicable, customary and reasonable business practices. During the pendency of any such disputes, Contractor shall continue to perform the work and Owner shall continue to make payments, provided such payments are due without dispute and are not subject to withholding under applicable provisions of this agreement. Failure of either party to so proceed during the course of any dispute shall constitute a material breach of this agreement
- B. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1) A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2) Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- C. *Final Resolution of Disputes:*
  - 1) Any dispute subject to resolution under this Article shall, at the sole discretion of the Owner, be resolved by binding arbitration or by litigation.
  - 2) Any litigation hereunder shall be in Providence County Superior Court, with any right to proceed in any other jurisdiction or venue hereby waived. Owner and Contractor further hereby waive any right to trial by jury in connection therewith.
  - 3) Any such arbitration shall be held in Providence, Rhode Island in accordance with the construction industry rules of the American Arbitration Association, and Owner shall be permitted, in its sole discretion, to consolidate with such arbitration, any other proceeding arising in connection with this project. Discovery in any such arbitration shall be limited to the following (a) production of paper and electronic documents in accordance with the requirements of Rule 34 of the Federal Rules of Civil Procedure, (b) written claim statements if deemed necessary by the arbitrator within 10 days

following order by the arbitrator, (c) written expert disclosures sufficient to satisfy Rule 26 of the Federal Rules of Civil Procedure and (d) for each \$100,000 in dispute, up to eight hours of deposition questioning by each side, with such hours of examination allowed to be divided among one or more witnesses.

- 4) The prevailing party in any dispute, whether in court or arbitration, shall be entitled to an award of attorney's fees and costs incurred in connection with such dispute. For purpose of such awards of costs, the prevailing party shall be either the party to whom an affirmative award is made for all or a substantial portion of the recovery sought, or the party who successfully defends against all or a substantial portion of the recovery sought, and if neither party substantially prevails no Arbitration Costs shall be awarded and each party shall bear its own costs; provided, however, that if an affirmative award is substantially less than a timely settlement offer by the opposing party, the opposing party making that offer shall be deemed the prevailing party. :

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1) delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
  - 2) delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

### **18.02 *Computation of Times***

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

### **18.03 *Cumulative Remedies***

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

### **18.04 *Limitation of Damages***

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

### **18.05 *No Waiver***

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Headings*

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

18.09 *No Waiver by Owner*

- A. The failure of the Owner in any one or more instances to insist upon the strict performance of any of the terms of this contract or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

18.10 *Hurricane Protection*

- A. Should hurricane warnings be issued, the Contractor shall take practicable precaution to minimize danger to persons, to the work, and to adjacent property. These precautions shall include closing all openings; removing all loose materials, tools and/or equipment from exposed locations, and removing or securing scaffolding and other temporary work. The Owner may prohibit the carrying out of any work at any time when in his judgment, high water or storm conditions are unfavorable or not suitable, or at any time, regardless of the weather, when proper precautions are not being taken to safeguard previously constructed work or work in progress.

18.11 *Salvage Material*

- A. All products generated by the work and not otherwise designated will become the property of the Contractor. Materials of value may be salvaged, temporarily stockpiled (for short periods of time) and soon removed by the Contractor from the premises. The selling of salvaged material on the premises shall be prohibited

18.12 *Debris*

- A. Debris generated by the Work shall be removed from the premises, with the work areas kept reasonably clean and free of debris at all times. At completion of the Contract, the work areas including temporary storage areas, shall be left without containers, Contractor's equipment and other undesired materials, and in an acceptable clean condition. Debris shall be transported off the premises and disposed of by the Contractor.
- B. In case the Contractor fails or neglects to promptly restore the storage area to its original condition, remove all debris, surplus materials, tools, and incidentals, the Owner may, after 24 hours notice, cause the work to be done and the cost thereof deducted from any payment due to the Contractor.

## SECTION 01100

### SUMMARY

#### PART 1 - GENERAL

##### 1.1 SUMMARY

A. This Section includes the following:

1. Work covered by the Contract Documents.
2. Work phases.
3. Work under other contracts.
4. Use of premises.
5. Owner's occupancy requirements.
6. Specification formats and conventions.

##### 1.2 WORK COVERED BY CONTRACT DOCUMENTS

A. Project Identification: 2022 At-Grade Railroad Crossing Improvements

1. Project Location: Quonset Business Park, North Kingstown, RI.

B. Owner: Quonset Development Corporation.

1. Owner's Representative: Mr. Steven J. King, P.E.

C. The Work consists of the following:

The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

1.) Compass Circle Crossing (West Davisville) DOT #943-189R:

- a. Replace existing rail ballast, wood cross ties, tie plates, and bolts as required;
- b. Install new compromise joint assemblies;
- c. Remove and replace tracks;
- d. Gauge and realign tracks;
- e. Install a new rubberized crossing;
- f. Installation of underdrain;
- g. Full depth pavement replacement approaching the crossing;
- h. Mill and overlay pavement, and
- i. New pavement markings using epoxy-based paint.

2.) Moscrip Avenue Crossing (Quonset) DOT #943-182T:

- a. Replace existing ballast, wood cross ties, tie plates, and bolts as required;
- b. Install new bonded insulated joints;
- c. Remove and replace tracks;
- d. Gauge and realign tracks;
- e. Install a new rubberized crossing;
- f. Installation of underdrain;
- g. Full depth pavement replacement approaching the crossing;

- h. Mill and overlay pavement; and
- i. New pavement markings using epoxy-based paint.

The pavement replacement at this crossing must account for the slight depression in which this crossing is located and shall extend out from the crossing on either side to provide a smooth transition through the crossing. The Contractor shall also account for existing signal activation devices within the crossing. Signal must be operational upon the completion of work.

3.) Casey Avenue Crossing (Quonset) DOT #943-193F:

- a. Replace existing ballast, wood cross ties, tie plates, and bolts as required;
- b. Install new bonded insulated joints;
- c. Remove and replace tracks;
- d. Gauge and realign tracks;
- e. Install a new rubberized crossing;
- f. Installation of underdrain;
- g. Full depth pavement replacement approaching the track;
- h. Mill and overlay pavement; and
- i. New pavement markings using epoxy-based paint.

The Contractor shall account for existing signal activation devices within the crossing. Existing signal is operational and must be operational upon completion of work.

4.) Compass Road Beach Crossing (Quonset) DOT #943-200N:

- a. Replace existing ballast, wood cross ties, tie plates, and bolts as required;
- b. Install new compromise joint assemblies;
- c. Remove and replace tracks;
- d. Gauge and realign tracks;
- e. Install a new rubberized crossing;
- f. Full depth pavement replacement approaching the crossing;
- g. Mill and overlay pavement; and
- h. New pavement markings using epoxy-based paint.

Work on this crossing cannot begin until September 1, 2023.

5. All American Way Crossing (West Davisville) DOT #943-188J:

- a. Replace existing ballast, wood cross ties, tie plates, and bolts as required;
- b. Install new compromise joint assemblies;
- c. Remove and replace tracks;
- d. Gauge and realign tracks;
- e. Install a new rubberized crossing;
- f. Full depth pavement replacement approaching the crossing; and
- g. Mill and overlay pavement; and
- h. New pavement markings using epoxy-based paint.

6. Romano Vineyard Way Crossing (Quonset) DOT #943-182T:

- a. Replace existing ballast, wood cross ties, tie plates, and bolts as required;
- b. Remove and replace tracks;
- c. Raise, align and surface tracks;
- d. Realign existing rubberized crossing;
- e. Installation of underdrain;
- f. Full depth pavement replacement approaching the crossing;
- g. New pavement markings using epoxy-based paint; and

The rail at this crossing will be installed along a new alignment. Continuation of rail on either side of these project limits will be under separate Contract. The Contractor shall account for existing signal activation devices within the crossing. Signal must be operational upon the completion of work. This crossing is Milestone 1 in the project and must be substantially complete by September 30, 2023.

- D. Project will be constructed under a single prime contract.

### 1.3 USE OF PREMISES

- A. General: Contractor shall have limited use of premises for construction operations as indicated on Drawings by the Contract limits.
- B. Use of Site: Limit use of premises to areas within the Contract limits indicated. Do not disturb portions of Project site beyond areas in which the Work is indicated.
  - 1. Limits: Confine constructions operations as indicated on the Contract Drawings.
  - 2. Owner Occupancy: Allow for occupancy of Project site by the Owner, the Owner's tenants, and private property owners within or adjacent to the project area.
  - 3. Accessways and Entrances: Keep accessways and entrances serving premises clear and available to Owner, Owner's employees, tenants, private property owners within and adjacent to the project area and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
    - a. Schedule deliveries to minimize use of accessways and entrances.
    - b. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.



- C. The Contractor shall conduct its operations as such that the Business Park tenants can continue their operations uninterrupted. Full road closures are not allowed except for weekends (full road closures will not be permitted at the Moscrip and Casey Avenue Crossings at any time). Weekends shall be considered as beginning at 6:00 PM on Friday to 5:00 AM Monday. All road closures must obtain prior approval from QDC. All closures of rails to train operation must be coordinated with Seaview.

### 1.4 OWNER'S OCCUPANCY REQUIREMENTS

- A. Partial Owner Occupancy: Owner will occupy the premises during entire construction period, with the exception of areas under construction. Cooperate with Owner during construction operations to minimize conflicts and facilitate Owner usage. Perform the Work so as not to interfere with Owner's operations. Maintain existing accessways, unless otherwise indicated.
- B. Owner Occupancy of Completed Areas of Construction: Owner reserves the right to occupy and to place and install equipment in completed areas of the work, before Substantial Completion, provided such occupancy does not interfere with completion of the Work. Such placement of equipment and partial occupancy shall not constitute acceptance of the total Work.

### 1.5 COORDINATION

- A. The Contractor shall be responsible for notifying the Owner of any stoppage of work. Coordination with all utility providers for work, including but, not limited to shut-offs, connections, installations and relocations of utilities shall be the responsibility of the Contractor. Any expense and/or delay occasioned by utilities and structures or damage thereto, including those not shown on available plans, or by scheduling issues with the utility companies shall be the responsibility of the Contractor at no additional expense to the Owner. The Contractor shall be responsible for contacting “Dig-Safe” at 1-888-344-7233 and shall conform to the “Dig-Safe” notification requirements. The Contractor shall be responsible for notifying and coordinating his work with the following:

Quonset Development Corporation  
Mr. Gregory Coren, P.E.  
Manager of Engineering  
(401) 295-0044 x238

Quonset Development Corporation  
Mr. Russell Hillman  
Principal Staff Engineer  
(401) 295-0044 x246

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

## **75675.2216 – FURNISH AND INSTALL NEW JOINTED RAIL**

### **DESCRIPTION:**

This work shall consist of furnishing and installing new replacement rails at locations shown in the Contract Documents or as directed by the Engineer.

### **GENERAL REQUIREMENTS:**

It is intended that the proposed New Jointed Rail be used as a replacement for new grade crossing installation, any transition rail required from the turnout to the grade crossing, turnout to the siding, or as directed by the Engineer.

### **MATERIALS:**

- Rail Shall be New No. 1 Prime 115RE
- Rail Shall be manufactured from head Hardened 115RE
- Rail Lengths 78'/80'
- Rail ends shall be blank
- The new rail shall meet material requirements from the latest issue of AREMA Specifications for Steel Rails Part 2 Manufacture of Rail, Section 2.1

### **CONSTRUCTION REQUIREMENTS:**

The shoulder of a tie plate shall be set to bear firmly against the rail base. Under no circumstances shall a shoulder be under the rail base. With double shoulder canted tie plate, the cant of the plate shall be downward to the gape of the rail. The Contractor shall not mix canted and flat tie plates.

Any material damaged or lost due directly to the Contractor's operations shall be replaced by the Contractor at no expense to the Owner.

The replacement rail shall be installed in accordance with the following requirements:

- (a) Any mismatch rail ends which exceed 1/8 inch either vertically or horizontally shall be corrected. Mismatches may be corrected by changing joint bars and bolts, by being "built-up" with weld material on the offending rail, or by substituting a different piece of rail.
- (b) Rail shall be spiked to standard track gauge, and gauging shall be performed at least at every third (3rd) tie. In the event the rail abutting the replacement rail is not at standard gauge, gauging shall be performed for a sufficient length to provide a smooth transition.
- (c) Spikes are to be driven perpendicular to the tie surface. Spikes which are bent while being driven shall be discarded and replaced. If a spike is removed, the tie shall be properly plugged before a new spike driven.
- (d) New rail anchors shall firmly grip the bottom of the rail to which they are applied to provide longitudinal rail restraint. Rail anchors shall not be installed at ties which support rail joints, where they will interfere with bond wire, boot legs, insulated joints, and other signal or track appliances, or within 2 inches from the edge of any weld to prevent nicks or gouges within the heat affected zones of the welds.

**METHOD OF MEASUREMENT:**

The quantity of Special Provision (Jointed Rail) of the type specified to be measured for payment will be the number of linear feet installed in the complete and accepted work.

**BASIS OF PAYMENT:**

The accepted quantity of Special Provision (Jointed Rail) of the type specified will be paid for at the Contract unit price per track foot.

Payment will include furnishing, transporting, distributing, handling, and installing the materials specified, including New 115RE Jointed Rail as necessary and as required; and for furnishing all labor, tools, equipment, and incidental necessary to complete the work.

Payment will be made under:

Pay Item

Pay Unit



75675.2216      Furnish and Install Jointed Rail

Linear Foot

## **75675.5600 – INSTALL COMPROMISE RAIL JOINT ASSEMBLY**



### **DESCRIPTION:**

The work shall consist of removing existing compromise rail joint assemblies and reinstalling at locations indicated in the Contract Documents or where ordered by the Engineer.

### **MATERIALS:**

Compromise Joint Bars shall be NEW or FIT (USED), 6-hole, as indicated in the Contract Documents and be of proper design for the Rail Sections to be connected.

If NEW compromise rail joint assemblies are to be furnished, they shall meet the material requirements of the Specification entitled: Chapter 4, Section 3.4 Specifications for Quenched Carbon-Steel Joint, Microalloyed Joint Bars, and Forged Compromise Joint Bars, AREMA Manual-current edition.

If FIT (USED) compromise rail joint assemblies are furnished, they will be acceptable, providing they fit properly, are premanufactured and are compatible with both rails which are to be connected. FIT bars shall be subject to inspection and acceptance by the engineer.

All compromise joint bars must have a specific hand and rail weight designation that fits the rail exactly. “No-hand” joint bars and 4-hole joint bars are not acceptable unless approved by the Engineer.

The Contractor is cautioned that due to the many slight variations in railroad rail and appurtenances, a preliminary inspection and acceptance of compromise rail joint assemblies by the engineer shall always be conditioned upon the fact that the final acceptance cannot be given until the assembly is installed in its final position. In addition to being judged defective due to improper fit, compromise rail joint assemblies may be judged defective for the following reasons:

- Cracks, breaks or other flaws that impair its proper functioning.
- Bolt holes with excessive wear.
- Excessive deterioration from rust or scale.
- If they permit any vertical movement of either rail when all the bolts are tight.

Bolts set shall be NEW and of the proper design and size for the two (2) rail sections to be connected.

Compromise joint bar bolts and nuts shall meet the material requirements of the Specification entitled: Chapter 4, Section 3.5 Specification for Heat Treated Carbon Steel Track Bolts and Carbon Steel Nuts, AREMA Manual-current edition.

Spring washers shall meet the material requirements of the Specification entitled: Chapter 4, Section 3.6 Specifications for Spring Washers, AREMA Manual-current edition.

### **CONSTRUCTION REQUIREMENTS:**

Compromise joints shall be installed so opposite rail joints are staggered at least 4’-11”. Compromise Joints must be field verified as to correctness.

When joining rails of differing sizes with a compromise rail joint assembly, it shall be fitted so that the top of rail surface and the gauge face of the rails to be connected are held in alignment. Bars must be installed,

as markings indicate, GAUGE SIDE/FIELD SIDE.

Bolt sets shall be installed in all assembly bolt holes. Driving of bolts will not be permitted. All bolts shall be tightened to a tension of between 90 and 133 kN (20,000 and 30,000 lbs).

In the event it is necessary to provide additional bolt holes, it shall be done only by drilling with a rail drill of appropriate size. No other method will be permitted.

**METHOD OF MEASUREMENT:**

The quantity of Special Provision (Compromise Joints) to be measured for payment will be the number of compromise rail joint assemblies reinstalled in the complete and accepted work.

**BASIS OF PAYMENT:**

The accepted quantity of Special Provision (Compromise Joints) will be paid for at the Contract unit price per each joint assembly. Payment will be full compensation for removing existing and reinstalling a properly fitted compromise rail joint assembly, complete with new properly tensioned bolts, nuts, and washers, and for furnishing all materials, labor, tools, equipment, and incidentals necessary to complete work.

Payment will be made under:

<u>Pay Item</u>	<u>Pay Unit</u>
75675.5600      Install Compromise Rail Joint Assembly	Each

**IMPROVEMENTS TO AT-GRADE RAILROAD CROSSINGS  
QUONSET DEVELOPMENT CORPORATION  
ADDENDUM 1  
RESPONSES TO CONTRACTOR QUESTIONS**

- 1.) Specification Section 01100, paragraph 1.3.C states full road closures are not allowed except for weekends. Would full road closure be allowed sometime Friday and if so what time Friday day or night can a full road closure be taken. Can one lane be taken M-F? Can more than one crossing be worked on at a time?

*Response: See revised Specification Section 01100, paragraph 1.3.C. More than one crossing may be worked on at one time if approval of roadway and track closures are obtained from QDC and Seaview.*

- 2.) Please provide more information on train traffic M-F and weekends.

*Response: The average train crossings at each at-grade crossing is as follows:*

- *Compass Circle – 2 crossings per month*
- *All American Way – 2 crossings per month*
- *Casey Avenue – 2 crossings per month*
- *Compass Rose Beach – 2 crossings per month*
- *Romano Vineyard Way – 4 crossings per day*
- *Moscrip Avenue – 2 crossings per day*

*There are no scheduled crossings on the weekends.*

- 3.) General Conditions, Article 6.05, specifies requirements for builder's risk insurance. Please confirm this policy will be required.

*Response: Article 6.05 states "Unless otherwise provided..." Article 6.03, Paragraph K lists the specific insurance requirements and Article 6.05 is not applicable to this project. See revised General Conditions. This paragraph has been crossed out for clarity.*

- 4.) General Conditions, Article 6, provides insurance requirements for the project. There is no railroad insurance policy listed. Please confirm railroad insurance is not required or provide policy requirements.

*Response: Railroad protective liability insurance is not required.*

- 5.) Section 75675.5800 – Furnish and Install factory assembled bonded insulated joint typically have lead times upwards of 12 weeks after approved submittal. If that is the case, then these items will be tough to procure to meet project schedule. Would liquidated damages be assessed if material is not available to support bid schedule.

*Response: See revised Section 00410 – Bid Proposal, Article 7.02.*

- 6.) Bid Form 00410, Article 7.02, lists substantial completion on December 1m, 2023. Please clarify "1m"

*Response: See revised Bid Form 00410, Article 7.02.*

- 7.) Milestone 1 is completion of Romano Vineyard Crossing by September 30, 2023. When does QDC anticipate providing NTP? Rubber grade crossing lead time is currently around six weeks after approved submittal. Lead time on other track products are still pending vendor feedback.

*Response: See revised Section 00410 – Bid Proposal, Article 7.02.*

- 8.) Bid Item 202.0399, unclassified excavation, requires excavation and removal of existing ballast. Please clarify if this material should be shipped offsite and disposed at landfill or kept onsite at QDC. If shipped offsite please clarify what contamination level should be assumed for proper landfill pricing? If offsite, please confirm a temporary onsite location will be provided during the sampling, testing, and disposal paperwork process.

*Response: Excess ballast may be stockpiled at the Romano Vineyard Way crossing. Coordinate location of stockpile with QDC.*

- 9.) Specification section 75675.5600 is titled Remove Existing and Reinstall Compromise Rail Joint Assembly. Bid Form pay item 75675.5600 is titled Compromise Rail Joint Assembly. Specification Section 01100-Summary Paragraph C Items 1) Compass Circle, 4) Compass Rose, 5) All American Way all state to install new compromise joints. Please clarify. If we are to remove and reinstall existing compromise joints please clarify where existing compromise joints are coming from.

*Response: See revised Specification Section 75675.5600. Pay Item is for installation of new compromise joint assemblies. Pay Item has been revised in the Bid Form, Specification Section 00410 – Bid Proposal.*

- 10.) All American Way Crossing does not have pay items 202.0300 – Unclassified Excavation, 207.10 F&I geotextile fabric for underdrain, 703.0608 8" perforated corrugated underdrain. No underdrain is shown on the plans at this location. Please provide clarification. How is excavation for new ballast paid at this location?

*Response: See revised Bid Form in Specification Section 00410.*

- 11.) Please explain intent of Pay Items 75675.8500 – Raise, align and surface track and 75675.8300 – Gauging. Is the intent of 75675.8500 to pay to raise, align and surface the new track construction? If so, then what is the gauging pay item used for as the quantities for both pay items are identical. The gauging pay item seems to be for work outside the crossing/work limits.

*Response: The scope of work under gaging is described in Specification Section 75675.8300. Gaging limit of work shall be the limit of newly installed rail.*

- 12.) The surface and align pay item quantity seems to cover the extent of the crossing. Usually you have to surface and align 50'-150' on each side of the crossing in addition to the crossing. In that case engineer quantities are too small. Please clarify expected extents to S&A track.

*Response: See revised Bid Form in Specification Section 00410.*

- 13.) Specification provide Pay Item 75675.2150 F&I thermite field welds. This pay item is not shown on the bid form. Sheet C-13 Typical Section detail has not identified 75675.2150 F&I thermite field welds. Please clarify.

*Response: This specification section, along with 75675.2216, shall be used for the procurement and installation of the welded rail. Bidders are to determine the required number of welds required for the specified lengths of welded rail in the contract.*

- 14.) Pay Item 75675.5800 F&I factory assembled bonded insulated joint, paragraph 5 states, "Rail ends shall be left blank so that they may be field welded into the track or field drilled for proper bolt spacing." Should these joints be field welded or bolted in place?

*Response: Either method is acceptable.*

- 15.) C-4 Moscrip Avenue crossing plan shows connecting new 115 rail to existing with bonded compromise joints. There is no compromise joint pay item on the Bid Form for this location. There is Pay Item 75675.5800 Furnish and Install factory assembled bonded insulated joint. This pay item calls for a 19'6" bonded joint piece. The plans show 223.8 LF of rail to be replaced. Are the 4 each 19'6" bonded joints included within the 223.8 LF of rail replacement or outside those limits? Same question applies to Casey Avenue Crossing.

*Response: See revised Bid Form in Specification Section 00410. The bonded joints are located outside the track replacement length.*

- 16.) Pay item 75675.2216 F&I new jointed rail is paid by the track foot under basis of payment. Under method of measurement the rail is measured by linear feet. The rails on the crossings are staggered so linear feet would make more sense as the basis of payment.

*Response: See revised Bid Form in Specification Section 00410. Units have been revised to LF for this Line Item.*

- 17.) Specification section 75675.2216 is titled Furnish and Install new jointed rail. The Bid Form has 75675.2216 titled as F&I welded rail. Plans call for welded rail. Please clarify.

*Response: Refer to Question 13 above.*

18.) All American Way has pay item 75675.5600 compromise joints. The plans show existing rail as 115lb rail and we are installing 115 lb rail. What is the compromise joint pay item used for at All American Way?

*Response: The plans for All American Way call for mechanical joints. See revised Bid Form in Specification Section 00410.*

19.) Specifications provide pay item 75675.5810 – F&I non-bonded insulated joint assembly. This pay item is not shown on the Bid Form. Please clarify.

*Response: This Specification Section is no longer required and has been removed from the Specifications.*

**SIGN IN SHEET**

**Mandatory Pre-Bid July 20, 2023 at 10 AM local time**

**PLEASE PRINT CLEARLY**

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