

WATER PERMIT NO. 2832-2

Name of Applicant: **Reel Simple LLC**

Address: **1912 Country Road, Rapid City SD 57701**

Phone: **605 593-1014**

Amount of Water Claimed: **0.044 cfs (32 AF)**

Total Acres: **NA**

Source of Water Supply: **groundwater (one well)**

Water to be used for: **water distribution system**

County: **Pennington**

Type of Waste Disposal System:

Location: **2 miles north of Rapid City**

PRIORITY

Date Received: **11-8-21**

Application/License Fee: **\$ 300**

Corrected Application Received:

Period of Annual Use: **January 1 – December 31**

Remarks:

Diversion Point: **SE 1/4 SW 1/4 Sec 17-T2N-R8E**

Land to be Irrigated: **NA**

Depth of Well: **1780 feet deep**

Well Driller: **Rapid Drilling LLC**

Remarks:

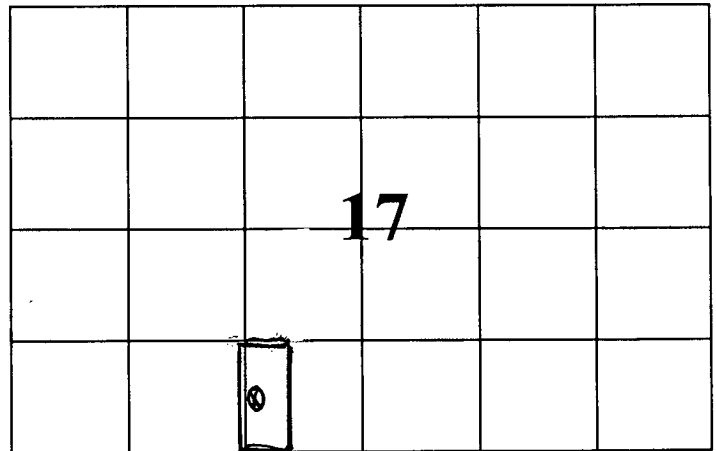
Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **11-8-21**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



**SOUTH DAKOTA
WATER PERMIT NO. 2832-2**

Date of first receipt of application November 8, 2021.

The Chief Engineer, on behalf of the Water Management Board, issues Water Permit No. 2832-2 to Reel Simple LLC, c/o Randy Dowdy, 1912 Country Rd, Rapid City SD 57701 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2832-2 appropriates 10 acre-feet of water annually at a maximum pump rate of 0.044 cubic feet of water per second from one well completed into the Inyan Kara Aquifer (1,780 feet deep) located in the SE 1/4 SW 1/4 Section 17 for a water distribution system located in the SE 1/4 SW 1/4 Section 17; all in T2N-R8E. This site is located on the north side of Rapid City SD.
2. The water appropriated shall be used for the purpose of a water distribution system and may not exceed the amount of water needed for beneficial use.
3. The water is to be used during the following described annual period: January 1 – December 31.
4. The date from which applicant may claim right is November 8, 2021.
5. The date of approval of Permit No. 2832-2 is January 24, 2022.
6. One-fifth of the construction is to be completed on or before July 24, 2024.
7. All construction is to be completed on or before January 24, 2027.
8. Water is to be put to beneficial use on or before January 24, 2031.
9. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The well approved under Water Permit No. 2832-2 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals under this Permit shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.
3. Water Permit No. 2832-2 authorizes a total annual diversion of up to 10 acre-feet of water.

WATER MANAGEMENT BOARD

By: Eric Gronlund
Eric Gronlund, Chief Engineer
Water Rights Program
Department of Agriculture and Natural Resources

MAR 30 2022
date



RECEIVED
NOV - 8 2021
WATER RIGHTS
PROGRAM

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2832-2</u> (office use only) Hydrologic Unit <u>10120111</u>
	Basin <u>Upper Cheyenne</u>
	Newspaper <u>Rapid City Journal</u>

Application For Permit To Appropriate Water Within The State Of South Dakota

Check use(s) of water:

☐ Municipal	☐ Water Distribution System	☐ Recreational	☐ Institutional
☐ Rural Water System	☐ Commercial	☐ Fish & Wildlife	☐ Geothermal
☒ Domestic (over 18 gpm)	☐ Industrial	☐ Other _____	

Type of Application: (check one)

☒ New	☐ Vested Right (Use predates Mar 2, 1955)	☐ Future Use Reservation
☐ Place to Beneficial Use Water Reserved by Future Use Permit No. _____		
☐ Amendment/Correction to Permit No. _____		

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

- Name to Appear on Water Permit Reel Simple, LLC
Mailing Address 1912 Country Road Rapid City SD 57701
(Address) (City) (State) (Zip Code)
Phone (605)-593-1014 Mobile _____ Email docdowdy@yahoo.com
- Amount of water claimed 0.044 *CFS or 20 **GPM and 10 ***AF or _____ Gallons
Flow rate and volume are both required. (*Cubic Feet per Second) (**Gallons per Minute) (**Acre Feet - storage capacity of dam/dugout or annual use)
- Source of water supply Well
- Location of point of diversion 1 well in SW 1/4 SW 1/4 section 17-T2N-R8E County Pennington
(example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)
If not a public water supply (e.g. municipal), will water be used outside of the area described above? ☐ Yes ☒ No
If "Yes," where will water be used? _____
(example - NW1/4 section 12-T104N-R53W)
- County or counties where water will be used Pennington
- Annual period during which water is to be used Year round
- Give a description of the project. When available include any preliminary engineering report or other reports or information that will help explain the project. (Attach sheet if more space is needed)

Well for Reel Simple, LLC. which will provide the supply water for the Reel Simple Water System.

I, Randy Dowdy Owner _____, the applicant, certify under
Name of Person Title (if applicable)

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

Supplemental Information

(type or print)

1. Well Information (check one or both as applicable) ☒ Drilling new well(s) ☒ Using existing well(s)

a) If new wells, how many ____ Have test holes been drilled ☐ Yes ☐ No Drilled by ____
(if yes, please provide copies of logs)

b) If existing wells, how many 1 Provide copy of log(s), if available. Drilled by Rapid Drilling, LLC.

For either Existing or Proposed Wells:

c) Well Depth (required) 1780 Depth to Top of Water Bearing Material ____ Depth to Water from Surface 120

d) Distance to nearest domestic well on applicant's property NA Property owned by others ~875'

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) Septic Tank & Drain Field

b) System Capacity (gallons) 1,500.00 Year Constructed 2021

c) Connected to the City of ____ Sanitary System

3. Dugout Information

a) Surface Dimensions ____ Depth ____

b) Depth to water (ground surface to water level) ____

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

b) Freeboard ____

c) Crest Width ____

Crest Length ____

d) Height ____

e) Primary Outlet Capacity ____

If pipe, diameter ____

f) Secondary Spillway Capacity ____

Spillway Width ____

g) X & Y Slope (e.g. 3 to 1 is a typical slope)

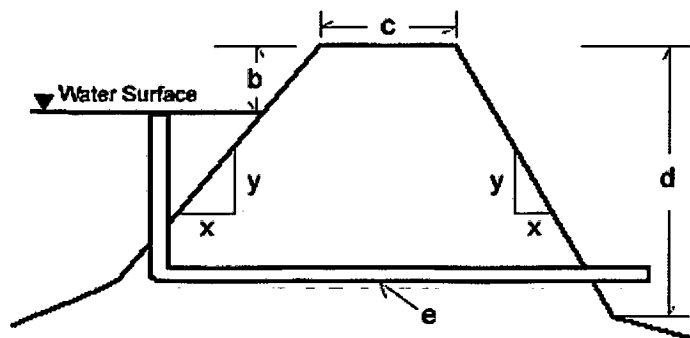
Upstream ____

Downstream ____

h) Surface Area of Impoundment ____

i) Storage ____ Acre Feet

j) Drainage Area Above Dam ____ Acres



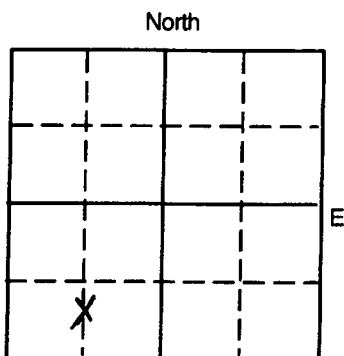
SOUTH DAKOTA WATER WELL COMPLETION REPORT

11-02

Location SE 1/4 SW 1/4 Sec 17 Twp 2N Rg 8E

County Pennington

Please mark well location with an "X"



Well completion Date

1-10-21

Distance to nearest potential pollution source (Septic tank, abandoned well, feed lot, etc.)

? 300 ft. from Septic (identify source)

PROPOSED USE:

☒ Domestic/Stock well ☐ Municipal ☐ Business ☐ Test Holes
☐ Irrigation ☐ Industrial ☐ Institutional ☐ Monitoring

METHOD OF DRILLING:

Mud Rotary

CASING DATA:

☒ Steel ☐ Plastic ☐ Other

If other describe

PIPEWEIGHT	DIAMETER	FROM	TO	HOLE DIAMETER
36 LB/FT	9 3/8 IN	0 FT	40 FT	12 1/4 IN
115 LB/FT	5 1/2 IN	0 FT	1770 FT	7 7/8 IN
LB/FT	IN	FT	FT	IN

GROUTING DATA:

Grout Type	No. of Sacks	Grout Weight	From	To
<u>Cement</u>	<u>15</u>	Lb/gal	<u>0</u> Ft	<u>40</u> Ft
<u>Cement</u>	<u>315</u>	Lb/gal	<u>0</u> Ft	<u>1770</u> Ft

Describe grouting procedure

Pressure Grouted
Through Casing

SCREEN:

☐ Perforated pipe ☐ Manufactured

Diameter _____ Inches Length _____ Feet

Material _____

Slot Size _____ Set From _____ Feet to _____ Feet

Other information _____

WAS A PACKER OR SEAL USED?

☐ Yes ☒ No

If so, what material?

Describe packer(s) and location

DISINFECTION: Was well disinfected upon completion?

☐ Yes, How?

☒ No, Why Not?

Lab sample sent to for water quality analysis

Well Owner:

Reel Simple L.L.C

Business Name:

Randy and Laura Dowdy

Address:

1912 Country Rd.

City, State, Zip:

Rapid City SD 57701

WELL LOG:

DEPTH

FORMATION

FROM

TO

Till

0

30

Shale

30

1425

Fall River Sand.

1425

1600

Shale Fusion

1600

1705

Lakota Sand

1705

1750

Morrison Shale

1750

1780

STATIC WATER LEVEL

120

FEET

If flowing: closed in pressure

PSI

GPM flow

through

Inch pipe

Controlled by

☐ Valve

☐ Reducers

☐ Other

Reduced flow rate

GPM

Can well be completely shut in?

WELL TEST DATA:

☐ Pumped

Describe:

Air

☐ Bailed

☒ Other

Pumping Level Below Land Surface

340

Ft. After

8

Hrs. pumped

20

GPM

Ft. After

Hrs. pumped

GPM

If pump installed, pump rate:

GPM

REMARKS

Electronically Perforated

1720-1725 4 shots per ft

This well was drilled under license #

739

And this report is true and accurate.

Drilling firm:

Rapid Drilling L.L.C

Signature of License Representative:

RECEIVED

Signature of Well Owner or Equitable Property Holder:

Randy Dowdy

JAN 29 2021

WATER RIGHTS PROGRAM

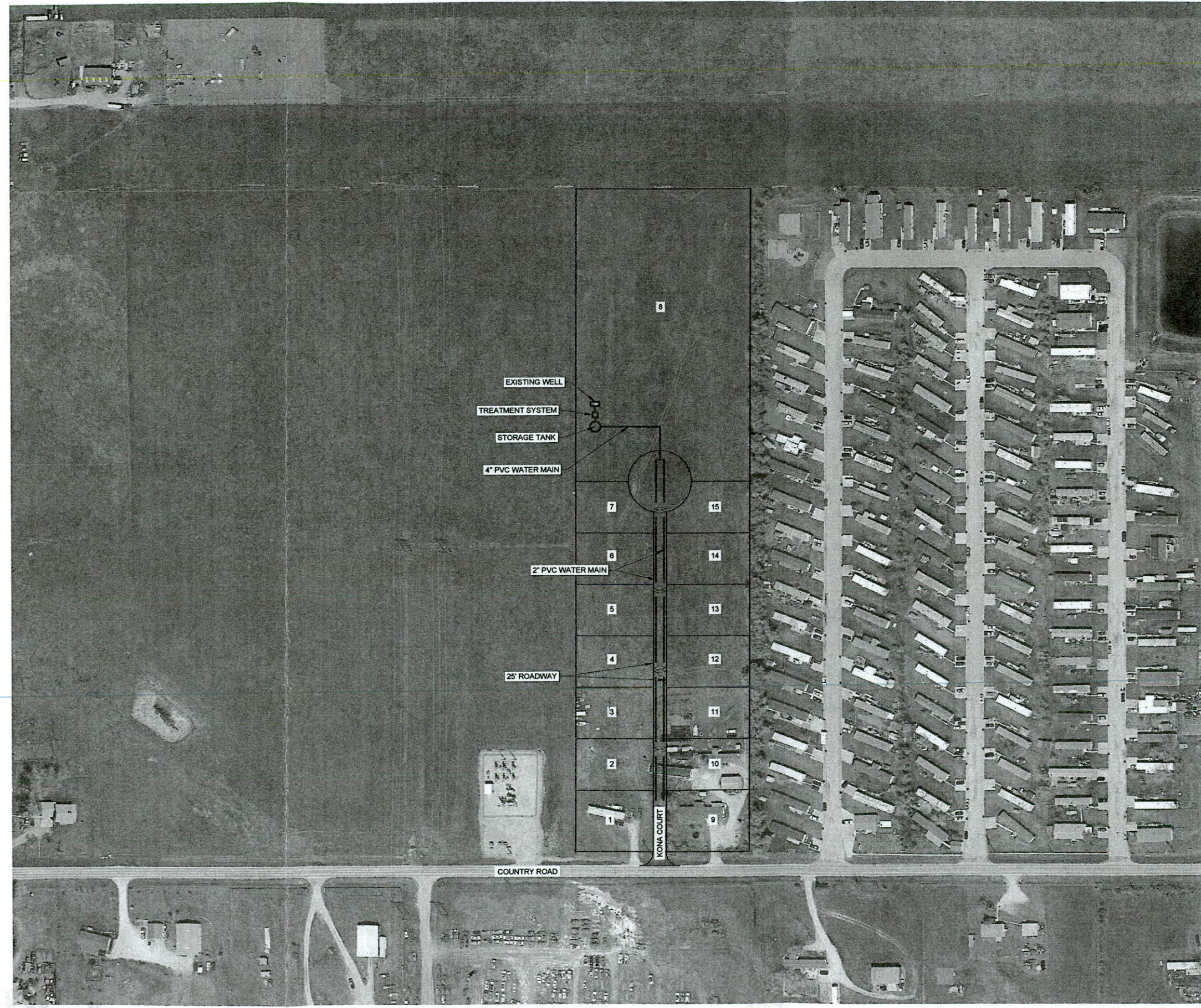
Date:

523 E Capitol Ave.

Pierre SD 57501

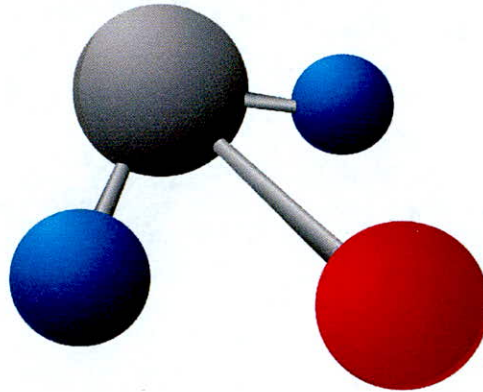
Please return WHITE COPY to:

DENR Water Rights



REEL SIMPLE WATER SYSTEM

RAPID CITY, SOUTH DAKOTA



INDEX OF DRAWINGS

G1 - COVER
G2 - VICINITY MAP
G3 - ABBREVIATIONS & LEGEND
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C4 - PROCESS PIPING AND INSTRUMENTATION DIAGRAM
C5 - PROCESS MECHANICAL PLAN
C6 - PIPING ELEVATION - WEST WALL
C7 - PIPING DETAILS

PREPARED FOR:
RANDY DOWDY

AE2S Project No.: 15230-2021-001

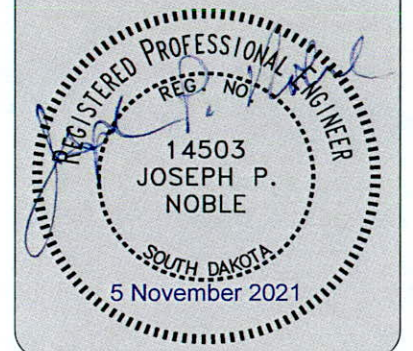
NOV 2021

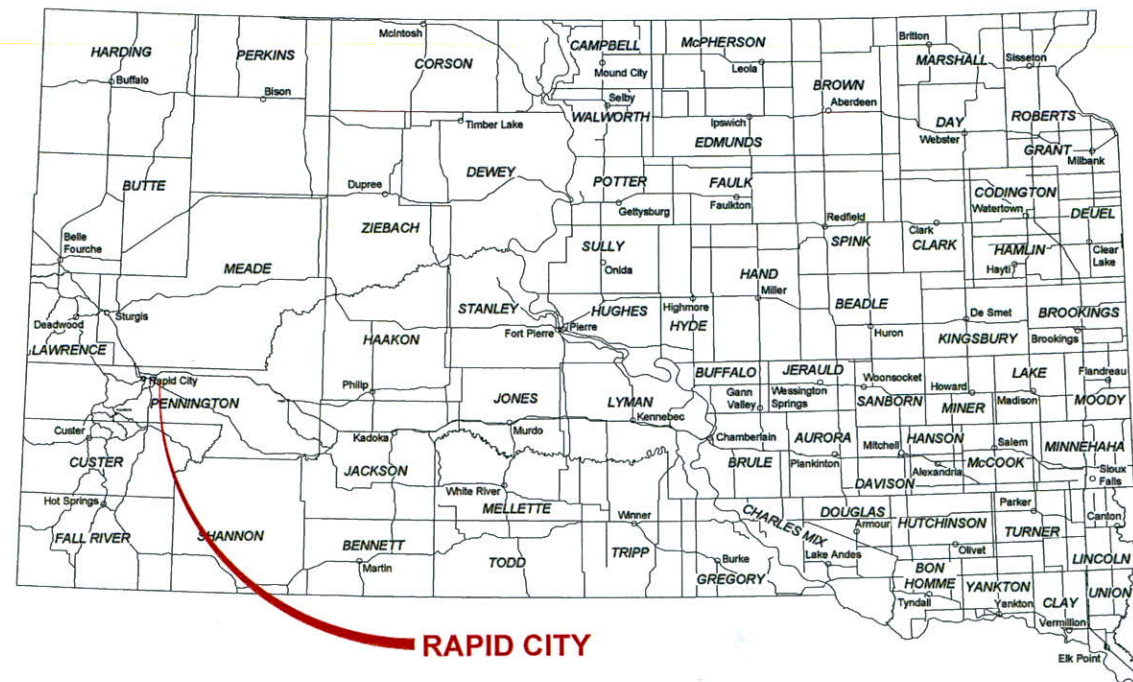
PROJECT DRAWINGS

Advanced Engineering and Environmental Services, LLC.
1560 Concourse Dr Rapid City, SD 57703
(t) 605-341-7800 www.ae2s.com

CERTIFICATION

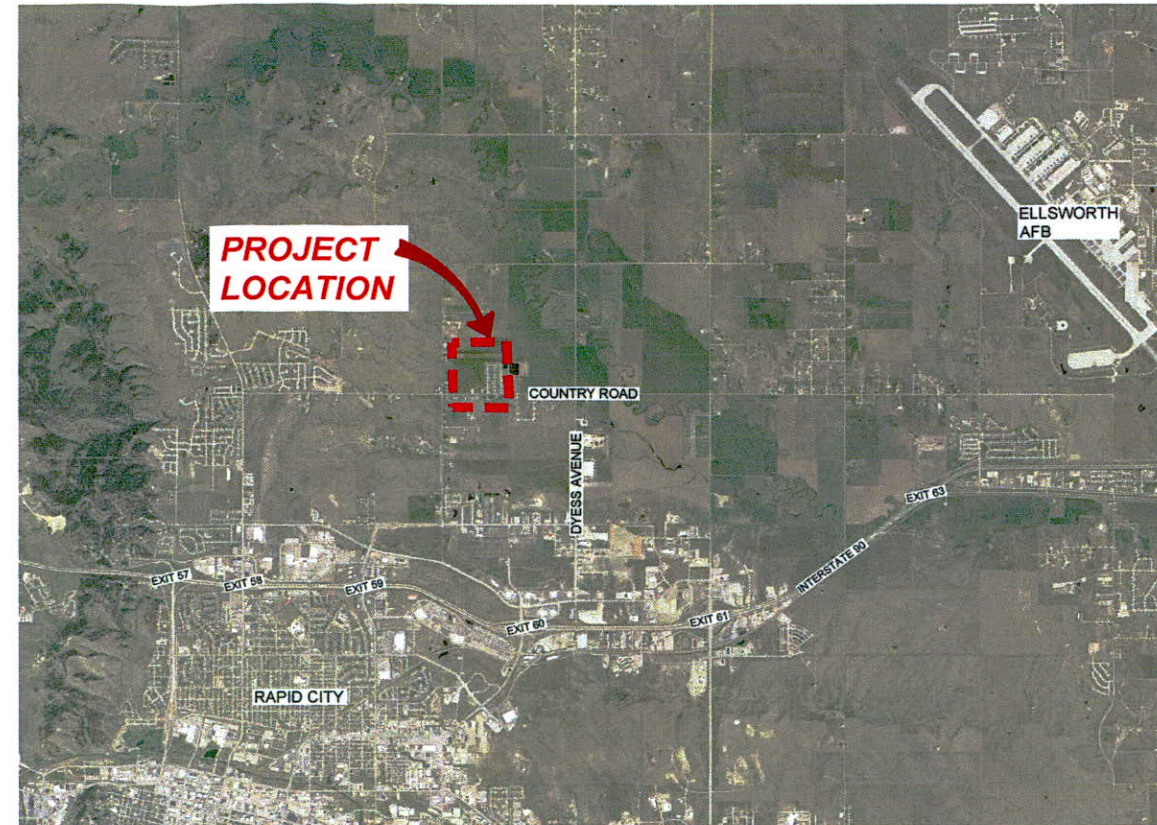
CIVIL ENGINEER
Advanced Engineering and
Environmental Services, Inc.





STATE OF SOUTH DAKOTA

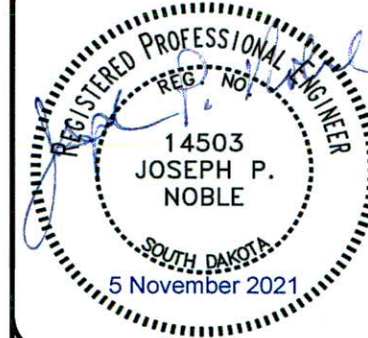
1
G2 PROJECT LOCATION MAP
PENNINGTON COUNTY



2
G2 PROJECT VICINITY MAP



3
G2 PROJECT AERIAL MAP



SYM	DATE	DESCRIPTION	APPR



REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA
VICINITY MAP

DRAWING TYPE	CONST
PREPARED BY	EJ
CHECKED / APPROVED	CS / JN
DATE	NOV 2021
PROJECT NUMBER	15230-2021-001
SHEET	2 of 12
DRAWING	G2

CIVIL BOUNDARY LEGEND

	SECTION LINE
	PROPERTY BOUNDARY
	PROPERTY LINE / LOT LINE
	EASEMENT LINE
R/W	RIGHT-OF-WAY
P/E	PERMANENT EASEMENT
C/E	CONSTRUCTION EASEMENT

CIVIL UTILITY LEGEND

EXISTING	PROPOSED	
SS	SS	SANITARY SEWER
---S---S---	---SSM---	SANITARY SEWER FORCEMAIN
○	●	SANITARY MANHOLE
⊙	●	SANITARY CLEANOUT
	▲	SANITARY DROP MANHOLE
	└	SANITARY WYE
	●	SANITARY PLUG
	●	SANITARY PIG
SD	SD	STORM DRAIN PIPE
⊙	●	AREA INLET
⊙	●	BEEHIVE INLET
⊙	●	CURB INLET
⊙	●	STORM MANHOLE
⊙	●	FES OUTFALL
W	W	WATER LINE
⊙	●	CURB STOP
⊙	●	WATER MANHOLE
⊙	●	AIR RELEASE MANHOLE
⊙	●	METER MANHOLE
□	■	GATE VALVE
⊙	●	BLOW-OFF HYDRANT
⊙	●	FIRE HYDRANT
⊙	●	WELL
	▲	AIR RELEASE HYDRANT
	└	BUTTERFLY VALVE
	○	PRESSURE REDUCING MANHOLE
	●	SLIDE MANHOLE
	■	PLUG VALVE
	■	WATER CROSS
	└	WATER TEE
	└	WATER FITTING
	└	WATER CAP
	└	WATER COUPLING
	└	WATER REDUCER
	▲	SADDLE
---CTV---		CABLE TV LINE
□ TV		CABLE TV PEDESTAL
---T---		TELEPHONE LINE
□ T		TELEPHONE PEDESTAL
---TFO---		FIBER OPTIC LINE
□ TFO		FIBER OPTIC PEDESTAL
---G---		GAS LINE
○		GAS LINE VENT
---UGE---		ELECTRIC, UNDERGROUND
---DHE---		ELECTRIC, OVERHEAD
○		ELECTRIC UTILITY POLE
□		ELECTRIC BOX
○		ELECTRIC MANHOLE
○		ELECTRIC GUY
○		ELECTRIC LIGHT
□		ELECTRIC SIGNAL ARM
□		ELECTRIC SIGNAL
⊙		ELECTRIC PUSH-TO-WALK
□		UNKNOWN PEDESTAL
○		UNKNOWN MANHOLE
□		UNKNOWN VALVE

CIVIL TOPOGRAPHIC LEGEND

EXISTING	PROPOSED	
		BUILDING
		FENCE, BARBED WIRE
		FENCE, WOVEN WIRE
		FENCE, CHAINLINK
		FENCE, WOOD
		FENCE, VINYL
		TREE - GROUP
		TREE - CONIFEROUS
		TREE - DECIDUOUS
		SHRUB / BUSH
		SIGN
		MILE POST
		BORE HOLE
		RIGHT-OF-WAY MONUMENT
		CONTOUR - INDEX
		CONTOUR - INTERMEDIATE

CIVIL SURFACE LEGEND

EXISTING	PROPOSED	
		BITUMINOUS PAVEMENT
		CONCRETE
		GRAVEL

1. THE INFORMATION DEPICTED WITHIN THESE DRAWINGS IS COMPILED FROM LEGACY DRAWINGS AND FIELD SURVEYS FROM PREVIOUS PROJECTS, SITE VISITS, CONSTRUCTION OBSERVATION TIES AND PHOTOGRAPHS, AND THE MEMORIES OF CITY STAFF AND CONSTRUCTION OBSERVERS.
2. THE LOCATIONS OF KNOWN UNDERGROUND UTILITIES ARE SHOWN ON THE CONSTRUCTION DRAWINGS IN AN APPROXIMATE WAY ONLY. ADDITIONAL ACTIVE AND INACTIVE UTILITIES MAY BE PRESENT.
3. COORDINATE ALL ON-SITE STORAGE WITH OWNER TO AVOID CONFLICTS WITH EXISTING UTILITIES.
4. MAINTAIN OWNER EGRESS TO SITE AT ALL TIMES.

The diagram illustrates the layout of a drawing sheet with three types of details: Plan, Detail, and Section. Each detail includes a detail number circle, title, scale, and graphic scale.

PLAN DRAWING TITLE

- DETAIL NUMBER:** A circle containing 'X' and 'XX'.
- SHEET WHERE DRAWN:** Points to the 'XX' in the detail number circle.
- GRAPHIC SCALE:** A scale bar showing 50', 0, 50', and 100'.
- REFERENCE NORTH (ORIENTED TO SITE OR STRUCTURE):** A north arrow pointing up, labeled 'CONSTR'.
- ACTUAL NORTH:** A north arrow pointing up and to the right, labeled 'ACTUAL'.

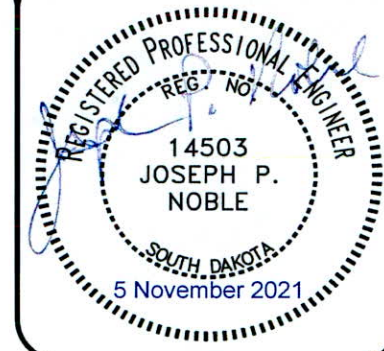
DETAIL TITLE

- DETAIL NUMBER:** A circle containing 'X' and 'XX'.
- SHEET WHERE DRAWN:** Points to the 'XX' in the detail number circle.
- SHEET WHERE DETAIL IS CALLED FROM (EVERY OCCURRENCE):** Points to the 'REF: C10, C12, C14' text.
- SCALE: NONE**

SECTION TITLE

- DETAIL NUMBER:** A circle containing 'X' and 'XX'.
- SHEET WHERE DRAWN:** Points to the 'XX' in the detail number circle.
- GRAPHIC SCALE:** A scale bar showing 50', 0, 50', and 100'.

	100'-0"± FLOOR	EXISTING ELEVATION & LOCATION IN SECTION VIEW (CONTRACTOR TO VERIFY)
	100'-0"± FLOOR	EXISTING ELEVATION & LOCATION IN PLAN VIEW (CONTRACTOR TO VERIFY)
	108'-0" WALL	PROPOSED ELEVATION & LOCATION IN SECTION VIEW
	108'-0" FLOOR	PROPOSED ELEVATION & LOCATION IN PLAN VIEW
		BREAKLINE (OBJECT CONTINUES, DRAWING ENDS)
		DIRECTION OF FLOW
		EXISTING NOTES
		DEMOLITION NOTES
		CONSTRUCTION NOTES
		PIPING SCHEDULE ITEMS
		EQUIPMENT SCHEDULE ITEMS



REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA

Sym	Date	Description	Appr

DRAWING TYPE CONST
PREPARED BY EJ
CHECKED / APPROVED CS / JN
DATE NOV 2021
PROJECT NUMBER 15230-2021-001
SHEET 3 of 12
DRAWING G3

STANDARD SPECIFICATIONS

Standard Specifications for construction shall be the City of Rapid City Standard Specifications for Public Works Construction, 2007 Edition, with current updates and revisions except as modified herein.

LICENSE

The related work includes the installation of water mains and associated work. Contractor must hold current water and sewer installer's license with the state of South Dakota to perform the work. The licensee shall perform the work. A copy of the license shall be submitted to the Engineer prior to work commencement.

UTILITY COMPANY NOTIFICATION

The information on these drawings concerning the type, size and location of utilities is based upon the information available from a field survey. The Contractor shall be responsible for the determination of the exact location of all utilities prior to beginning construction. The Contractor shall be responsible for protecting all existing utilities in place. The Contractor shall coordinate any relocation with the utility companies. The Contractor shall utilize the South Dakota One Call notification process to provide advance notice of at least 48 hours, excluding weekends and holidays, to inform all South Dakota underground facility operators of intended excavation. The Contractor shall contact all utility companies before work is commenced. Protection, relocations or adjustment of utilities is the responsibility of the Contractor and no additional payment will be made for this work.

TRENCH EXCAVATION AND BACKFILL

Contractor shall be responsible for meeting OSHA standards for excavation and trenching.

Excavated soil for backfill shall be placed in an area coordinated with the Engineer and Owner. Excess excavated soil shall be disposed of by the Contractor. Costs shall be incidental to water main installation and backfilling. All trenching and backfilling will be incidental to the pipeline costs.

If unsuitable material is encountered, the Contractor may perform drying operations on the material or provide imported fill. No additional payment will be made for importing fill. The Contractor is responsible for compacting all materials to 95% maximum dry density standard proctor. Water for compaction shall be incidental to the trench backfill. The Owner will provide compaction testing for the work through a local geotechnical firm. The Contractor shall furnish soil samples to the owner upon request.

EASEMENTS AND WORK LIMITS

The Contractor shall complete all work on the Owner's property and within the Right-of-Way. The Contractor is solely responsible for restoration outside of the proposed roadway easement limits. Area disturbed outside of the easement limits established for this project shall be restored to original conditions with sod, seed, gravel, or other materials as required. No payment will be made for work outside of these limits. The Contractor is responsible for providing staging sites for materials and equipment storage. Security of the storage site is the responsibility of the Contractor.

INCIDENTAL WORK

Items not included in the bid forms as a pay item under each schedule of the contract but are included in the plans and specifications as needed to complete the work shall be incidental to the contract lump sum price for Incidental Work.

Incidental work includes but is not limited to the following:

1. The Contractor is responsible for recording and providing all as-built conditions found and installed upon construction. The Contractor shall provide the as-builds with field measurements and grades upon completion of the work.
2. Removal and resetting of signs, fences, mailboxes etc. as needed for the completion of the water main installation. (If needed)
3. Storm water permits.
4. Work associated with developing construction sequencing.
5. Contractor Furnished Progress Schedules.
6. Incidental work listed in the plans.
7. Press Release Announcements.
8. Sawing in existing pavement or sidewalk.
9. Exploratory Excavation.

EXPLORATORY EXCAVATION

The Contractor shall provide exploratory excavation as needed for the completion of work under the contract. No separate payment will be made for Exploratory Excavation. The Contractor is responsible for all work necessary to complete the project.

Utility Contacts:

- Midco-1-800-888-1300, 537 Century Road, Rapid City, SD 57701
- MDU- (605) 342-0160 or 1-800-638-3278, 718 Steele Ave, Rapid City, SD 57701
- WREA- (605) 393-1500, 3250 SD-44, Rapid City, SD 57701
- Century Link- General (605) 863-0497, Internet Service 877-348-9005, Phone Service 877-348-9007
- VAST- (888) 745-2888, 809 Deadwood Ave N, Rapid City, SD 57702

EXCAVATION AND GRADING NOTES

The Contractor shall restrict disturbance limits to the grading limits shown on the plans. Disturbance outside of the designated areas is prohibited.

Soil supporting vegetation (top 4" typ.) shall be stockpiled during excavation work for subsequent placement of the surface during finished grading. Rocks larger than 2" in any dimension shall be excluded from soils used for finish grading. Rock Raking is required.

Proposed elevations and contours on the plan are to finish grade less topsoil and co-compost amendment.

Compost filter socks shall be furnished, installed, and maintained at locations shown on the plans and at locations deemed necessary by the Engineer.

WATER FOR COMPACTION

The Contractor is responsible for providing water for compaction of embankments, granular materials and trench backfill as required. There will be no separate payment for water for compaction. The costs for loading, transporting, and applying water shall be in the various items where water is required.

DEWATERING AND SEDIMENT COLLECTING

If construction dewatering is required, the Contractor is required to obtain a Surface Water Discharge Permit from the DENR. Contact the DENR Surface Water Program at 605-773-3351 to apply for a permit. NOTE: construction dewatering is anticipated.

The Contractor has the option to treat sediment laden water trapped within the project limits with a Dewatering and Sediment trap system or the Contractor may elect to transport sediment laden water off the project. The Dewatering and Sediment Collection System shall be pre-approved by the Engineer prior to the start of Dewatering. All costs for dewatering and sediment collection shall be incidental to the contract item for which dewatering is being performed. An example of a temporary sediment trap for construction dewatering is provided in the plan details.

SEEDING

The areas to be seeded comprise of all newly graded areas within the project limits except for the top of roadways.

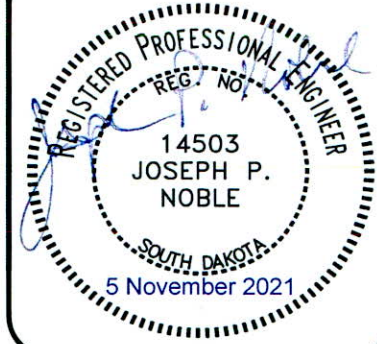
All permanent seed shall be planted in the topsoil at a depth of ¼" to ½".

All seed broadcast must be raked or dragged in (incorporated) within the top ¼" to ½" of topsoil when possible.

Permanent Seed Mixture shall consist of the following:

Non-irrigated Lawn Mix
20% Blue Fescue
20% Chewings Fescue
20% Creeping Red Fescue
10% Perennial Ryegrass
10% NuBlue Kentucky Bluegrass

Rate of Application - 200# per acre

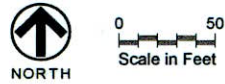
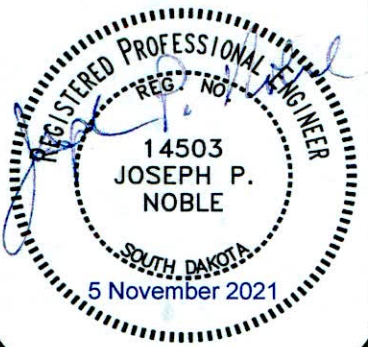
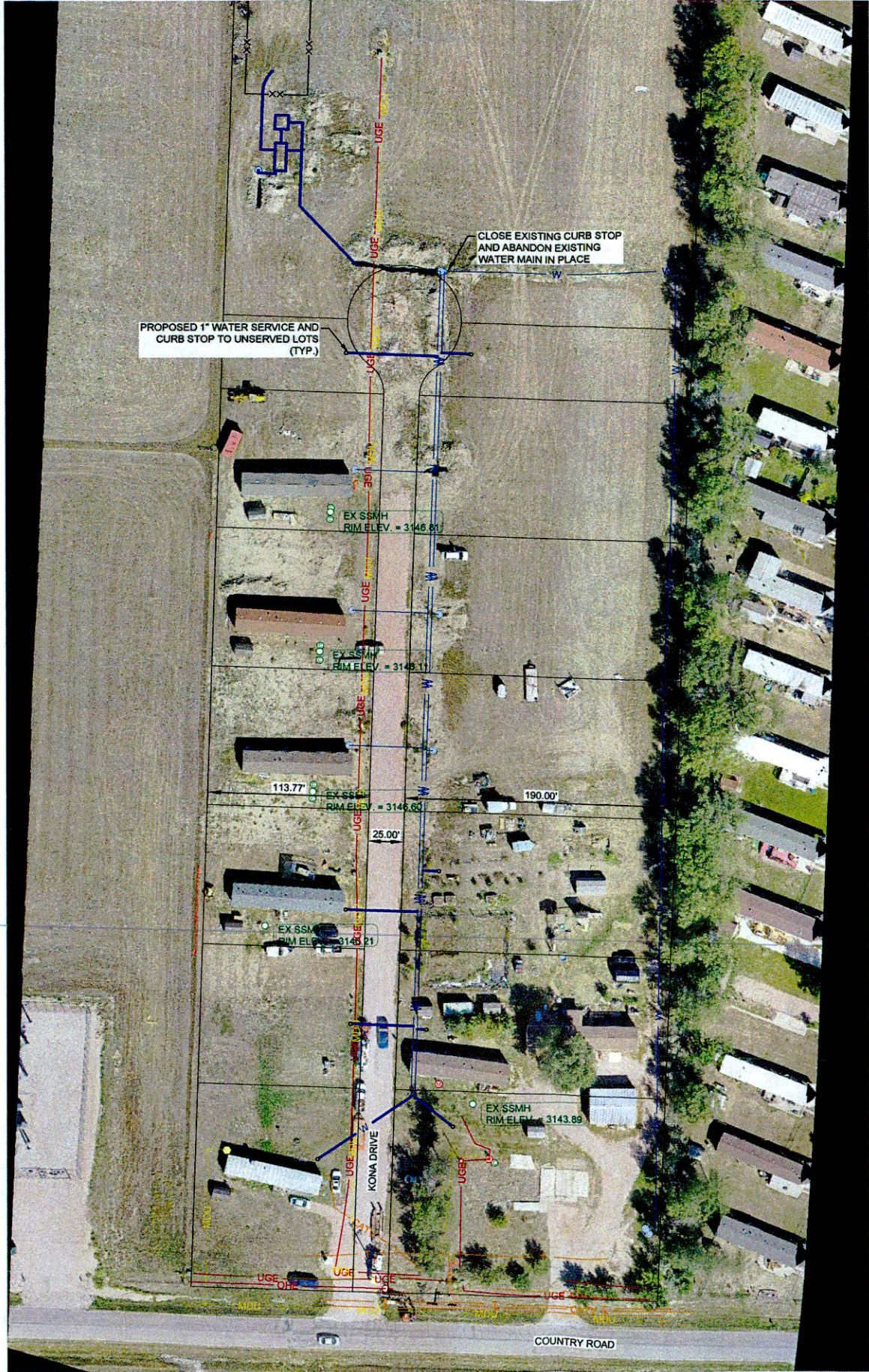


SYM	DATE	DESCRIPTION	APPR



REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA

DRAWING TYPE	CONST
PREPARED BY	EJ
CHECKED / APPROVED	CS / JN
DATE	NOV 2021
PROJECT NUMBER	15230-2021-001
SHEET	4 of 12
DRAWING	G4



SYM	DATE	DESCRIPTION	APPR



REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA
OVERALL SITE PLAN

DRAWING TYPE	CONST
PREPARED BY	EJ
CHECKED / APPROVED	CS / JN
DATE	NOV 2021
PROJECT NUMBER	15230-2021-001
SHEET	6 of 12
DRAWING	C1

WASTE CONTAINMENT POND DESIGN BASIS

WATER USE

DESIGN WATER USE: 15 HOMES 3,000 GPD

WASTEWATER PRODUCTION

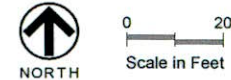
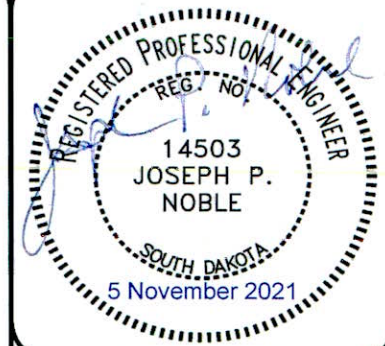
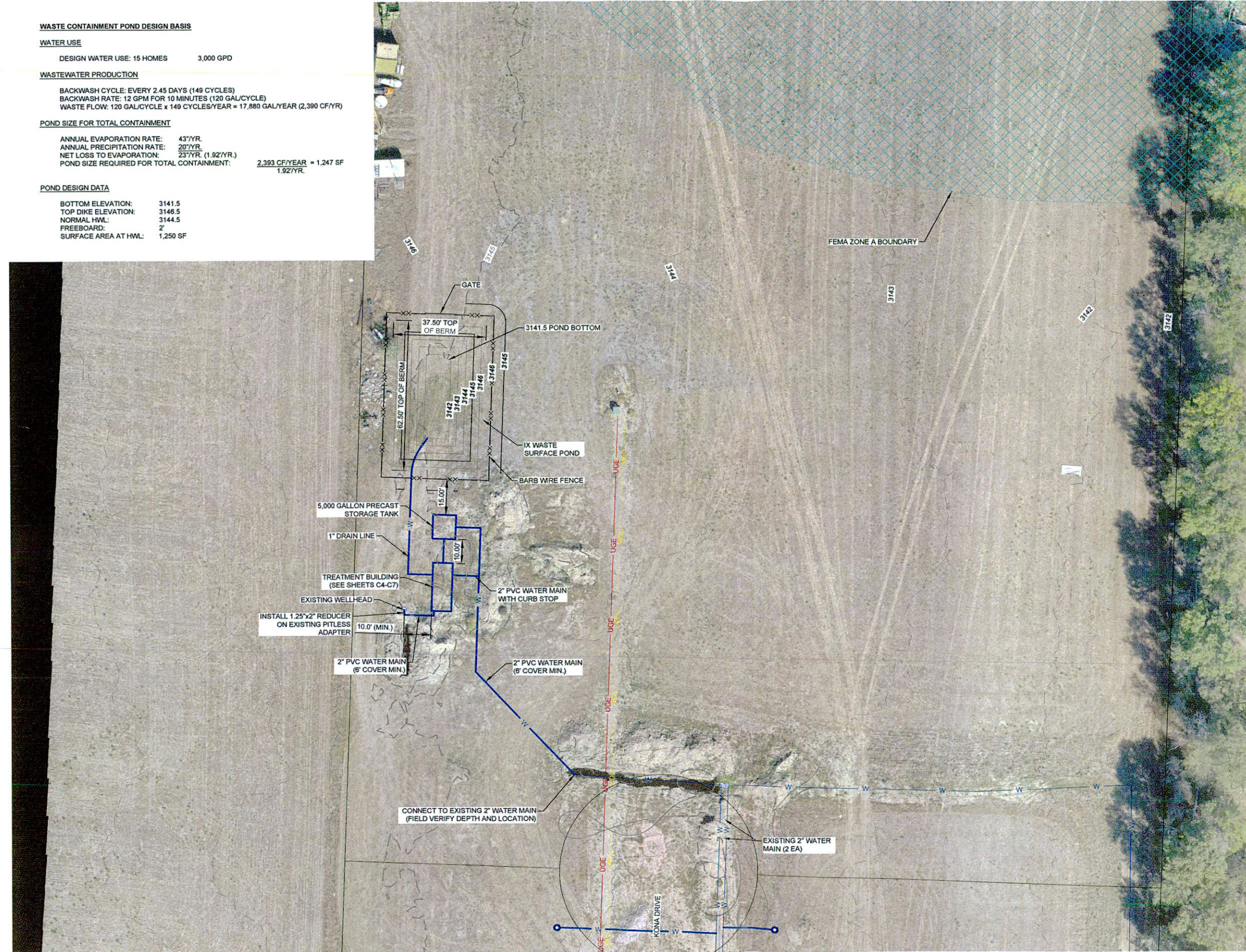
BACKWASH CYCLE: EVERY 2.45 DAYS (149 CYCLES)
BACKWASH RATE: 12 GPM FOR 10 MINUTES (120 GAL/CYCLE)
WASTE FLOW: 120 GAL/CYCLE x 149 CYCLES/YEAR = 17,880 GAL/YEAR (2,390 CF/YR)

POND SIZE FOR TOTAL CONTAINMENT

ANNUAL EVAPORATION RATE: 43"/YR.
ANNUAL PRECIPITATION RATE: 20"/YR.
NET LOSS TO EVAPORATION: 23"/YR. (1.92"/YR.)
POND SIZE REQUIRED FOR TOTAL CONTAINMENT: $\frac{2,393 \text{ CF/YEAR}}{1.92"/YR} = 1,247 \text{ SF}$

POND DESIGN DATA

BOTTOM ELEVATION: 3141.5
TOP DIKE ELEVATION: 3146.5
NORMAL HWL: 3144.5
FREEBOARD: 2'
SURFACE AREA AT HWL: 1,250 SF



GRADING NOTES:

CLEARING:
ALL WEEDS, BRUSH AND WOODY VEGETATION WITHIN THE GRADING LIMITS SHALL BE CLEARED AND GRUBBED. DISPOSE OF CLEARING WASTES AWAY FROM THE JOBSITE.

STRIPPING TOPSOIL:
TOPSOIL SHALL BE STRIPPED FROM ALL AREAS WITHIN THE GRADING LIMITS PRIOR TO EXCAVATION AND GRADING OPERATIONS. THE DEPTH OF STRIPPING SHALL BE APPROXIMATELY 3" TO 4", BUT THE STRIPPING DEPTH SHALL VARY SO AS TO OBTAIN THE REQUIRED QUANTITY OF TOPSOIL FOR COVERING GRADING AREAS AS PART OF FINISH GRADING OPERATIONS. TOPSOIL SHALL BE STOCKPILED WITHIN THE JOBSITE. DEVIATIONS FROM THIS REQUIREMENT WHICH RESULT IN SURFACE DISTURBANCE OUTSIDE OF THE WORK LIMITS WILL REQUIRE THAT THE CONTRACTOR RESTORE AND RE-SEED UNAUTHORIZED DISTURBANCE AREAS AT THEIR OWN EXPENSE. EXCESS TOPSOIL, IF ANY, SHALL BE PLACED UNIFORMLY OVER THE FINISH GRADING AREAS.

EARTHWORK NOTES:

TOTAL CUT: 98 CY
TOTAL FILL: 73 CY

FILL FACTOR ASSUMED: 1.00

THE QUANTITIES SHOWN ARE AN ESTIMATE AND MAY NOT REFLECT ACTUAL QUANTITIES OBSERVED DURING CONSTRUCTION. THE CONTRACTOR SHALL PERFORM HIS/HER OWN CALCULATION TO OBTAIN QUANTITIES.

SEEDING NOTES:

SEED, FERTILIZE AND MULCH ALL DISTURBED AREAS ABOVE ELEVATION 3144.5 INSIDE THE POND AND ALL AREAS OUTSIDE THE POND. DO NOT SEED POND BOTTOM OR IN SLOPES BELOW ELEVATION 3144.5.

PERIMETER FENCE NOTES:

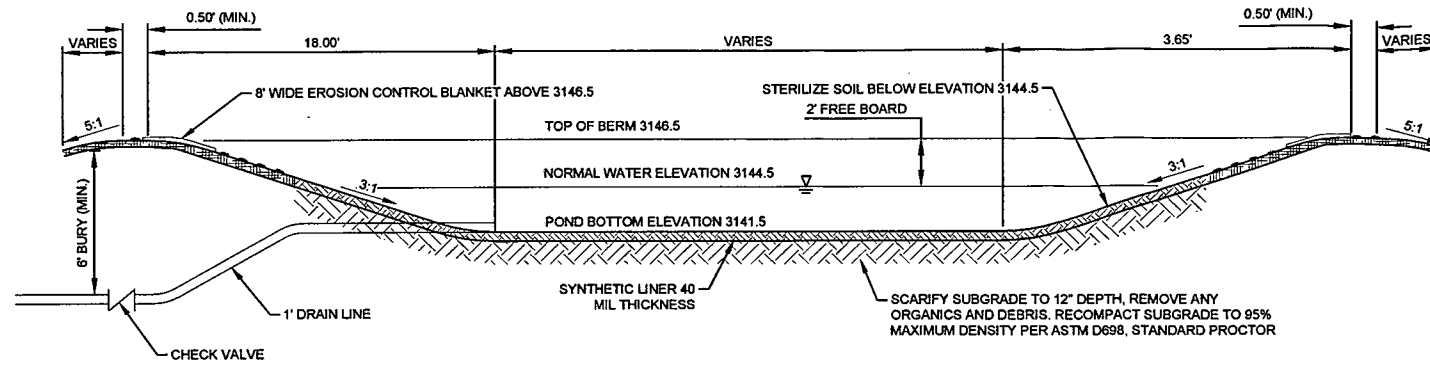
INSTALL NEW BARB WIRE FENCE AT POND PERIMETER IN THE LOCATION SHOWN AT COMPLETION OF GRADING WORK. INSTALLATION SHALL BE PER SDDOT STANDARD DETAIL 620.01 WITH ALTERNATING WOOD AND STEEL POSTS. A STEEL GATE WITH WOOD BRACE POSTS SHALL BE INSTALLED ON THE NORTH SIDE OF THE POND.

WARNING SIGN NOTES:

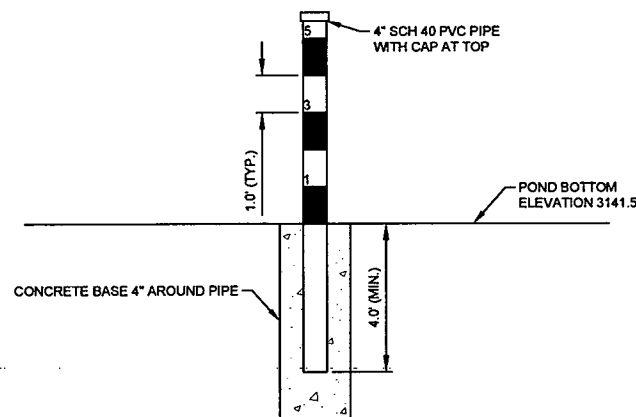
FURNISH AND INSTALL 14"x20" WARNING SIGNS AT POND FENCING, 4 LOCATIONS, ONE ON EACH SIDE OF PERIMETER FENCE. SIGNS SHALL BE .010" ALUMINUM, PAINTED WITH MESSAGE "KEEP OUT - WASTEWATER". ATTACH SECURELY TO FENCE POSTS WITH CORROSION RESISTANT HARDWARE.

REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA

DRAWING TYPE
CONST
PREPARED BY
EJ
CHECKED / APPROVED
CS / JN
DATE
NOV 2021
PROJECT NUMBER
15230-2021-001
SHEET
7 of 12
DRAWING
C2



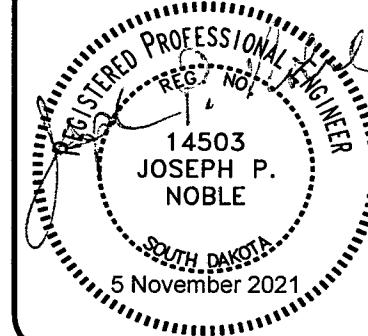
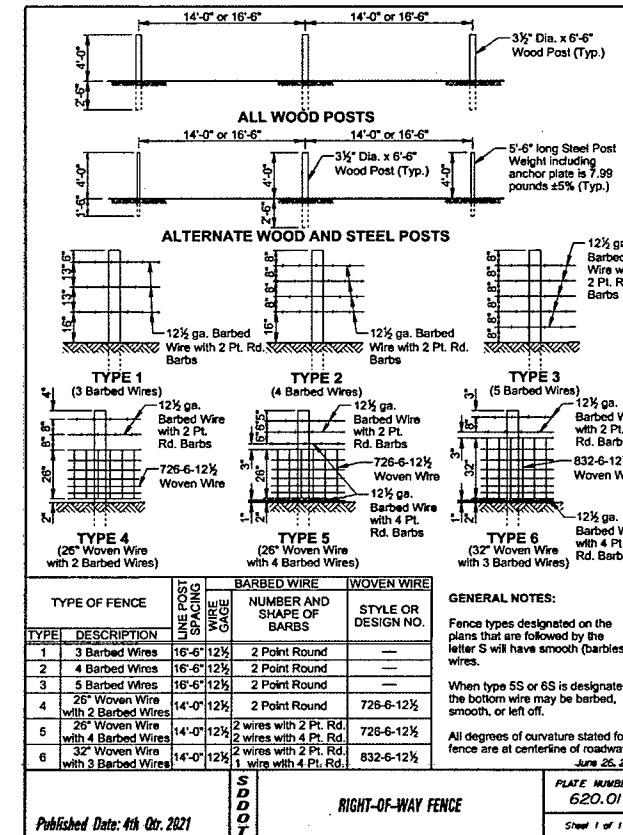
1 WASTE CONTAINMENT POND GRADING SECTION
C3 NOT TO SCALE



NOTES REGARDING POND DEPTH GAUGE

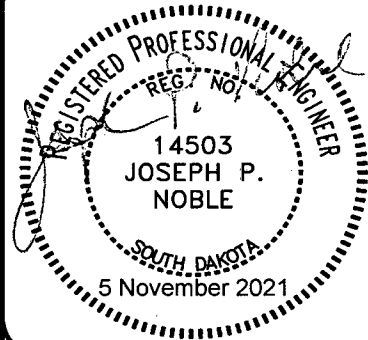
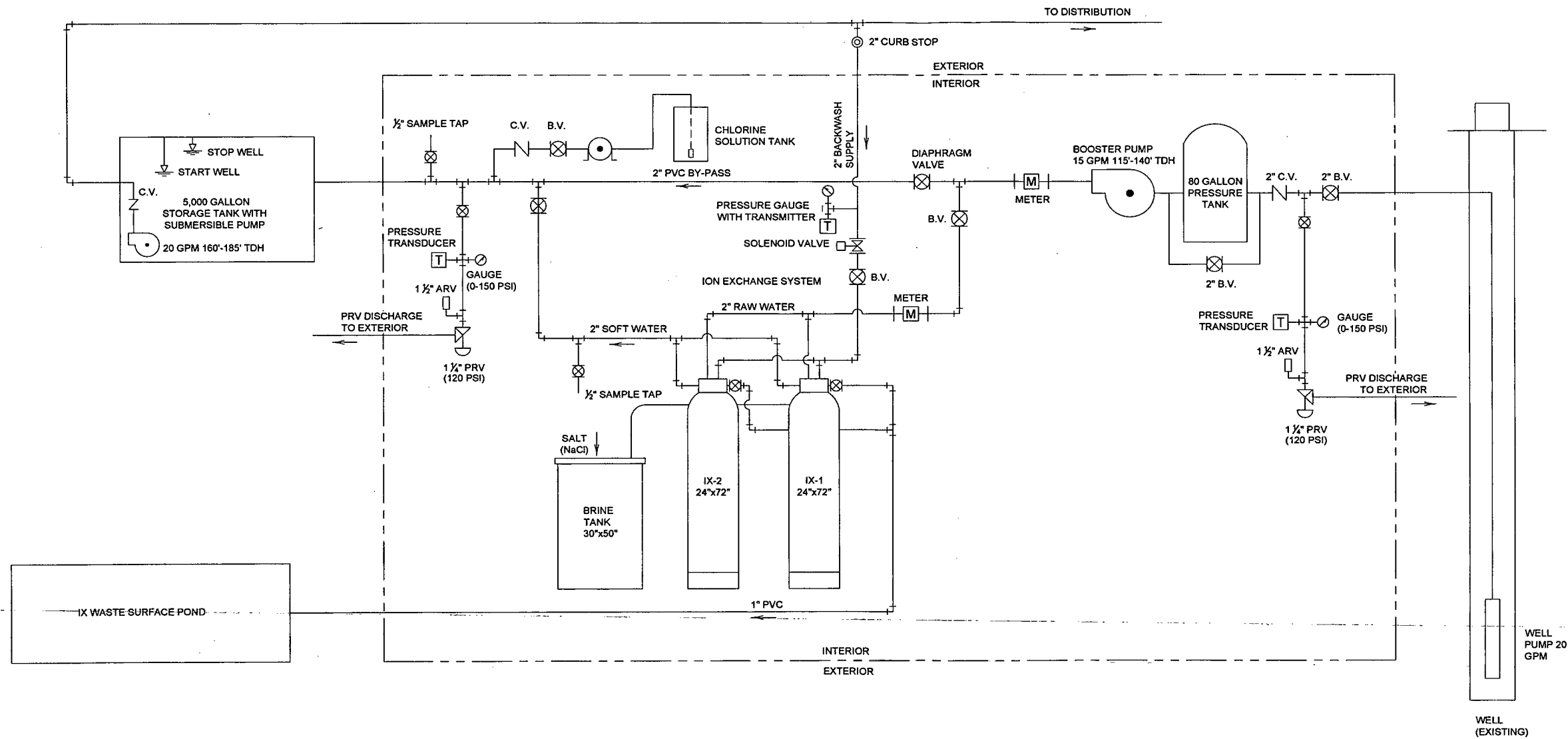
- PIPE SHALL BE BURIED TO A DEPTH OF 4 FEET, MINIMUM, FROM POND BOTTOM ELEVATION OF 3141.5 CENTRALLY LOCATED AT THE POND BOTTOM. PIPE SHALL BE INSTALLED IN CONCRETE BASE WITH 4" CLEAR AROUND OUTSIDE OF PIPE.
- PIPE SHALL EXTEND 5, MINIMUM, ABOVE POND BOTTOM TO ELEVATION OF 3146.5. PIPE SHALL BE CAPPED TO PREVENT PRECIPITATION FROM ENTERING.
- DEPTH MARKINGS SHALL BE PROVIDED AT 1' VERTICAL INTERVALS, ALTERNATING SOLID BLACK AND WHITE USING PAINT APPROVED FOR MARINE USE.
- DEPTH NUMERALS SHALL BE PROVIDED AT THE 1, 3, AND 5' POND LEVELS IN BLACK PAINT ON CONTRASTING WHITE PAINT. NUMERALS SHALL BE A MINIMUM OF 6" HIGH AND SHALL BE VISIBLE FROM THE SOUTH EDGE OF THE POND.
- POND LINER SHALL BE SEALED AROUND EXPOSED PIPE TO PREVENT POND LEAKAGE.

2 POND DEPTH GAUGE
C3 NOT TO SCALE



REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA

DRAWING TYPE
CONST
PREPARED BY
EJ
CHECKED / APPROVED
CS / JN
DATE
NOV 2021
PROJECT NUMBER
15230-2021-001
SHEET
8 of 12
DRAWING
C3

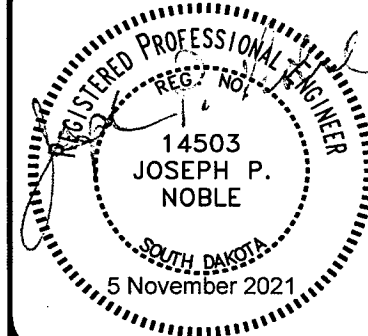
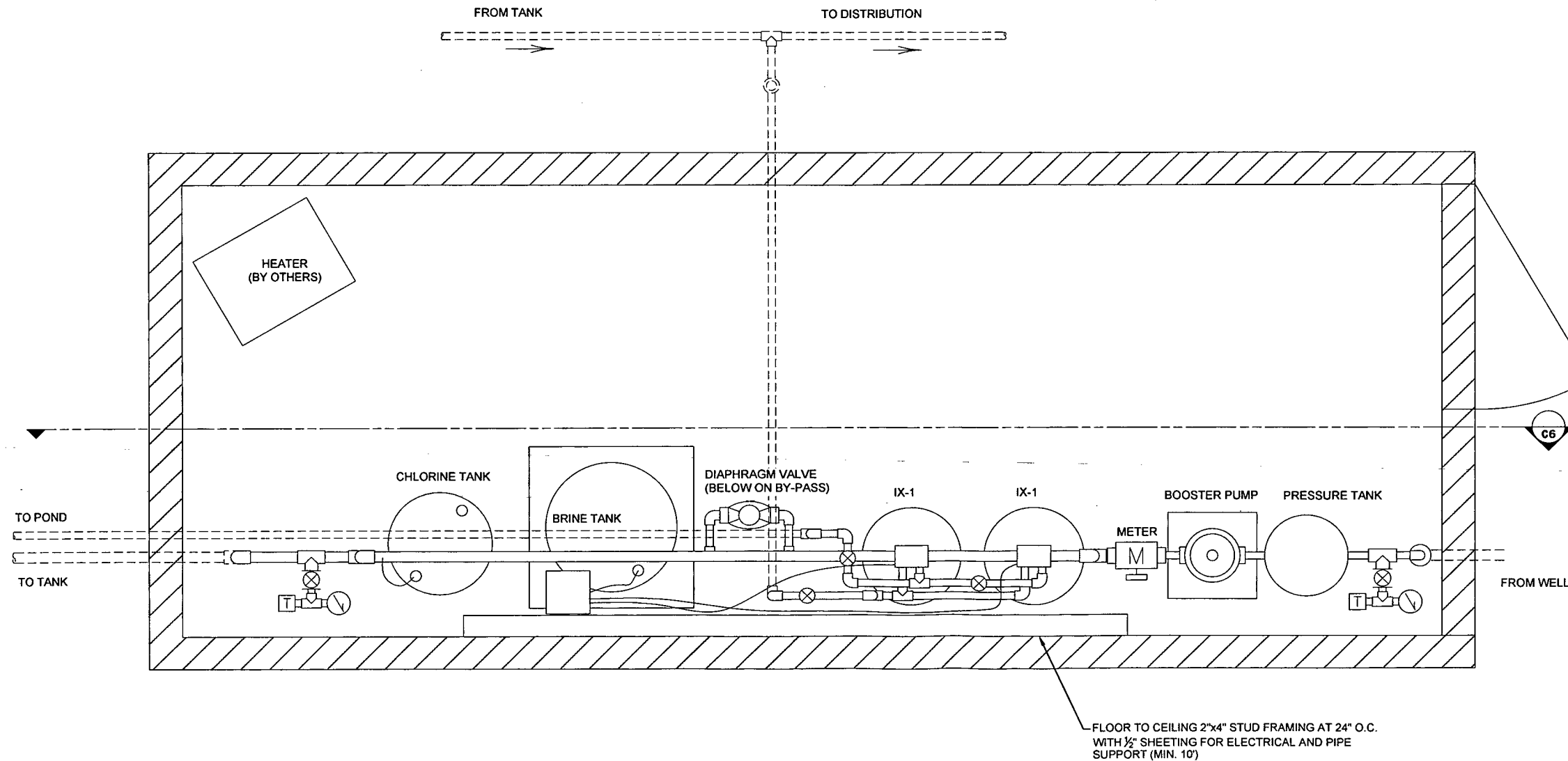


REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA

DRAWING TYPE	CONST
PREPARED BY	EJ
CHECKED / APPROVED	CS / JN
DATE	NOV 2021
PROJECT NUMBER	15230-2021-001
SHEET	9 of 12
DRAWING	C4

SYMBOL	DATE	DESCRIPTION	APPROVED

1. ALL NEW PROCESS PIPE AND FITTINGS SHALL BE SCHEDULE 80 PVC PER ASTM D1785 UNLESS NOTED OTHERWISE. SOLVENT WELD FITTINGS ARE PERMISSIBLE EXCEPT WHEN FLANGED OR THREADED FITTINGS ARE CALLED FOR OR DETAIL. THE CONTRACTOR SHALL INCORPORATE SUFFICIENT FLANGED FITTINGS, UNIONS OR UNION END VALVES INTO THE SYSTEM TO ALLOW FOR CONVENIENT DISASSEMBLY OF PIPING SYSTEM FOR REPAIR AND MAINTENANCE PURPOSES WHETHER DETAILED OR NOT. ALL FLANGED FITTINGS SHALL BE FABRICATED USING SOLVENT WELDED SOCKET FLANGES, CLASS 150 WITH STAINLESS STEEL BOLTS AND HARDWARE.
2. THE ION EXCHANGE (IX) SYSTEM PIPING SHALL BE FABRICATED BY THE CONTRACTOR USING SCHEDULE 80 PVC PIPE, FITTINGS AND VALVES. THE PIPING LAYOUTS SHOWN ON THESE DRAWINGS ARE INTENDED TO BE REPRESENTATIVE OF THE REQUIRED PIPE CONNECTIONS AND PIPE ROUTING. HOWEVER, THE CONTRACTOR SHALL CONFORM WITH APPROVED SUBMITTALS FROM THE EQUIPMENT MANUFACTURER AND WITH MANUFACTURER PROVIDED INSTALLATION DRAWINGS. WITH ENGINEER CONCURRENCE, THE CONTRACTOR MAY MAKE NECESSARY FIELD ADJUSTMENTS TO CONFORM WITH THE MANUFACTURER'S REQUIREMENTS.
3. THE DRAWINGS DO NOT NECESSARILY SHOW PRINCIPAL PIPE AND EQUIPMENT SUPPORT SYSTEMS TO BE CONSTRUCTED. THE CONTRACTOR SHALL PROVIDE AND INSTALL PIPING AND EQUIPMENT SUPPORTS CONFORMING WITH SPECIFICATIONS AND THE REQUIREMENTS OF EQUIPMENT MANUFACTURERS. UNSUPPORTED LENGTHS FOR SCHEDULE 80 PVC PIPE MAY NOT EXCEED 6 FEET. ALL SUPPORTS SHALL BE CORROSION RESISTANT NON-METALLIC OR STAINLESS STEEL. PAINTED OR PLATED STEEL IS NOT ACCEPTABLE.
4. TESTING AND START-UP OF NEW EQUIPMENT SHALL BE PERFORMED BY AUTHORIZED REPRESENTATIVES OF THE ION EXCHANGE AND BOOSTER PUMP SYSTEMS. START-UP SHALL BE COORDINATED WITH THE SYSTEM OPERATOR AND THE ENGINEER. THE CONTRACTOR SHALL NOT DELIVER TREATED WATER INTO THE DISTRIBUTION SYSTEM WITHOUT THE PRIOR AUTHORIZATION OF THE OPERATOR. WATER USED FOR INITIAL FILLING, FLUSHING AND TESTING OF EQUIPMENT SHALL BE WASTED INTO THE ON-SITE HOLDING TANK AND SHALL BE PUMPED AND DISPOSED OF LAWFULLY AWAY FROM THE SITE.

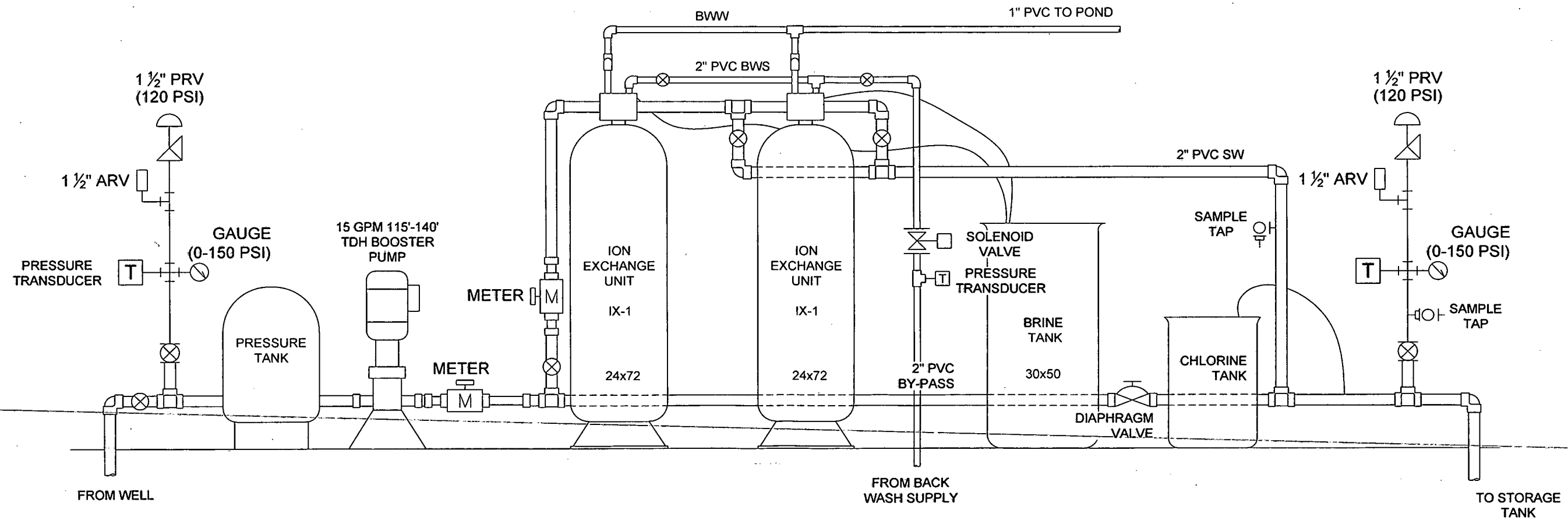


SYM	DATE	DESCRIPTION	APPR

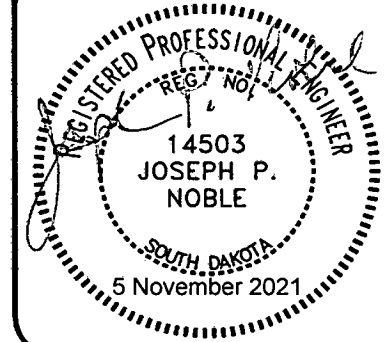


REEL SIMPLE WATER SYSTEM
RANDY DOWDY
RAPID CITY, SOUTH DAKOTA
PROCESS MECHANICAL PLAN

DRAWING TYPE	CONST
PREPARED BY	EJ
CHECKED / APPROVED	CS / JN
DATE	NOV 2021
PROJECT NUMBER	15230-2021-001
SHEET	10 of 12
DRAWING	C5



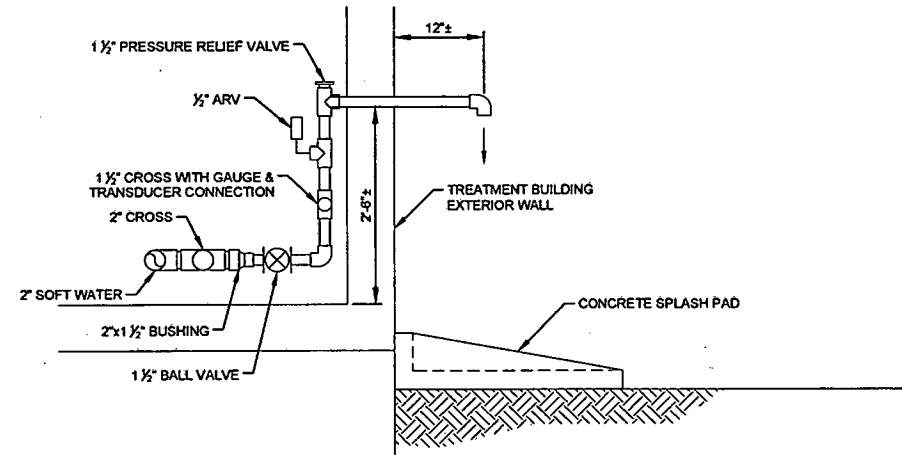
NOTE:
 1" PVC DRAIN LINE TO POND SHALL HAVE 6' (MIN.) COVER.
 DRAIN LINE SHALL VERTICALLY DEFLECT TO OUTLET AT
 AN ELEVATION OF 3142.0 IN POND. A 1" CHECK VALVE
 SHALL BE INSTALLED BEFORE THE VERTICAL DEFLECTION
 TO PREVENT EXCESS DISCHARGED BACKWASH WATER
 FROM RE-ENTERING THE 1" DRAIN LINE.



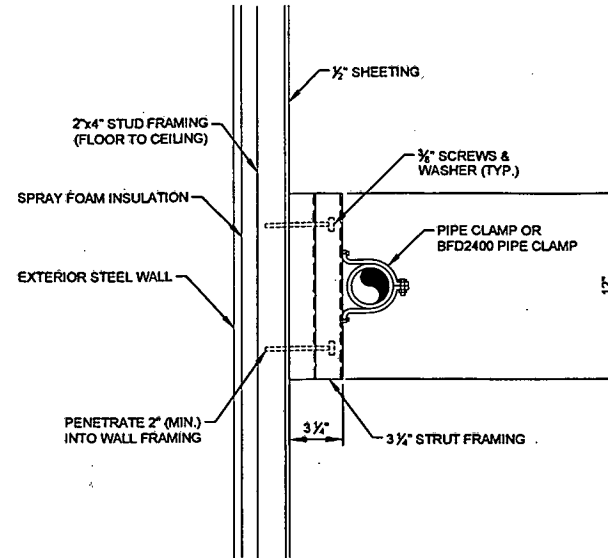
REEL SIMPLE WATER SYSTEM
 RANDY DOWDY
 RAPID CITY, SOUTH DAKOTA
 PIPING ELEVATION - WEST WALL

DRAWING TYPE	CONST
PREPARED BY	EJ
CHECKED / APPROVED	CS / JN
DATE	NOV 2021
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DRAWING	

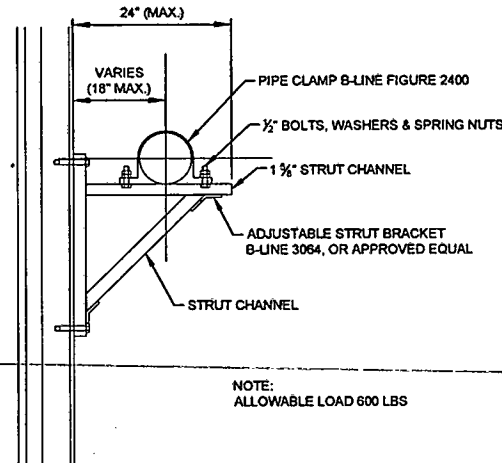
C6



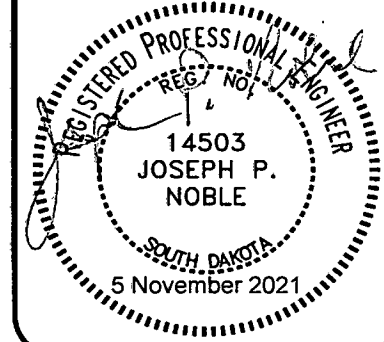
1 PRESSURE RELIEF VALVE DISCHARGE
 C7 NOT TO SCALE



2 WALL PIPE SUPPORT
 C7 NOT TO SCALE



3 PIPE SUPPORT - WALL BRACKET FOR HORIZONTAL OR VERTICAL PIPE
 C7 NOT TO SCALE



REEL SIMPLE WATER SYSTEM
 RANDY DOWDY
 RAPID CITY, SOUTH DAKOTA

DRAWING TYPE	CONST
PREPARED BY	EJ
CHECKED / APPROVED	CS / JN
DATE	NOV 2021
PROJECT NUMBER	15230-2021-001
SHEET	12 of 12
DRAWING	C7

Reel Simple Water System

**Rapid City,
South Dakota**

RECEIVED

NOV - 8 2021

**WATER RIGHTS
PROGRAM**

PREPARED FOR:

**Reel Simple, LLC,
Rapid City, South
Dakota**

November 2021

AE2S Project #: P15230-2021-001

Technical Specifications

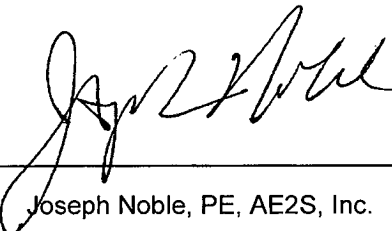
These specifications are to supplement the City of Rapid City Standard Specifications. The Contractor shall follow the City standard specifications if there is any discrepancy between these plans or supplemental specifications and the Rapid City Standard Specifications.

PLANS AND SPECIFICATIONS
FOR
REEL SIMPLE WATER SYSTEM
REEL SIMPLE, LLC
RAPID CITY, SOUTH DAKOTA

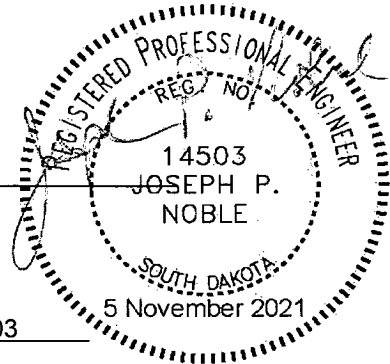
November 2021

CIVIL ENGINEER

I hereby certify that these plans and specifications were prepared by me or under my direct supervision and that I am a duly Registered Professional Engineer under the laws of the State of South Dakota.



Joseph Noble, PE, AE2S, Inc.



Date: November 5, 2021

Reg. No. 14503

END OF SECTION 00 01 05

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 01 10 – TABLE OF CONTENTS

These specifications are to supplement the City of Rapid City Standard Specifications. The Contractor shall follow the City standard specifications if there is any discrepancy between these plans or supplemental specifications and the Rapid City Standard Specifications.

DOCUMENT	TITLE
00 01 05	Certification Page
00 01 10	Table of Contents
00 01 11	List of Drawings
00 41 00	Bid Form
00 43 13	Bid Bond
00 52 00	Agreement
00 55 00	Notice to Proceed
00 61 13.13	Performance Bond
00 61 13.15	Payment Bond
00 62 76	C-620 Application for Payment Form
00 63 13	Request for Information Form
00 63 49	Work Change Directive Form
00 63 63	Change Order Form
00 65 16	Certificate of Substantial Completion Form
00 70 00	C-700 General Conditions
00 80 00	Supplementary Conditions

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01 11 13	Work Covered by Contract Documents
01 26 00	Contract Modification Procedures
01 77 00	Closeout Procedures
01 78 23	Operation and Maintenance Data

DIVISION 40 – PROCESS INTEGRATION

40 23 19.3	Water Process Piping and Accessories
40 91 23	Electronic Flow Meters

DIVISION 46 – WATER AND WASTEWATER EQUIPMENT

46 33 00	Liquid Chemical Feed Equipment
46 63 15	Ion Exchange Vessel Treatment System

END OF SECTION 00 01 10

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 01 11 – LIST OF DRAWINGS

DRAWINGS

The plans for Reel Simple Water System in Rapid City, South Dakota consist of the following:

<u>Sheet No.</u>	<u>Description</u>
G1 -----	COVER
G2 -----	LOCATION & VICINITY MAP
G3 -----	LEGEND & ABBREVIATIONS
G4 -----	CONSTRUCTION NOTES
G5 – G6 -----	SWPPP NOTES
C1 -----	EXISTING CONDITIONS
C2 -----	OVERALL GRADING PLAN
C3 -----	OVERALL UTILITY PLAN
C4 -----	OVERALL EROSION CONTROL PLAN
C5 -----	TYPICAL ROAD SECTION
C6 – C7 -----	ROAD PLAN & PROFILE
C8 -----	DETENTION BASIN PLAN & PROFILE
C9 – C11 -----	UTILITY PLAN & PROFILE
C12 – C17 -----	STANDARD DETAILS
C18 – C23 -----	CROSS SECTIONS
G1 -----	COVER
G2 -----	LOCATION & VICINITY MAP
G3 -----	LEGEND & ABBREVIATIONS
G4 -----	CONSTRUCTION NOTES
G5 – G6 -----	EROSION CONTROL NOTES
C1 -----	EXISTING CONDITIONS
C2 – C3 -----	OVERALL GRADING PLAN
C4 – C5 -----	OVERALL UTILITY PLAN
C6 – C7 -----	EROSION CONTROL PLAN
C8 -----	TYPICAL ROAD SECTION
C9 -----	RUSSEL STREET PLAN & PROFILE
C10 – C12 -----	BEARTOOTH LOOP PLAN & PROFILE
C13 -----	STREET A PLAN & PROFILE

BIDDING DOCUMENTS

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 41 00 – BID FORM

Reel Simple Water System
Reel Simple, LLC
Rapid City, SD

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ARTICLE 2 – Bidder's Acknowledgements	1
ARTICLE 3 – Bidder's Representations	1
ARTICLE 4 – Bidder's Certification	2
ARTICLE 5 – Basis of Bid	3
ARTICLE 6 – Time of Completion	4
ARTICLE 7 – Attachments to this Bid	4
ARTICLE 8 – Defined Terms	4
ARTICLE 9 – Bid Submittal.....	4

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Reel Simple, LLC
1910 Country Road
Rapid City, SD 57701

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.

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 30 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:

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:

Addendum No.

Addendum Date

- A. 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.
- B. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- C. 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.
- D. 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.
- E. 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.
- F. Bidder has given City of Deadwood 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.
- G. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- H. 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 any thing 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(s):

BID SCHEDULE

BASE BID

Item No.	Item Description	Estimated Quantity	Units	Unit Price	Total
1	Mobilization	1	LS		
2	Incidental Work	1	LS		
3	Water Treatment System	1	LS		
4	Waste Surface Pond	1	LS		
5	Wellhouse Plumbing	1	LS		
6	6,000 Gallon Water Storage Tank w/ Pump	1	LS		
7	Booster Pump	1	LS		
8	2-inch PVC Water Main & Appurtenances	160	LF		
Total Base Bid:					

EA = each, LF = lineal foot, LS = lump sum, SF = Square Foot

NOTE: Bidder's price is to include all applicable taxes.

It is possible that not all items will be required. Payment will be only for those items completed at the indicated bid prices.

Quantities are estimated, and payment will be based on actual quantities (at the bid unit rates) as required by project.

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. List of Proposed Subcontractors;
 - B. List of Proposed Suppliers;

ARTICLE 8 – DEFINED TERMS

- 8.01 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 9 – 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: _____

END OF SECTION 00 41 00

BID BOND

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

BIDDER (*Name and Address*):

SURETY (*Name and Address of Principal Place of Business*):

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name and Include Location*):

BOND

Bond Number:

Date (*Not earlier than Bid due date*):

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER**SURETY**

Bidder's Name and Corporate Seal

(Seal)

Surety's Name and Corporate Seal

(Seal)

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.

PENAL SUM FORM

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

CONTRACT FORMS

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

THIS AGREEMENT is by and between Reel Simple, LLC ("Owner") and
("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of water system for Reel Simple, LLC.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Reel Simple Water System

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Advanced Engineering and Environmental Services, LLC.
- 3.02 The Owner has retained Advanced Engineering and Environmental Services, LLC. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- #### 4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- #### 4.02 Contract Times: Dates

- A. The Work will be substantially completed on or before _____ and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before _____.

- #### 4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the

actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$1,000.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500.00 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are additive and will be imposed concurrently.

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

[To be completed following Bid]

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on a schedule as determined during the preconstruction meeting for performance of the Work as provided in the Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 100 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the ~~punch-list-of-items-to-be-completed-or-corrected~~ prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of 6 percent per annum.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions 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 Supplementary Conditions, 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 Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract 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 Contractor; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor 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 Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. General Conditions (pages 1 to 65, inclusive).
 - 3. Supplementary Conditions (pages 1 to 5, inclusive).
 - 4. Specifications as listed in the table of contents of the Project Manual.
 - 5. Drawings (not attached but incorporated by reference) consisting of ____ sheets with each sheet bearing the following general title: Reel Simple Water System
 - 6. Addenda (numbers ____ to ____, inclusive).
 - 7. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages ____ to ____, inclusive).
 - 8. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

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

assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

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

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract 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.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER: Reel Simple, LLC

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

END OF SECTION 00 52 00

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 55 00 – NOTICE TO PROCEED

Owner:	Reel Simple, LLC	Owner's Contract No.:
Contractor:		Contractor's Project No.:
Engineer:	Advanced Engineering and Environmental Services, LLC	Engineer's Project Nos.: P15230-2021-001
Project:	Reel Simple Water System	Contract Name:
		Effective Date of Contract:

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on _____, 2021. *[see Paragraph 4.01 of the General Conditions]*

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the date of Substantial Completion is _____ and the date of readiness for final payment is _____.

Before starting any Work at the Site, Contractor must comply with the following:

Owner: Reel Simple, LLC

Authorized Signature

By: _____

Title: _____

Date Issued: _____

END OF SECTION 00 55 00

PROJECT FORMS

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 61 13.13 – PERFORMANCE BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location):

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal (seal)

Surety's Name and Corporate Seal (seal)

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the

Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper

payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

END OF SECTION 00 61 13.13

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 61 13.15 – PAYMENT BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location):

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and

8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

END OF SECTION 00 61 13.15

Contractor's Application for Payment No.

Application Period:		Application Date:	
To (Owner):	From (Contractor):	Via (Engineer):	
Project:	Contract:		
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:	

**Application For Payment
Change Order Summary**

Approved Change Orders			
Number	Additions	Deductions	
TOTALS			
NET CHANGE BY CHANGE ORDERS			

1. ORIGINAL CONTRACT PRICE.....	\$	_____
2. Net change by Change Orders.....	\$	_____
3. Current Contract Price (Line 1 ± 2).....	\$	_____
4. TOTAL COMPLETED AND STORED TO DATE		
(Column F total on Progress Estimates).....	\$	_____
5. RETAINAGE:		
a. X _____ Work Completed.....	\$	_____
b. X _____ Stored Material.....	\$	_____
c. Total Retainage (Line 5.a + Line 5.b).....	\$	_____
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c).....	\$	_____
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$	_____
8. AMOUNT DUE THIS APPLICATION.....	\$	_____
9. BALANCE TO FINISH, PLUS RETAINAGE		
(Column G total on Progress Estimates + Line 5.c above).....	\$	_____

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:

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

Contractor Signature

By: _____

Date: _____

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____
(Engineer) (Date)

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____
(Owner) (Date)

Approved by: _____
Funding or Financing Entity (if applicable) (Date)

Progress Estimate - Lump Sum Work

Contractor's Application

[illegible]

Progress Estimate - Unit Price Work

Contractor's Application

[illegible]

Stored Material Summary

Contractor's Application

[illegible]

REQUEST FOR INFORMATION FORM

Submitted to: Reel Simple, LLC
1910 Country Road
Rapid City, SD 57701

Date: _____
From: _____
Attention To: _____
Tel/Fax: _____
CC: _____
RFI #: _____
RFI Subject: _____
Spec. Referenced: _____
Project: Reel Simple Water System
AE2S Project #s: P15230-2021-001

Information Requested:

Response:

END OF SECTION 00 63 13

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 63 49 – WORK CHANGE DIRECTIVE FORM

Work Change Directive No. _____

Date of Issuance: _____	Effective Date: _____
Owner: <u>Reel Simple, LLC</u>	Owner's Contract No.: _____
Contractor: _____	Contractor's Project No.: _____
Engineer: <u>Advanced Engineering and Environmental Services, LLC</u>	Engineer's Project No.: <u>P15230-2021-001</u>
Project: <u>Reel Simple Water System</u>	Contract Name: _____

Contractor is directed to proceed promptly with the following change(s):
Description: _____

Attachments: *[List documents supporting change]*

Purpose for Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is issued due to: *[check one or both of the following]*

- ☐ Non-agreement on pricing of proposed change.
- ☐ Necessity to proceed for schedule or other Project reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price \$ _____ [increase] [decrease].

Contract Time _____ days [increase] [decrease].

Basis of estimated change in Contract Price:

- | | |
|---|-------------------------------------|
| ☐ Lump Sum | ☐ Unit Price |
| ☐ Cost of the Work | ☐ Other |

RECOMMENDED: _____

AUTHORIZED BY: _____

RECEIVED: _____

By: _____	By: _____	By: _____
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____

Title: _____

END OF SECTION 00 63 49

Change Order No. _____

Date of Issuance: _____ Effective Date: _____
 Owner: Reel Simple, LLC Owner's Contract No.: _____
 Contractor: _____ Contractor's Project No.: _____
 Engineer: Advanced Engineering and Environmental Services, LLC Engineer's Project No.: P15230-2021-001
 Project: Reel Simple Water System Contract Name: _____

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)		Contractor (Authorized Signature)		
Title: _____	Title _____	Title _____	Title _____	Title _____	Title _____
Date: _____	Date _____	Date _____	Date _____	Date _____	Date _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
 Title: _____

END OF SECTION 00 63 63

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 65 16 - CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:	Reel Simple, LLC	Owner's Contract No.:	
Contractor:		Contractor's Project No.:	
Engineer:	Advanced Engineering and Environmental Services, LLC	Engineer's Project Nos.:	P15230-2021-001
Project:	Reel Simple Water System	Contract Name:	

This [preliminary] [final] Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]*

Amendments to Owner's
responsibilities:

☐ None
☐ As follows

Amendments to
Contractor's responsibilities:

☐ None
☐ As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY ENGINEER:		RECEIVED:		RECEIVED:	
By:	_____	By:	_____	By:	_____
	(Authorized signature)		Owner (Authorized Signature)		Contractor (Authorized Signature)
Title:	_____	Title:	_____	Title:	_____
Date:	_____	Date:	_____	Date:	_____

END OF SECTION 00 65 16

CONDITIONS OF THE CONTRACT

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

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1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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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*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
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, Supplementary Conditions, and 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, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary 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 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 Supplementary 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 Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

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

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise 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;
 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.

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.

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:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer 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).

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 caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. 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, 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.

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.

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.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely 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. 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.

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 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. Unless it is otherwise expressly provided in the Supplementary 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.
- B. *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.
- C. *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.

D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *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.

5.06 *Hazardous Environmental Conditions at Site*

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

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

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in 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 and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J 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.

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, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or 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.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, 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, the Supplementary Conditions, 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.

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 Supplementary 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 Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; 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.
 - 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 and in the Supplementary Conditions, 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 Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the 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.

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 in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner 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 *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:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by,

- arising out of, or resulting from fire or other perils whether or not insured by Owner; and
- 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial 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.

6.07 *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 assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

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.

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.
- 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

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.

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.
- 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 Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 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.

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.

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. *Engineer's Review:*
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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. *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 and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
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- B. ~~In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

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.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. 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.

- D. 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.

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 Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times 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. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is

proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. 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 Supplementary 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 Supplementary Conditions.

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. 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.

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:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim 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:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim 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. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 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.

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.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- ~~C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.~~
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, 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. 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.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering 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.

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 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments 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. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- 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.

D. *Payment Becomes Due:*

- 1. Ten 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.

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which 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.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 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.

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract

Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), 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.

15.07 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.

15.08 Correction Period

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

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, 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; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 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. *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.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

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.

DIVISION 00 – CONTRACTING REQUIREMENTS
SECTION 00 80 00 – SUPPLEMENTARY CONDITIONS

PART 1 - GENERAL

1.01 GENERAL

- A. These Supplementary Conditions amend or supplement the STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT (EJCDC C-700, 2013 Ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

1.02 DEFINED TERMS (GC-1)

- A. The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions.

1.03 CONFLICT (GC-2.03)

- A. In case of conflict between the "General Conditions and Supplementary Conditions" and applicable federal regulations for federally assisted projects (including 40 CFR Part 31), the provisions of the federal regulations shall govern.

1.04 SUBSURFACE CONDITIONS

- A. A subsurface investigation was not performed on this project. The Engineer and Owner do not express or imply any condition of subsoil types or groundwater levels. The Contractor is responsible for completing the work in the conditions found upon construction. The Contractor may excavate test holes with Owner permission.
- B. Delete paragraphs and subparagraphs of 5.03 and 5.04 of the General Conditions. The Contractor shall not construe these paragraphs to infer that a contract change may be made for varying subsoil types or varying groundwater levels.

1.05 CONTRACT BONDS, WORKMEN'S COMPENSATION AND INSURANCE
(ARTICLE 6)

A. Liability Insurance.

1. The Contractor shall, as provided in the General Conditions, obtain insurance acceptable to the Owner in a company or companies acceptable to the Owner and shall furnish copies of all policies of insurance (except Workmen's Compensation Insurance, in which case a certificate of insurance is adequate) to the Owner at the time he executes the Contract.
2. The Contractor shall not commence work nor shall allow his employees or subcontractors or anyone to commence work until all required insurance has been obtained and certificates of insurance submitted to the Owner.
3. The Contractor shall take out and maintain at all times during the entire period of performance and until the work is accepted by the Owner under this Contract the required policies of insurance.

4. The limits of liability for the insurance required by paragraph 6.02 and 6.03 of the General Conditions shall provide coverage for not less than the amounts stated in the Purchase Order Terms and Conditions or greater where required by Laws and regulations.

B. Schedule of Insurance Limits (minimums).

1. Commercial General Liability:

\$1,000,000 per occurrence.
\$2,000,000 general aggregate.
\$2,000,000 Products/Completed operations aggregate.
\$1,000,000 Personal and Advertising injury per occurrence.
The commercial general liability policy(s) shall include the Owner and Engineer as additional insureds.

2. Workers Compensation Insurance:

- a. As required by state statute.
- b. Applicable federal (e.g. Longshoreman and Harbor workers) statutory.
- c. Employer's liability:
- d. \$1,000,000 each accident.
- e. \$500,000 disease policy limit.
- f. \$100,000 disease each employee.
- g. Include waiver of subrogation against Owner or its employees for any injury to a covered employee while working on the Owner's premises.

3. Automobile Liability:

\$1,000,000 each accident.
\$1,000,000 each person.
\$1,000,000 property damage or
\$1,000,000 combined single limit.

Such policy shall include liability coverage for owned, non-owned, hired and leased vehicles at the above limits.

4. Umbrella/Excess Liability (optional):

\$1,000,000 per occurrence.
\$1,000,000 policy aggregate.
\$1,000 maximum retention for self-insured hazards each occurrence.
Umbrella/Excess Liability will be excess over the above-required coverages.

1.06 "OR EQUAL" EQUIPMENT OR SUBSTITUTION (GC-7.04 AND 7.05)

- A. Major items of mechanical equipment, electrical equipment, and process equipment have been specified by name followed by the words "or equal." In all cases, the dimensions shown on the plans are based on the named equipment.
- B. It shall be fully acknowledged and understood that the furnishing and installing of any "or equal" equipment shall include the preparation and submission of all details, shop and construction drawings showing all modifications necessary to accommodate such equipment.
- C. It shall be further acknowledged and understood that if any "or equal" is bid, the bid shall include all costs necessary to make any and all architectural, structural, mechanical and electrical changes required to incorporate such equipment into the project. No extras will be allowed after the award of the Contract for any modifications required to install or properly operate "or equal" equipment.
- D. All "or equal" equipment shall conform to the requirements of the respective parts and sections of the plans and specifications. Guarantees shall also conform to the Contract Documents.
- E. The Contractor shall pay for all redesign costs associated with the retrofitting required for the installation and use of "or equal" equipment.

1.07 SUBCONTRACTORS AND SUPPLIERS (GC-7.06)

- A. Refer to Instructions to Bidders for any further requirements regarding subcontractor and supplier approval.

1.08 SEPARATE CONTRACTOR CLAIMS

- A. Should Contractor cause damage to the work or property of any separate Contractor at the site, or should any claim arising out of Contractor's performance of the Work at the site be made by any separate Contractor against Contractor, Owner, Engineer, the Construction Coordinator or any other person, Contractor shall promptly attempt to settle with such other Contractor by agreement, or to otherwise resolve the dispute by arbitration or at law. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold Owner, Engineer and the Construction Coordinator harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate Contractor against Owner, Engineer or the Construction Coordinator to the extent based on a claim arising out of Contractor's performance of the Work. Should a separate Contractor cause damage to the Work or property of Contractor or should the performance of Work by any separate Contractor at the site give rise to any other claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer or the Construction Coordinator on account

of any such damage or claim. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate Contractor and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Time attributable thereto, Contractor may make a claim for an extension of time. An extension of the Contract Time shall be Contractor's exclusive remedy with respect with respect to Owner, Engineer and Construction Coordinator for any delay, disruption, interference or hindrance caused by any separate Contractor. This paragraph does not prevent recovery from Owner, Engineer or Construction Coordinator for activities that are their respective responsibilities.

1.09 PERMITS (GC-7.08)

- A. Contractor shall obtain dewatering and/or storm water permits for the construction site, if required, and shall be responsible for compliance with storm water regulations for construction sites.

1.10 SALES TAX (GC-7.09)

- A. Contractor shall include state sales tax, use tax and excise tax in the bid price and shall copy all supply invoices to Owner for Owner's use in collecting any tax refund.

1.11 CHANGE IN WORK AND CONTRACT PRICE (GC - 11.04)

- A. The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or deducting from the work, the Contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused hereby shall be adjusted at the time of ordering such change.
- B. In giving instructions, the Engineer shall have authority to verbally make minor changes in the work; but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the Contract sum shall be valid unless so ordered and approved by the Common Council.

1.12 ARBITRATION (GC-17)

- A. Add the following paragraph:

The Contractor will carry on the work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing. The Owner reserves the right to deny arbitration and to resolve any dispute in a court of law.

1.13 CONTRACT TIME AND LIQUIDATED DAMAGES

- A. The contract time and liquidated damages are stated in the Agreement.
- B. Time being an essential element of the Contract, it is hereby agreed that the Owner will be entitled to damages for failure on the part of the Contractor to complete the work within the prescribed time. In view of the difficulty in making a precise determination of actual damages incurred, the Contractor will be assessed a daily

charge in the amount stipulated, not as a penalty, but as liquidated damages to compensate for the additional costs incurred.

- C. In any suit involving assessment or recovery of liquidated damages, the reasonableness of daily charges shall be presumed and the amount assessed will be in addition to every other remedy not or hereinafter enforceable at law, in equity, by statute, or under the Contract.
- D. In the event that the work is not completed within the time constraints specified, the Contractor agrees to pay the Owner liquidated damages for each calendar day that all work is not completed within the time constraints specified in the Agreement. This amount is in addition to the liquidated damages specified for substantial completion, if applicable.
- E. No liquidated damages will accrue during periods of authorized suspension.
- F. Permitting the Contractor to continue to finish the work or any part of it after the time fixed for its completion shall not in any way operate as a waiver on the part of the Owner of any of its rights under the contract. Neither by the act of taking over the work nor by annulment of the Contract shall the Owner forfeit the right to recover liquidated damages from the Contractor or his Sureties.

END OF SECTION 00 80 00

DIVISION 01

GENERAL

REQUIREMENTS

DIVISION 01 – GENERAL REQUIREMENTS
SECTION 01 11 13 – WORK COVERED BY CONTRACT DOCUMENTS

PART 1 - GENERAL

1.01 SUMMARY

A. This Section includes:

1. Project Description.
2. Contracts.
3. Completion Dates.
4. Reference Standards.
5. NPDES Construction Storm Water Permit.
6. Coordination of Contract Documents.
7. Coordination of Existing Conditions.
8. Fines.
9. Salvage Demolition Debris.
10. Restocking.

1.02 PROJECT DESCRIPTION

A. This project includes construction of an above ground meter facility on property owned by the Reel Simple, LLC. The following is a breakdown of major items in the project:

1. Installation of wellhouse and treatment system.
2. Installation of storage tank.
3. Installation of water mains.
4. Installation of electrical work for the wellhouse.
5. Construction of waste containment pond.
6. Associated work, including surface restoration.

1.03 REFERENCE STANDARDS

- A. For products specified by association or trade standards, comply with requirements of the standard, ~~except when requirements that are more rigid are specified or are required by applicable codes.~~
- B. The date of the standard is that in effect as of the bid date, or date of Owner-Contractor Agreement when there are no bids, except when a specific date is specified.
- C. Obtain copies of standards when required by contract documents. Maintain copy at job site during progress of the specific Work.

1.04 NPDES CONSTRUCTION STORM WATER PERMIT

- A. The Project consists of disturbing less than one (1) acre of area and will not require a NPDES Construction Storm Water Permit.

1.05 COORDINATION OF CONTRACT DOCUMENTS

- A. Coordinate work of the various Sections of Specifications to assure efficient and orderly sequence of installation of construction elements, with provisions for accommodating items installed later.
- B. Verify characteristics of elements of interrelated materials are compatible; coordinate work of various Sections having interdependent responsibilities for installing, connection to, and placing in service, such materials.
- C. The Drawings indicate required pipe sizes and the general arrangement for major piping and equipment. Layout and arrangement for certain other piping systems shall be in conformance to the equipment items furnished. Locations shall be verified in the field by the Contractor. Valves and fittings furnished shall be of such dimensions to allow for the installation of this piping as shown on the Drawings. In the event it should become necessary to change the location of the work due to interference with other work, the Contractor shall request written permission from the Engineer before making changes, and such changes shall be made without added cost to Owner. Under no circumstances shall the pipe sizes indicated on the Drawings be changed without first having the written approval of the Engineer.
- D. The final length and location of required pipe connections to equipment shall be coordinated to meet the requirements and recommendations of the equipment manufacturer and shall be subject to the approval of the Engineer.
- E. Install no work that directly connects to equipment until such time as complete shop drawings of said equipment have been reviewed and approved by the Engineer.
- F. Discrepancies discovered before or after work has started shall be brought to the attention of the Engineer immediately, and the Engineer reserves the right to require minor changes in the work of Contractor to eliminate such discrepancies.

1.06 COORDINATION OF EXISTING CONDITIONS

- A. Data on subsurface conditions are made available for convenience of Contractor and are not intended as representations or warranties of accuracy or continuity between soil borings.
- B. It is expressly understood that the Owner will not be responsible for interpretations or conclusions drawn by Contractor from subsurface data. Additional subsurface data gathering operations may be made by Contractor. Contact Owner for site access for additional test borings and/or other exploratory operations which may be made by Contractor at no cost to Owner.
- C. Locate existing underground utilities in areas of work. Provide adequate means of support and protection during operations for utilities that are to remain in place.
- D. The locations of the utilities shown on the Drawings cannot be guaranteed. Contractor shall determine exact location of utilities. Should uncharted or incorrectly charted piping or other utilities be encountered, consult utility owner immediately for directions.

Cooperate with Owner and utility companies in keeping respective services and facilities in operation. Repair damaged utilities to satisfaction of utility owner.

- E. Do not interrupt existing utilities except when permitted in writing by Engineer and then only after acceptable temporary utility services have been provided.
- F. Take and verify dimensions of existing structures, piping, and equipment required for the proper fabrication and installation of new piping and equipment.

1.07 FINES

- A. In the event the Owner is fined by the South Dakota Department of Environment and Natural Resources or Environmental Protection Agency as a result of the Contractor's actions or lack of actions, the Owner will deduct from payment, due the Contractor, corresponding amounts to cover the cost of such fines, including the costs of related engineering and legal fees.

1.08 SALVAGED DEMOLITION DEBRIS

- A. Owner shall have the right to retain select demolition debris. At the discretion of Owner, select demolition debris items shall be stored on-site and remain the property of the Owner. Owner shall designate the location for storage of salvageable demolition debris items. Contractor shall place selected items in designated storage area.

1.09 RESTOCKING

- A. There will be no additional compensation made to Contractor due to restocking charges for materials not used on the project.

PART 2 - PRODUCTS

NOT USED

PART 3 - EXECUTION

NOT USED

END OF SECTION 01 11 13

DIVISION 01 – GENERAL REQUIREMENTS
SECTION 01 26 00 – CONTRACT MODIFICATION PROCEDURES

PART 1 - GENERAL

1.01 SUMMARY

A. Section Includes:

1. Submittals.
2. Documentation of Change in Contract Price and Contract Time.
3. Change Procedures.
4. Work Directive Change.
5. Stipulated Price Change Order.
6. Time and Material Change Order.
7. Execution of Change Orders.
8. Correlation of Contractor Submittals.

B. Related Sections include:

1. Section 00 52 00 – Agreement Form.
2. Section 00 70 00 – General Conditions.
3. Section 00 80 00 – Supplementary Conditions.
4. Section 01 77 00 – Closeout Procedures.

1.02 SUBMITTALS

- A. Submit name of the individual authorized to receive change documents, and be responsible for informing others in Contractor's employ or Subcontractors of changes to the Work.
- B. Change Order Forms: Engineers Joint Contract Document Committee (EJCDC) Form (form C-941, 2013 Edition).

1.03 DOCUMENTATION OF CHANGE IN CONTRACT PRICE AND CONTRACT TIME

- A. Maintain detailed records of Work done on a time and material basis. Provide full information required for evaluation of proposed changes, and to substantiate costs of changes in the Work.
- B. Document each quotation for a change in cost or time with sufficient data to allow evaluation of the quotation.
- C. Provide additional data to support computations:
 1. Quantities of products, labor, and equipment.
 2. Taxes, insurance, and bonds.
 3. Overhead and profit.
 4. Justification for any change in Contract Time.
 5. Credit for deletions from Contract, similarly documented.

D. Support each claim for additional costs, and for Work done on a time and material basis, with additional information:

1. Origin and date of claim.
2. Dates and times work was performed, and by whom.
3. Time records and wage rates paid.
4. Invoices and receipts for products, equipment, and subcontracts, similarly documented.

1.04 CHANGE PROCEDURES

- A. The Engineer will advise of minor changes in the Work not involving an adjustment to Contract Price or Contract Time by issuing supplemental instructions.
- B. The Engineer may issue a Proposal Request that includes a detailed description of a proposed change with supplementary or revised Drawings and Specifications and a change in Contract Time for executing the change. Contractor will prepare and submit an estimate within five (5) days.
- C. The Contractor may propose a change by submitting a request for change to the Engineer, describing the proposed change and its full effect on the Work, with a statement describing the reason for the change, and the effect on the Contract Price and Contract Time with full documentation and a statement describing the effect on Work by separate or other contractors.

1.05 WORK CHANGE DIRECTIVE

- A. Engineer may issue a document, signed by the Owner, instructing the Contractor to proceed with a change in the Work, which may require subsequent inclusion in a Change Order if any change in Contract Price or Contract Time is required.
- B. The document will describe changes in the Work, and will designate method of determining any change in Contract Price or Contract Time. A work change directive will not include any change in Contract Price or Contract Time without written notice and approval by the Engineer for inclusion in a Change Order.
- C. Promptly execute the change in Work.

1.06 STIPULATED PRICE CHANGE ORDER

- A. Based on Proposal Request and Contractor's fixed price quotation or Contractor's request for a Change Order as approved by Engineer.

1.07 TIME AND MATERIAL CHANGE ORDER

- A. Submit itemized account and supporting data after completion of change, within time limits indicated in the Conditions of the Contract.
- B. Engineer will determine the change allowable in Contract Price and Contract Time as provided in the Contract Documents.

- C. Maintain detailed records of work done on Time and Material basis.
- D. Provide full information required for evaluation of proposed changes, and to substantiate costs for changes in the Work.

1.08 EXECUTION OF CHANGE ORDERS

- A. Execution of Change Orders: Engineer will prepare the formal Change Order document(s) for signatures of parties as provided in the Conditions of the Contract.

1.09 CORRELATION OF CONTRACTOR SUBMITTALS

- A. Promptly revise Schedule of Values and Application for Payment forms to record each authorized Change Order as a separate line item and adjust the Contract Price.
- B. Promptly revise progress schedules to reflect any change in Contract Time, revise sub-schedules to adjust times for other items of work affected by the change, and resubmit.
- C. Promptly enter changes in Project Record Documents.

PART 2 - PRODUCTS

NOT USED.

PART 3 - EXECUTION

NOT USED.

END OF SECTION 01 26 00

DIVISION 01 – GENERAL REQUIREMENTS
SECTION 01 77 00 – CLOSEOUT PROCEDURES

PART 1 - GENERAL

1.01 SUMMARY

A. Section Includes:

1. Closeout Procedures.
2. Substantial Completion
3. Final Completion
4. Final Cleaning.
5. Project Record Documents.
6. Spare Parts and Maintenance Products.
7. Warranties and Bonds.
8. Maintenance Service.

B. Related Sections include:

1. Section 01 11 13 – Work Covered by Contract Documents.
2. Section 01 78 23 – Operation and Maintenance Data.

1.02 CLOSEOUT PROCEDURES

- A. Submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with Contract Documents and ready for Engineer's review.
- B. Provide submittals to Engineer that are required by governing or other authorities.
- C. Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due.
- D. Owner will occupy all portions of the Project.

1.03 SUBSTANTIAL COMPLETION

- A. Prior to substantial completion Contractor shall review Contract Documents for items which are not complete or need to yet be completed including submittal of all manuals, and testing reports. Contractor shall make a list of incomplete work, a value of the incomplete work, and reasons why work is incomplete. Contractor shall complete all items required to be completed as part of substantial completion.
- B. Contractor shall provide a written notice to Engineer that the work, or specific portions of the work, is substantially complete and ready for review. If there are any items remaining to be corrected or completed Contractor shall submit a list of these items along with the notice of substantial completion. Along with the list of items the Contractor should provide a written explanation of why these items are not considered necessary for substantial completion.

- C. Upon receipt of Contractor's notice of substantial completion, Engineer will proceed with inspection for substantial completion.
- D. Following the substantial completion inspection by the Engineer and Engineer's subconsultants, Engineer will either prepare certificate of substantial completion, or notify the Contractor in writing that substantial completion has not been meant listing the various reasons.
- E. Contractor shall promptly complete the items required to meet substantial completion and submit a second notice of substantial completion to the Engineer.
- F. Engineer will review the work a second time to determine the status of substantial completion.
- G. When Engineer considers the project to be substantially complete, Engineer will prepare the preliminary certificate of substantial completion along with a substantial completion punch list of items to be completed prior to final payment. Engineer will deliver preliminary certificate and punch list to Owner and consider any objections by the Owner as provided in the Conditions of the Contract.
- H. Upon agreement by Owner and Engineer of substantial completion and punch list items, Engineer will execute and deliver to the Contractor and Owner a final certificate of substantial completion along with substantial completion punch list of items to be completed prior to final payment.
- I. A maximum of two (2) reviews of substantially complete work will be completed by Engineer and Engineer's subconsultants for any one portion of work under the Contract. Should a third or subsequent reviews be necessary the following requirements will be met:
 - 1. Owner will compensate Engineer for additional reviews.
 - 2. Owner will deduct the amount of compensation paid to the Engineer for additional reviews from the payment to the Contractor.
 - 3. Compensation shall be at Engineer's standard hourly rates plus actual cost of reimbursables.

1.04 FINAL COMPLETION

- A. Following substantial completion Contractor shall complete remaining work and items to be corrected as part of substantial completion punch list as well as final cleaning and transferring site to Owner.
- B. When Contractor considers that all work is complete, Contractor shall provide written notice of final completion to Engineer.
- C. Following receipt of final completion certification, Engineer and Engineer's subconsultants shall review the work to verify that the requirements for final completion have been met.

- D. Upon review of work for final completion Engineer will either request the Contractor to make closeout submittals or will notify Contractor that the work is not complete with a list of incomplete or defective work.
- E. Contractor shall promptly take steps to correct all listed deficiencies and incomplete work before sending a second written notice of final completion certification to Engineer.
- F. If final completion was not met following first review, Engineer will review work a second time to determine if the requirements for final completion have been met.
- G. A maximum of two (2) reviews of final complete work will be completed by Engineer and Engineer's subconsultants for any one portion of work under the Contract. Should a third or subsequent reviews be necessary the following requirements will be met:
 - 1. Owner will compensate Engineer for additional reviews.
 - 2. Owner will deduct the amount of compensation paid to the Engineer for additional reviews from the payment to the Contractor.
 - 3. Compensation shall be at Engineer's standard hourly rates plus actual cost of reimbursables.
- H. When Engineer considers all work to be complete in accordance with the Contract Documents, Engineer shall request the Contractor to make closeout submittals.

1.05 FINAL CLEANING

- A. Execute final cleaning prior to final project assessment.
- B. Clean site; sweep paved areas, rake clean landscaped surfaces.
- C. Remove waste and surplus materials, rubbish, and construction facilities from the site.

1.06 PROJECT RECORD DOCUMENTS

- A. Maintain on site one set of the following record documents; record actual revisions to the Work:

-
- 1. Drawings.
 - 2. Specifications.
 - 3. Addenda.
 - 4. Change Orders and other modifications to the Contract.
 - 5. Reviewed Shop Drawings, Product Data, and Samples.
 - 6. Manufacturer's instruction for assembly, installation, and adjusting.
- B. Ensure entries are complete and accurate, enabling current and future reference by Owner and Engineer.
 - C. Store record documents separate from documents used for construction.
 - D. Record information concurrent with construction progress.

E. Specifications: Legibly mark and record at each Product section description of actual Products installed, including the following:

1. Manufacturer's name and product model and number.
2. Product substitutions or alternates utilized.
3. Changes made by Addenda and modifications.

F. Record Drawings and Shop Drawings: Legibly mark each item to record actual construction including:

1. Measured depths of foundations in relation to finish first floor datum.
2. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
3. Provide GPS survey during construction for horizontal and vertical locations of all underground piping and utilities at fittings, valves, building connections, pull boxes, junction boxes, manholes, and other appurtenances.
4. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
5. Field changes of dimension and detail.
6. Details not on original Contract drawings.

G. Submit documents to Engineer with claim for final Application for Payment.

1.07 SPARE PARTS AND MAINTENANCE PRODUCTS

- A. Provide spare parts, maintenance, and extra Products in quantities specified in individual specification sections.
- B. Deliver to Project site and place in location as directed by Owner; obtain receipt prior to final payment.

1.08 WARRANTIES AND BONDS

- A. Provide duplicate notarized copies.
- B. Execute and assemble transferable warranty documents from Subcontractors, suppliers, and manufacturers.
- C. Provide Table of Contents and assemble in D size three ring binders with durable plastic cover.
- D. Submit prior to final Application for Payment.
- E. For items of Work delayed beyond date of Substantial Completion, provide updated submittal within 10 days after acceptance.

1.09 MAINTENANCE SERVICE

- A. Furnish service and maintenance of components during the warranty period.

- B. Examine system components at a frequency consistent with reliable operation. Clean, adjust, and lubricate as required.
- C. Include systematic examination, adjustment, and lubrication of components. Repair or replace parts whenever required. Use parts produced by the manufacturer of the original component.
- D. Maintenance service shall not be assigned or transferred to any agent or Subcontractor without prior written consent of the Owner.

1.10 FINAL ADJUSTMENT OF ACCOUNTS

- A. Contractor shall submit a final statement of accounting to Engineer. Statement shall reflect all adjustments to the contract sum and include the following:
 - 1. Original contract sum.
 - 2. Additions and deductions resulting from:
 - a. All previous change orders
 - b. Allowances
 - c. Unit prices
 - d. Deductions for uncorrected work
 - e. Penalties and bonuses
 - f. Deductions for liquidated damages
 - g. Deductions for multiple reviews
 - h. Other adjustments
 - 3. Total contract sum, as adjusted.
 - 4. Previous payments.
 - 5. Sum remaining due.
- B. Engineer will prepare a final change order, reflecting approved adjustments to the contract sum which were not previously made by change orders.

PART 2 - PRODUCTS

NOT USED

PART 3 - EXECUTION

NOT USED

END OF SECTION 01 77 00

DIVISION 01 – GENERAL REQUIREMENTS
SECTION 01 78 23 – OPERATION AND MAINTENANCE DATA

PART 1 - GENERAL

1.01 SUMMARY

A. Section includes:

1. Quality Assurance.
2. Format.
3. Contents of Each Volume.
4. Instruction of Owner's personnel.
5. Submittals.
6. Asset Management Submittals.
7. Schedule of Submittals.

B. Related Sections include:

1. Section 01 77 00 – Closeout Procedures.

1.02 QUALITY ASSURANCE

- A. Prepare instructions and data by personnel experienced in maintenance and operation of described products.

1.03 FORMAT

- A. Prepare data in the form of an instructional manual. Arrange data in numerical format.

1. Binders:

- a. Commercial quality, 8-1/2 x 11-inch, three D side ring binders with durable plastic covers.
- b. 2-inch maximum ring size.
- c. When multiple binders are used, correlate data into related consistent groupings.

2. Cover; Identify:

- a. Each binder with typed title OPERATION AND MAINTENANCE INSTRUCTIONS.
- b. Title of Project.
- c. Subject matter of contents.
- d. Volume number.
- e. Year of construction.

3. Provide tabbed dividers for each separate product and system, with typed description of product and major component parts of equipment.

- B. Text: Manufacturer's printed data, or typewritten data on 24-pound paper.

- C. Drawings: Provide with reinforced punched binder tab. Bind in with text; fold larger drawings to size of text pages. Folded paper should be unfoldable without removal from binder.
- D. Contents: Prepare a Table of Contents for each volume, with each Product or system description identified, in three parts as follows:
 - 1. Part 1: Directory, listing names, addresses, and telephone numbers of Engineer, Contractor, Subcontractors, and major equipment suppliers.
 - 2. Part 2: Operation and maintenance instructions, arranged by system and subdivided by specification section. For each category, identify names, addresses, and telephone numbers of Subcontractors and suppliers. Identify the following:
 - a. Significant design criteria.
 - b. List of equipment.
 - c. Parts list for each component.
 - d. Operating instructions.
 - e. Maintenance instructions for equipment and systems.
 - 3. Part 3: Project documents and certificates, including the following:
 - a. Shop drawings and product data.
 - b. Pre-functional checklists.
 - c. Air and water balance reports.
 - d. Certificates.
 - e. Photocopies of warranties.
 - f. Bonds.

1.04 CONTENTS OF EACH VOLUME

- A. Table of Contents: Provide title of Project; names, addresses, and telephone numbers of Engineer, Subconsultants, and Contractor with name of responsible parties; schedule of products and systems, indexed to content of the volume.
- B. For Each Product or System: List names, addresses and telephone numbers of Subcontractors and suppliers, including local source of supplies and replacement parts.
- C. Product Data: Mark each sheet to clearly identify specific products and component parts, and data applicable to installation. Delete inapplicable information.
- D. Drawings: Supplement product data to illustrate relations of component parts of equipment and systems, to show control and flow diagrams. Do not use Project Record Documents as maintenance drawings.
- E. Typed Text: As required to supplement product data. Provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.
- F. Warranties: Prepare and submit per Section 01 77 00.
- G. Bonds: Prepare and submit per Section 01 77 00.

1.05 MANUAL FOR EQUIPMENT AND SYSTEMS

- A. Each Item of Equipment and Each System: Include description of unit or system, and component parts. Identify function, normal operating characteristics, and limiting conditions. Include performance curves, with engineering data and tests, and complete nomenclature and model number of replaceable parts.
- B. Operating Procedures: Include start-up, break-in, and routine normal operating instructions and sequences. Include regulation, control, stopping, shut-down, and emergency instructions. Include summer, winter, and any special operating instructions.
- C. Maintenance Requirements: Include routine procedures and guide for preventative maintenance and trouble-shooting; disassembly, repair, and reassembly instructions; and alignment, adjusting, balancing, and checking instructions.
- D. Provide servicing and lubrication schedule, and list of lubricants required. Include list of generic non-OEM equivalent lubricants that may be used in lieu of OEM recommended lubricants without violating warranty.
- E. Include manufacturer's printed operation and maintenance instructions.
- F. Include sequence of operation by controls manufacturer.
- G. Provide original manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance.
- H. Provide control diagrams by controls manufacturer as installed.
- I. Provide Contractor's coordination drawings, with color coded piping diagrams as installed.
- J. Provide charts of valve tag numbers, with location and function of each valve, keyed to flow and control diagrams.
- K. Provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage, and local sources of supply.
- L. Additional Requirements: As specified in individual Product specification sections.
- M. Provide a listing in Table of Contents for design data, with tabbed dividers and space for insertion of data.

1.06 INSTRUCTION OF OWNER PERSONNEL

- A. Before final inspection, instruct Owner's designated personnel in operation, adjustment, and maintenance of products, equipment, and systems, at agreed upon times.
- B. For equipment requiring seasonal operation, perform instructions for other seasons within six months.

- C. Use operation and maintenance manuals as basis for instruction. Review contents of manual with personnel in detail to explain all aspects of operation and maintenance.
- D. Prepare and insert additional data in Operation and Maintenance Manual when need for such data becomes apparent during instruction.

1.07 SUBMITTALS

- A. Submit two (2) copies of preliminary draft or proposed formats and outlines of contents before Substantial Completion. Engineer will review draft and return one copy with comments.
- B. For equipment, or component parts of equipment put into service during construction and operated by Owner, submit documents within ten days after acceptance.
- C. Submit two (2) copies of completed volumes fifteen (15) working days prior to final inspection. One (1) copy will be returned after final inspection, with Engineer comments. Revise content of all document sets as required prior to final submission.
- D. Submit four (4) sets of revised final volumes in final form within ten (10) days after final inspection.
- E. Contractor shall also provide preventative maintenance forms for specific maintenance requirements for pieces of equipment. The preventative maintenance forms shall include steps to take to perform maintenance and shall be provided in an electronic format in a form which can be input into an asset management system. Engineer shall supply contractor with a typical form and Contractor shall be responsible for filling out preventative maintenance forms for the equipment types specified above and coordinating with manufactures and vendors to fill out forms.
- F. Contractor shall supply an installed photo of all equipment.

PART 2 - PRODUCTS

NOT USED

PART 3 - EXECUTION

NOT USED

END OF SECTION 01 78 23

DIVISION 40

PROCESS

INTEGRATION



DIVISION 40 – PROCESS INTEGRATION
SECTION 40 23 19 – WATER PROCESS PIPING AND ACCESSORIES

PART 1 - GENERAL

1.01 THE REQUIREMENTS

- A. The Contractor shall furnish and install all piping systems shown and specified; in accordance with the requirements of the Contract Documents. Each system shall be complete with all necessary fittings, hangers, supports, anchors, expansion joints, flexible connectors, valves, accessories, insulation, lining and coating, testing, disinfection, excavation, backfill and encasement, to provide a functional installation.
- B. The piping shown is intended to define the general layout, configuration, routing, method of support, pipe size, and pipe type. The mechanical drawings are not pipe construction or fabrication drawings. It is the Contractor's responsibility to develop the details necessary to construct all mechanical piping systems, to accommodate the specific equipment provided, and to provide and install all spools, spacers, adapters, connectors, etc., for a complete and functional system.

1.02 RELATED WORK SPECIFIED ELSEWHERE

- A. Electronic Flowmeters: Section 40 91 23.
- B. Ion Exchange Vessel Treatment Systems: Section 46 63 15.

1.03 REFERENCE SPECIFICATIONS, CODES AND STANDARDS

- A. Commercial Standards:

ANSI/AWWA D1785 Specification for Polyvinyl Chloride Plastic Pipe, Schedules 40, 80 and 120.

ANSI/AWWA D2241 Specification for Polyvinyl Chloride Pressure-Rated Pipe (SDR Series)

1.04 CONTRACTOR SUBMITTALS

- A. The Contractor shall submit complete shop drawings and certificates, test reports, affidavits of compliance, of all piping systems. The submittals shall include detailed all pipe spools, spacers, adapters, connectors, fittings, and pipe supports necessary to accommodate the equipment and valves provided in a complete and functional system.

PART 2 - PRODUCTS

2.01 PIPES AND FITTINGS

A. PVC Pressure Pipe and Fittings (3" and Smaller).

1. Exposed Locations.
 - a. PVC, Schedule 80.
 - b. Fittings: PVC Schedule 80, SW or flanged per drawings. Van Stone style flanges are acceptable.

B. PVC Process Drain Pipes (Non-Pressure).

1. Exposed Locations.
 - a. PVC Schedule 40.
 - b. Fittings: PVC Schedule 40, SW or flanged per drawings.

2.02 COUPLINGS

A. PVC Solvent Weld

1. Solvent weld fittings acceptable for 3" and smaller pipe.

B. PVC Flanged Couplings

1. Use solvent welded socket by flange couplings, Schedule 80, Class 150.
2. Use stainless steel bolts and nuts for PVC flanged fittings.

2.03 VALVES

A. PVC Ball Valves (3" and Smaller).

1. Full Port Opening.
2. Double o-ring stem seals.
3. For Schedule 80 pipe, 230-psi rating.
4. Flanged end connection or true union.
5. NSF-61 certification.
6. Spears, Hayward, or equal.

B. PVC Pressure Relief Valve.

1. Continuous by-pass relief valve.
2. PVC construction.
3. Open at adjustable pressure, ± 50 psi.
4. Plastomatic RVT, or equal.

C. PVC Check Valve – Swing Type.

1. Swing-type check, HI-PVC Body.

2. Flanged end connections.
3. EPDM Seats.
4. Spears Industrial Swing Check, or equal.

D. Self-Closing Check Valve.

1. Spring Loaded Poppet Style.
2. PVC Body, EPDM Seats.
3. True union end connection.
4. Plastomatic CKS, or equal.

E. Sampling Tap:

1. 1 ½" x ¾".
2. Hose bibb style, Watts HB-1 or equal.

F. Air Release.

1. Pressure type air release.
2. ½" inlet.
3. 150-psi rating.
4. PVC body.
5. Plastomatic Series ARV or equal.

G. Hose Bibb.

1. Interior: Watts SC-4 with vacuum breaker.
2. Exterior: Frost-proof Watts FHB, or equal, length as required.

H. PVC Diaphragm Valves.

1. Body: PVC with reinforcing ribs.
2. Diaphragm: EPDM
3. Stem: stainless steel
4. Bolts, nuts, washers: stainless steel
5. Thrust bearing: Teflon disc
6. Operator: Hand wheel with position indicator
7. End connections: true union
8. Manufacturer:
 - a. Hayward
 - b. Spears
 - c. Or equal

2.04 GAUGES

- A. 4 ½" diameter, phenolic case, pressure range per drawings.
- B. ¼" NPT connection.

- C. Graduation in psi, range per plans.
- D. Provide with isolation cock and snubber.
- E. Ashcroft, Duragauge Plus.

2.05 PIPE HANGERS AND SUPPORTS

- A. Pipe hangers or supports shall be furnished and installed for all interior or exposed process piping as shown on the plans not to exceed 6'-0" for Sch. 80 PVC pipe.
- B. Unless shown otherwise on the plans, PVC pipe shall be well supported using strut framing and accessories, Unistrut B-Line, Akinstrut, or equal. All supports shall be adjustable except when specifically shown otherwise on the Plans.
- C. All accessory devices, including pipe clamps, mounting bases, angle supports, gussets and similar devices shall be by the same manufacturer as the strut framing system.
- D. All mounting hardware, including bolts, nuts, washers, screws, concrete anchors and related items shall be galvanized steel or stainless steel.

PART 3 - EXECUTION

3.01 HANDLING

- A. Pipe, fittings, and accessories shall be handled in a manner that will insure installation in sound, undamaged condition. Equipment, tools, and methods used in handling and installing pipe and fittings shall not damage the pipe and fittings.
- B. Hooks inserted in ends of pipe shall have broad, well-padded contact surfaces.
- C. Pipe and fittings in which the cement lining has been damaged shall be replaced. Small and readily accessible damaged areas may be repaired.
- D. All pipe coating which has been damaged shall be repaired by the Contractor before installing the pipe.

3.02 CUTTING PIPE

- A. Cutting shall be done in a neat manner, without damage to the pipe or to the cement lining.
- B. Cuts shall be smooth, straight, and at right angles to the pipe axis. After cutting, the end of the pipe shall be dressed with a file to remove all roughness and sharp corners.

3.03 CLEANING

- A. The interior of all pipe and fittings shall be thoroughly cleaned of foreign matter before being installed and shall be kept clean until the work has been accepted.

- B. Before jointing, all joint contact surfaces shall be wire-brushed, if necessary, wiped clean, and kept clean until jointing is completed.
- C. Precautions shall be taken to prevent foreign material from entering the pipe during installation. Debris, tools, clothing, or other materials shall not be placed in or allowed to enter the pipe.
- D. Whenever pipe laying is stopped, the open end of the pipe shall be sealed with a watertight plug which will prevent trench water from entering the pipe.

3.04 INSPECTION

- A. Pipe and fittings shall be carefully examined for cracks and other defects immediately before installation; spigot ends shall be examined with particular care.
- B. All defective pipe and fittings shall be removed from site of the work.

3.05 FLANGED JOINTS

- A. The pipe end flange face shall be finish machined in a single operation.
- B. Flange faces shall be flat and perpendicular to the pipe centerline.
- C. When bolting flanged joints, care shall be taken to avoid restraint on the opposite end of the pipe or fitting which would prevent uniform gasket compression or which would cause unnecessary stress in the flanges.
- D. One flange shall be free to move in any direction while the flange bolts are being tightened.
- E. Bolts shall be tightened gradually and at a uniform rate, so that gasket compression is uniform.
- F. Special care shall be taken when connecting to equipment to insure that no stresses are transmitted to the flanges by the connected piping. All such piping shall be permanently supported so that accurate matching of bolt holes and uniform contact over the entire surface of abutting piping flanges are obtained before installation of any bolts in those flanges.

3.06 HYDROSTATIC TESTING

- A. Process piping shall be field tested for leakage in accordance with the appropriate section (hydrostatic tests) of AWWA C600-87. Test pressure and duration shall be per AWWA C600-87.
- B. Test pressure shall be 1.5 times normal working pressure, but not less than 100 psi.
- C. No visible leakage is permitted for any part of the exposed piping system.

3.07 DISINFECTION

- A. All process pipe shall be flushed clean and disinfected prior to placing into service.
- B. Disinfection methods shall conform to AWWA C651 as applicable. Coordinate test methods and procedures with the Engineer. Chlorine solution swabbing methods may be used where connections with existing piping preclude using 24-hr. holding methods.
- C. The Contractor shall be responsible for testing for bacteriological safety using approved methods and testing laboratory. At least two consecutive samples, 24 hours apart, are required for each test location. Test locations shall assure a representative sampling of all process piping systems.

END OF SECTION 40 23 19.3

DIVISION 40 – PROCESS INTEGRATION
SECTION 40 91 23 – ELECTRONIC FLOW METERS

PART 1 - GENERAL

1.01 DESCRIPTION

A. Scope of Work.

1. The work included under this section consists of furnishing and installing electronic flow meters, including supports and all appurtenances, fully tested as shown on the Drawings and/or as specified herein.

1.02 RELATED WORK SPECIFIED ELSEWHERE

- A. Water Process Piping and Accessories: Section 40 23 19.13.**

1.03 QUALITY ASSURANCE

- A. The equipment items covered by these specifications are intended to be units of proven ability as manufactured by reputable manufacturers having long experience in the production of this equipment.**
- B. The Contractor shall supply the services of a qualified factory trained service representative. The representative shall inspect the completed equipment installation to ensure that it meets the manufacturer's recommendations. Any adjustments or modifications shall be made, at no additional cost to the Owner, to place the equipment in trouble free operation. Factory representative shall train the operational personnel in the proper operation and maintenance of the equipment.**

1.04 SUBMITTALS

A. Coordination with Instrumentation and Controls.

1. The instrumentation and controls supplier shall furnish the magnetic flow meters for this project.

~~B. Materials and Shop Drawings: The Contractor shall submit shop drawings to the Engineer for approval:~~

1. Manufacturer's literature, illustrations, and applicable data for the individual system components, including the weight of each major equipment item.
2. Certified shop drawings showing all important details of construction of all components of the system.
3. A complete total bill of materials for all equipment.
4. A list of manufacturer's recommended spare parts to be supplied with the manufacturer's current price for each item.

C. Operation Instruction:

1. Operating and maintenance manuals shall be furnished. The manuals shall be prepared specifically for this installation and shall include all required cuts, drawings, equipment lists, descriptions, etc., that are required to instruct operating and maintenance personnel unfamiliar with such equipment.

D. Certifications: The Contractor shall furnish the Engineer with a written certification signed by the manufacturer's representative that the equipment has been properly installed, is in accurate alignment, is free from undue stress imposed by piping or mounting bolts, and has been operated under full load conditions and that satisfactory operation has been attained.

E. Calibration: Meter should be hydraulically calibrated at a facility traceable to the National Institute of Science and Technology and supplied with certified calibration data.

1.05 PRODUCT DELIVER, STORAGE AND HANDLING

- A. All parts and pieces of equipment shall be properly protected so that no damage or deterioration will occur during a prolonged delay from the time of shipment until installation is complete and the equipment is ready for operation.
- B. Factory assembled parts and components shall not be dismantled for shipment unless permission is received in writing from the Engineer.
- C. Finished surfaces of all exposed openings shall be protected by wooden blanks, strongly built and securely bolted thereto.

1.06 WARRANTY AND GUARANTEES

- A. The equipment manufacturer shall warrant the equipment being supplied to the Owner against defects in workmanship and material for a minimum period of one (1) year. In the event that the equipment fails to perform as specified, the equipment manufacturer shall promptly repair or replace the defective equipment without any cost to the Owner (including handling and shipment costs).

PART 2 - PRODUCTS

2.01 ELECTRONIC TURBINE METER

- A. One-piece electronic meter and register, PVC body, 1 ½" diameter, 10-100 gpm flow range.
- B. Battery-powered with 3.6-volt lithium battery with 20-year service life.
- C. LCD display with digital rate of flow in gpm, ±3% accuracy.
- D. GPI Series TM200, or equal.

PART 3 - EXECUTION

3.01 INSTALLATION

- A. Installation shall be in strict accordance with the manufacturer's instructions and recommendations in the locations shown on the drawings.

END OF SECTION 40 91 23

DIVISION 46
WATER AND
WASTEWATER
EQUIPMENT



DIVISION 46 – WATER AND WASTEWATER EQUIPMENT
SECTION 46 33 00 – LIQUID CHEMICAL FEED EQUIPMENT

PART 1 - GENERAL

1.01 DESCRIPTION

- A. The Contractor shall furnish and install chemical feed equipment for chlorination as shown on the plans.
- B. The system shall include, but is not necessarily limited to the following:
 - 1. Equipment shall include peristaltic metering pump, suction and discharge tubing and fittings, and solution tank.

1.02 RELATED WORK SPECIFIED ELSEWHERE

- A. Water Process Piping and Accessories: Section 40 23 19.3.

1.03 SUBMITTALS

- A. Submit a complete materials list for all items to be furnished under this section.
- B. Submit manufacturer's specifications, product data and drawings for all items.
- C. Submit manufacturer's recommended installation details and the proposed mounting location, heights and methods for all equipment.

1.04 QUALITY ASSURANCE

- A. Acceptable Manufacturers
 - 1. Chemical feed equipment specified herein by reference by brand name is intended to indicate standard of quality and function.
 - 2. Other equipment manufacturers may be acceptable subject to compliance with specifications, and Owner approval.
- B. Field Service
 - 1. The chemical equipment supplier shall provide a site visit and service by a qualified service technician to inspect the completed installation and to instruct the Owner's operating personnel in the proper operation and maintenance of the equipment.

1.05 MEASUREMENT AND PAYMENT

- A. No measurement of work quantities under this specification will be made. Payment will be taken to be included under the lump sum contract amount for the project work to which it relates.

PART 2 - PRODUCTS

2.01 HYPOCHLORITE FEED SYSTEM

A. General Requirements

1. Equipment to be furnished under this specification shall provide controlled feeding of liquid sodium hypochlorite for water chlorination purposes.
2. These specifications are intended to provide for a complete and operable system which is specifically designed for sodium hypochlorite.
3. Accessory items for a complete system shall be furnished whether or not specifically described herein.
4. Pump shall be peristaltic type with adjustable feed rate for chemical feed application.
5. Furnish with 120 v. cordset.

B. Performance Requirements:

1. Feed Rate: Adjustable 0.05 to 5.0 gal./day @ 100 psi.
2. 20:1 Turn Down Ratio.
3. Adjustable in 2.5% increments.
4. Manufacturer: Stenner 85MHP5, or equal by Blue-White Industries.

C. Control Requirements

1. Feed pumps shall be manually on-off controllable with external switch.

D. System Accessories

1. Foot valve and strainer assembly.
2. Suction and discharge tubing, fittings and valves.
3. Injection check valve assembly.
4. Pumps shall be furnished with cordset and plug for 120 vac.

E. Solution Tanks.

1. 35-gallon capacity, 22" dia. x 36" high.
2. Dual wall per 40 CFR 264.175.
3. Cross-linked Polyethylene (XLPE) construction.
4. 6" fill cap.

F. Start-Up Chemical

1. Furnish 35 gallons of 12.5% sodium hypochlorite at the equipment installation and start-up stage.
2. No additional chemical supply is required of the Contractor.

PART 3 - EXECUTION

3.01 INSPECTION

- A. All equipment shall be inspected by the Contractor and supplier upon delivery to the site with findings reported to the Engineer.
- B. The Contractor shall remove from the site any damaged or unacceptable products, and shall replace with new equipment.

3.02 EQUIPMENT INSTALLATION

- A. The Contractor shall consult with the equipment supplier, Owner and Engineer prior to beginning equipment installation. The Contractor will be directed regarding specific mounting locations, heights, and anchorage methods of equipment.
- B. All items shall be installed in accordance with manufacturer's printed instructions, or as may be directed by the Engineer.
- C. All liquid piping systems shall be carefully installed and tested to ensure no leakage.
- D. All tubing shall be run neatly and be adequately supported by clamps or other means for a secure installation or described in the plan notes.

END OF SECTION 46 33 00

DIVISION 46 – WATER AND WASTEWATER EQUIPMENT
SECTION 46 63 15 – ION EXCHANGE VESSEL TREATMENT SYSTEM

PART 1 - GENERAL

1.01 DESCRIPTION

- A. Ion exchange treatment system for removal of radiological contaminants in well water, including tanks, resin media, automatic valving and control system, brine tank and accessories.

1.02 RELATED WORK

- A. Water Process Piping and Accessories: Section 40 23 19.3.

1.03 SUBMITTALS

- A. Submit product data to Engineer for review prior to ordering as follows.
- B. Manufacturer's Literature and Data.
 - 1. Tank construction, sizes, coatings and pressure ratings.
 - 2. Piping accessories and valves to be provided with the system and identification of interfaces with field-installed piping, including main operating valve.
 - 3. Controls and microprocessor.
 - 4. Flow meter.
 - 5. Exchange resin
 - 6. Brine system.
 - 7. Flow controls and backwash valving using separate source backwash supply.
- C. Complete detailed layout, setting, arrangement and installation drawings, including electrical controls. Drawing shall show all parts of the apparatus, including relative positions, dimensions, sizes and general arrangement of connecting piping.

1.04 PROJECT CONDITIONS

A. Raw Water Supply.

- 1. Refer to laboratory analysis of well raw water by included with these specifications in Appendix A.

B. Design parameters.

- 1. System Flow and Treatment Rate.
 - a. Maximum: 20 gpm.
- 2. System Backpressure: Minimal
- 3. Estimated Daily Usage: 6,000 gpd (max.)
- 4. Water Temperature: 65°F to 75°F.

5. Backwash Supply: 20 gpm @ 60 psi.
6. Electrical requirements: 120v. 60Hz, 1-phase receptacle.

1.05 ACCEPTABLE MANUFACTURERS.

- A. Hellenbrand.
- B. Or equal.

PART 2 - PRODUCTS

2.01 ION EXCHANGE SYSTEM

- A. Type: Catonic ion exchange treatment, single vessel to reduce radium 226/228 concentration to maximum 0.5 pCi/L. The specifications recited hereinafter are based upon equipment by Hellenbrand, H-151 (Super HP) series. Equipment by other manufacturers is acceptable subject to Engineer approval prior to bidding.
- B. Performance Requirements
 1. Intermittent flow, twin alternating, vertical tank, downflow.
 2. Turbidity and color of treated water shall not increase above that of raw water.
 3. No wash out of exchange material or any other media.
 4. Regeneration in 75 minutes per day or less.
- C. Resin Tanks:
 1. Fiberglass (FRP) non-corrosive tank.
 2. NSF listed, 150 psi w.p.
 3. Side openings and/or steel tanks are not allowed.
 4. Lower distribution system shall be a hub and lateral design.
- D. Exchange Resin:
 1. Solid virgin high capacity styrene based resinous material.
 2. Particle size 20-50 mesh.
 3. Exchange capacity as CaCO_3 to be 30,000 grains/cf at 15 lbs/cf salt.
- E. Brine Tank and Controls
 1. Molded HDPE tank
 2. Sized to provide minimum of four regenerations per load of salt.
 3. Automatic valve to admit brine to exchange unit, automatic close to prevent air to exchange unit.
 4. Float operated valve to prevent brine overflow.
- F. System Controls:
 1. The controller shall be completely automatic and shall sequence all steps of regeneration and return the exchange unit to a service or stand-by mode.

Selectable time or flow meter initiated regeneration. The initiating time or volume set points shall automatically reset upon initiation of the regeneration sequence. Controller shall permit manual initiation of regeneration.

2. Computer-based field-programmable controller with selectable flow meter based and time clock based operating cycles. The controller will utilize alphanumeric, self-prompting programming for simple start-up. Self-diagnostic and capable of emitting an audible error signal and displaying error-specific messages. Sealed keypad with capability of all programming functions. Fluorescent alphanumeric display on face of controller.
3. Operating conditions shall be continuously monitored and display shall show time of day, volume remaining before next regeneration, number of regenerations in last 14 days, number of days since last regeneration, instantaneous flow rate, resettable totalized flow since the last regeneration, and identify the cycle that is in progress.
4. Flow shall be regulated to prevent resin loss, operate between 10 and 30-psi supply pressure, and prevent noise and hydraulic shock. Control shall permit only one unit to regenerate at a time.
5. Main operating valve shall be a fully automatic multiport diaphragm type constructed of corrosion resistant alloy material with hard-coat anodization and final coat of fluoroplate polymer. Valves shall be slow opening and closing, free of water hammer; diaphragm assembly shall be fully guided. All valve parts accessible for service. The main operating valve shall include a valve mounted automatic self-adjusting brine injector to draw brine and control rinse at a constant rate regardless of water pressure in the range of 0 to 60 psi. Valve shall have soft water sampling cock and indicator to show system status.
6. Auxiliary contact switch to provide for control signal to lock out well pump operation during regeneration and backwash.
7. Sampling Cocks: Provide for hard and treated water.
8. Sodium Chloride: Fed. Spec. A-A-694D. Provide sufficient quantity for ten regenerations.

G. Meter:

1. The treatment unit shall be equipped with an individual 1.5" stainless steel electronic meter for monitor water usage.
2. This meter shall be accurate from 0.5 to 75 gallons per minute at $\pm 5\%$.

H. Separate Source Regeneration:

1. The treatment unit shall utilize a 12V two-way motorized auxiliary valve installed on the treatment piping to isolate the system to prevent raw water by-pass during regeneration, along with a three-way motorized auxiliary valve on the inlet piping to shut off the raw water inlet and open the water inlet to supply treated water from the existing pressure booster system for backwashing, regenerating and rinsing the tank resin.

PART 3 - EXECUTION

3.01 REQUIRED TECHNICAL SERVICES

- A. Provide the services of a qualified and authorized manufacturer's representative to oversee loading of exchange media and to inspect the installed equipment and place the system into full operation.
- B. The time required on site will be as needed to accomplish the work and demonstrate full operation.
- C. In addition to start-up services, the manufacturer shall provide on-site training to Owner personnel after equipment has been successfully placed into service. At least one-half day of training shall be included.

3.02 FLUSHING AND DISINFECTING

- A. Flush and disinfect new piping and tank interiors in accordance with AWWA C651.
- B. Perform bacteriological testing to confirm satisfactory disinfection results.

3.03 TESTS

- A. Operating Tests.
 - 1. Run tests in presence of the Engineer and Owner.
 - 2. Run system through exchange and regeneration cycles to demonstrate automatic valves and control system capabilities and performance.
 - 3. Operate system at maximum flow rate for a minimum of 8 hours and sample treated water to demonstrate that total radium 226/228 is less than 0.5 pCi/L. Provide necessary laboratory testing. Test raw and finish water once at completion of start-up period and provide results to Owner and Engineer.
 - 4. Demonstrate all features of the system, including diagnostic and troubleshooting capabilities.

3.04 FOLLOW-UP SITE INSPECTION

- A. A follow-up site inspection for the system shall be provided at a time and date requested by the Owner.
- B. The follow-up visit will be not greater than 3 months after placing the system into operation.
- C. The manufacturer's representative shall review operating data and records, assess equipment performance, and provide any recommended changes in equipment settings, chemical feed rates or other operational modifications.

END OF SECTION 46 63 15

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date November 8, 2021

RECEIVED OF Reel Simple LLC 1912 Country Road Rapid City SD 57701

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>2832-2</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>100.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>28323</u>	\$ <u>200.00</u>
Fee for Filing Transfer Form _____	\$ _____
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law)	
TOTAL	\$ <u>300.00</u>

By Eric Gronlund
Chief Engineer

VM



LETTER OF TRANSMITTAL

TO: SD Dept of Agriculture & Natural
Resources
Water Rights
Joe Foss Building
523 E Capitol Avenue
Pierre, SD 57501-3182

RECEIVED

NOV - 8 2021

**WATER RIGHTS
PROGRAM**

DATE	JOB NO.
11/5/2021	P15230-2021-001
ATTENTION	Eric Gronlund, Chief Engineer
RE	Reel Simple Water System Rapid City, South Dakota

WE ARE SENDING YOU:

☐ Report ☒ Plans ☒ Specifications ☐ Letter ☐ Drawings
☐ Samples ☐ Change Order ☒ Other Applications

COPIES	DATE	NO.	DESCRIPTION
1	08-30-2021		Water System Application (Application, Business Plan, Revised Financial Plan)
3	11-2021		Plans
3	11-2021		Specifications
1	11-05-2021		Water Permit Application with \$300 Application Check

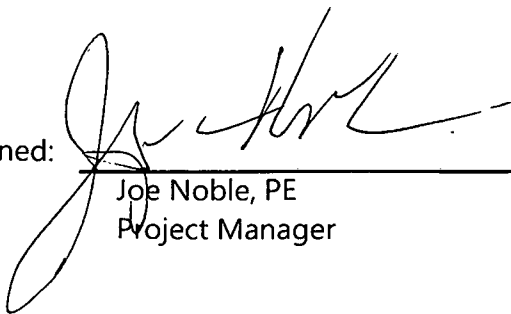
THESE ARE TRANSMITTED as checked below:

☒ For approval ☐ For your use ☐ As requested ☐ For your signature & forwarding

REMARKS:

Please call with any questions

Copy to: _____

Signed: 
Joe Noble, PE
Project Manager

If enclosures are not as noted, kindly notify us at once.

Advanced Engineering and Environmental Services, LLC
1560 Concourse Drive • Rapid City, SD 57703 • 605-341-7800

Water Rights Program - File Documentation

NAME: Joe Noble with AE2S.com

ADDRESS: Rapid City SD

DATE: 11-8-21

RE: Application for Reel Simple LLC

COMMENTS:

Joe Noble clarified that the location of the well for this application should be **SE 1/4 SW 1/4** Section 17-T2N-R8E.

Karen Schlaak

Karen Schlaak
Water Rights Program



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

File No. 2832-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Reel Simple LLC

DATE: November 10, 2021

RE: Water Permit Application No. 2832-2

COMMENTS:

I contacted the applicant and consultant via email to determine the volume of water that applicant intended to claim. The application identified 32 acre-feet which amounted to pumping at the claimed 20 gallons per minute 24 hours a day continuously for a year. Based on this, I told the applicant and consultant that the actual volume would likely be less but to not underestimate the volume needed either.

A response was received via email from Casey Skillingstad, with Advanced Engineering and Environmental Services, LLC, and was told to modify the application by using 10 acre-feet annually. Mr. Skillingstad indicated he was confused by the application instructions and misunderstood what volume to use.

Based on Mr. Skillingstad's response, the application has been modified to reflect a 10 acre-feet volume.

Ron Duvall
Water Rights Permitting Administrator
Water Rights Program



OFFICE OF THE SECRETARY OF STATE
STEVEN J. BARNETT, SECRETARY OF STATE
JASON LUTZ, DEPUTY SECRETARY OF STATE

Filing Information

Name: **Reel Simple LLC**

General Information

SOS Business ID DL186477
Filing Type: Limited Liability Company - Domestic
08/22/2020
Status: Good Standing
Duration Term: Perpetual
Managed By: Member-Managed

Registered Agent Address

Randy Dean Dowdy
1912 COUNTRY RD
RAPID CITY, SD 57701

Principal Address

1912 COUNTRY RD
RAPID CITY, SD 57701

The following document(s) was/were filed in this office on the date(s) indicated below:

Date Filed	Filing Description	Image #
06/17/2021	2021 Annual Report	B0184-4457
08/22/2020	Initial Filing	B0151-2574

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, January 6, 2022 8:29 AM
To: docdowdy@yahoo.com
Cc: joe.noble@AE2S.com
Subject: Water Permit Application No. 2832-2
Attachments: 2390.pdf

Attached is a copy of the report, chief engineer recommendation and information regarding the public notice for your water permit application. As stated in the letter, please contact the paper as soon as possible to authorize publication and arrange for payment. This information is being mailed to you today.

Karen Schlaak
DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2832-2, Reel Simple LLC**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Agriculture and Natural Resources concerning Water Permit Application No. 2832-2, Reel Simple LLC, 1912 Country Road, Rapid City SD 57701.

The Chief Engineer is recommending APPROVAL of Application No. 2832-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The well approved under Water Permit No. 2832-2 is located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals under this Permit shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Inyan Kara aquifer.
3. Water Permit No. 2832-2 authorizes a total annual diversion of up to 10 acre-feet of water.

See report on application for additional information.

Eric Gronlund

Eric Gronlund, Chief Engineer
January 5, 2022

**Report to the Chief Engineer on
Water Permit Application No. 2832-2**

Reel Simple LLC
29 November 2021

Water Permit Application No. 2832-2 proposes to appropriate up to 10 acre-feet of water per year (ac-ft/yr) at a maximum instantaneous withdrawal rate of 0.044 cubic feet of water per second (cfs), or approximately 20 gallons per minute (gpm) from one existing well completed into the Inyan Kara aquifer (approximately 1,780 feet deep) located in the SE ¼ SW ¼ Section 17 T2N-R8E Black Hills Meridian for a water distribution system. The site is located on the north side of Rapid City, South Dakota.

Aquifer: Inyan Kara (INKR)

Hydrogeologic Characteristics

The Inyan Kara aquifer is a regional-scale bedrock aquifer that underlies most of the northern great plains in the United States and Canada and is composed of the permeable and saturated portions of the Inyan Kara Group of sediments deposited during the early Cretaceous period [1] [2]. The Inyan Kara Group consists of the Fall River and the Lakota Formations. The Fall River Formation is a “Variegated brown, red, and gray to purple, calcareous, well-sorted, fine-grained sandstone, siltstone, and shale containing mica” [1]. The Lakota Formation is a “yellow, brown, red-brown, and gray to black claystone, silty pebble conglomerate, and massive-to-thin-bedded, cross-bedded sandstone” [1]. The Inyan Kara aquifer underlies approximately 23,000,000 acres of South Dakota west of the Missouri River and also extends east of the Missouri River [3]. In South Dakota, the Inyan Kara aquifer is under water table conditions where it outcrops around the Black Hills but is otherwise under confined conditions [4] [5]. Most of the Inyan Kara aquifer is overlain by the Skull Creek Shale, which behaves as a relatively impermeable barrier between the Inyan Kara and the Dakota aquifers [6]. Where the Skull Creek Shale is not present, the Inyan Kara aquifer discharges into the Dakota aquifer [6]. Below most of the Inyan Kara aquifer, the Morrison Shale behaves as a relatively impermeable barrier between the Inyan Kara aquifer and the aquifers below it [6]. In general, the Inyan Kara aquifer flows radially out from the Black Hills and eastward across South Dakota [7] [4].

The applicant submitted the well completion report for the existing well for this application, which was completed January 10, 2021. The driller reported encountering Fall River sandstone from 1,425 to 1,600 feet below grade, shale from 1,600 to 1705 feet, and Lakota sandstone from 1,705 to 1,750 feet below grade. The driller placed shots to perforate the casing from 1,720 to 1,725 feet below grade, so this well withdraws from the Lakota Formation only. The static water level at the time the well was completed was 120 feet below grade.

Applicable South Dakota Codified Law (SDCL)

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued if there is reasonable probability that there is unappropriated water available for the applicant’s proposed use, that the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management

Board. This report will only assess the availability of water and possibility of developing this application without unlawful impairment of existing domestic water uses and water rights.

Pursuant to SDCL 46-6-3.1, no application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of the water to the groundwater source. An exception allows water distribution systems to withdraw from groundwater sources older or stratigraphically lower than the Greenhorn Formation regardless of the results of a hydrologic budget. The Inyan Kara aquifer is older and stratigraphically lower than the Greenhorn Formation and applicant is a water distribution system as defined in SDCL 46-1-6(17). Therefore, it is not necessary to find that recharge exceeds withdrawals to approve this application. However, a statewide and local hydrologic budget will be provided for the information of the Chief Engineer and the Water Management Board.

Availability of Water

Statewide Hydrologic Budget

Statewide Recharge

Recharge to the Inyan Kara aquifer is by infiltration of precipitation and streamflow over the outcrop and groundwater inflow from aquifers in contact with the Inyan Kara aquifer when hydraulic head in the Inyan Kara aquifer is less than the hydraulic head of the aquifers with which it contacts [8]. There is no estimate of the total recharge to the Inyan Kara aquifer available from a single report. Driscoll and Carter [9] estimated that the recharge to the Inyan Kara outcrop in the Black Hills area of South Dakota is 11,600 ac-ft/yr. Bredehoeft, Neuzil, and Milly [10] attempted to model flows between the Madison Group, Inyan Kara aquifer, Dakota/Newcastle aquifer, and confining shale units, but the model is based on dated information when newer information is available that could change the results. Their model estimated that approximately 16,000 ac-ft/yr flows from the Madison Group to the Inyan Kara aquifer [10], which is the only available estimate of recharge to the Inyan Kara aquifer from lower aquifers.

Statewide Discharge

Discharge from the Inyan Kara aquifer is by evapotranspiration on the outcrops when the hydraulic head and formation of the aquifer is near land surface, seepage to surface water features when hydraulic head of the aquifer is above the stage of the surface water features the aquifer is hydrologically connected to, groundwater outflow to aquifers in contact with the Inyan Kara aquifer, uncontrolled flowing wells, and domestic and appropriative well withdrawals [8] [9] [11]. The Water Rights Program considers the outflow from uncontrolled flowing wells and the outflow from natural discharge to be available for appropriation.

Due to the low withdrawal rate and prevalence of water distribution systems, domestic well withdrawals are estimated to be negligible for the hydrologic budget. There are 206 water rights/permits currently authorized to withdraw from the Inyan Kara aquifer, one future use permit, No. 1780-2, reserving 142 ac-ft/yr from the aquifer, one application, No. 2686-2, which

seeks to withdraw up to 274 ac-ft/yr and is held in abeyance until federal permits are approved [11], and one application, No. 2830-2, which is pending and seeks to withdraw 160 ac-ft/yr.

Of the 206 water rights/permits authorized to withdraw water, 113 are primarily for some type of water distribution system (such as a rural water system, suburban housing development, or municipal use, etc.), 54 are for commercial use, 18 for irrigation, 10 for industrial use, 5 for fish and wildlife propagation, 3 for geothermal use, 2 for recreation, and 1 for institutional use [11]. Eleven of the 18 irrigation water rights/permits are required to report their withdrawals and are old enough to have reported their withdrawals in an irrigation questionnaire [11]. Figure 1 shows a graph of reported irrigation over the entire period of record (1982-2020) [12]. Average irrigation reported over the period of record (1982-2020) was approximately 80 ac-ft/yr [12]. However, irrigation practices have changed, so an average over the period of record may not be an accurate method to predict future withdrawals. The average irrigation over the last ten years of record (2011-2020) was approximately 131 ac-ft/yr [12]. There are seven irrigation permits, accounting for 196 acres, where the permit either does not require an annual report or the permit is too new to have reported irrigation [11]. Water Right No. 466-1 allows for irrigation via ditches of 434 acres from a flowing well at 1.5 cfs and is assumed to withdraw 1,087 ac-ft/yr, which is the amount the well can deliver if it flows uncontrolled at its maximum instantaneous diversion rate [11]. Assuming the other six water rights/permits that do not report irrigation or are too new to have reported apply 12 inches per acre per year, those permits are estimated to withdraw a total of 1,282 ac-ft/yr. The total estimated withdrawal for irrigation is 1,413 ac-ft/yr, using the 2011 through 2020 average withdrawal rate for reporting permits.

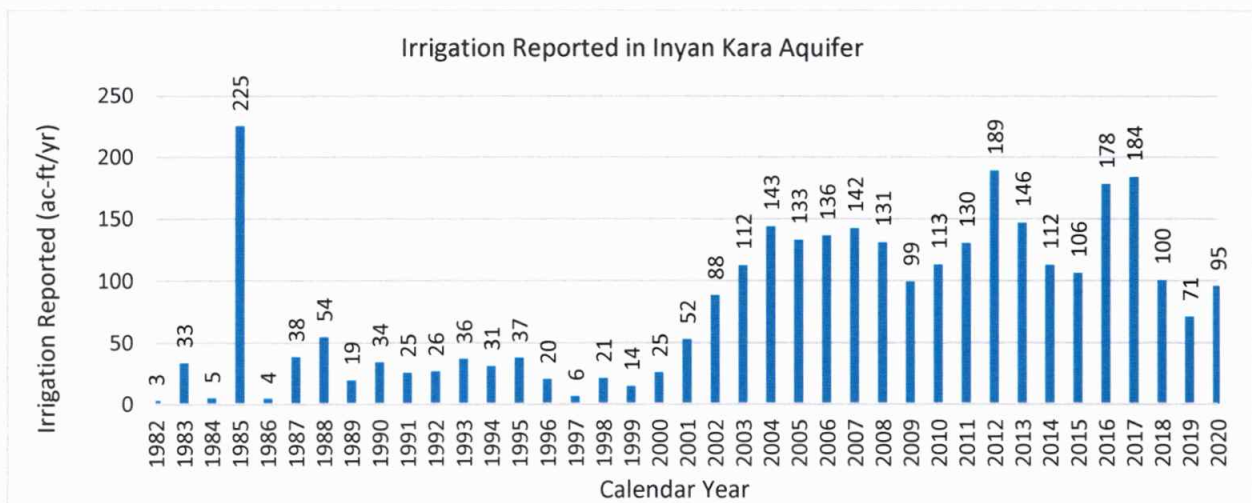


Figure 1: Irrigation reported in the Inyan Kara aquifer [12]

Of the non-irrigation withdrawals, 18 municipal water rights/permits are only maintained for emergency use (see Appendix Table 2 on pg. 9) [13] [14] [15] [16]. Those water rights/permits are assumed to withdraw a negligible amount of water.

There are 35 non-irrigation water rights/permits required to report, although some are new enough that their average reported use continues to increase with each new year of reports, which means they are still developing the full use of their permit [11] [17]. For water rights/permits that are still developing their permit, if there is a maximum volume of withdrawal specified in their permit, that volume is assumed to be their estimated annual withdrawal. If those permits do not have a volume specified on their permit, they are assumed to pump at their maximum

instantaneous diversion rate 60% of the time. For non-irrigation permits required to report that have fully developed their permit, the estimated withdrawal is their average annually reported withdrawal rate. One water right permit holder, Wink Cattle Company, reported withdrawals of 24 ac-ft in 2018, 15.9 ac-ft in 2019, and 25.5 ac-ft in 2020 [17] [18]. Representative Wink indicated to Water Rights staff that the meter reading in his latest non-irrigation questionnaire response was for the entire time the well for his water rights had been in operation and he also reported that the meter reading for his well was over 106 million gallons on November 6, 2021 [18]. His earliest water right/permit was approved in 2006 [11], so his average annual withdrawal is approximately 21.7 ac-ft/yr for the 15 years Wink Cattle Company has had a water right/permit. There are 14 water rights/permits which report their water production to the Drinking Water Program and the Inyan Kara aquifer is their only source of water, so their reported production is assumed to be their withdrawal [14]. Appendix Table 3 (pg. 10) shows the non-irrigation water rights/permits required to report their withdrawals and those reported to the Drinking Water Program when the Inyan Kara aquifer is their only source of water. The total estimated withdrawal for non-irrigation water rights/permits that report withdrawals is 3,587 ac-ft/yr.

There are five non-irrigation water rights/permits not required to report that have a volume limit specified in their permit [11]. Those water rights/permits are assumed to withdraw their full specified volume, for a total withdrawal of 193 ac-ft/yr.

Concentrated animal feeding operations (CAFOs) large enough to require a *General Water Pollution Control Permit for Concentrated Animal Feeding Operations* (General Permit) that do not report their annual withdrawals are estimated to withdraw water based on the number of animals permitted to those facilities [19] [20]. There are 14 CAFOs that are large enough to require a General Permit that are not required to report their withdrawals under their water right/permit. In the cases where the estimated animal water requirements are greater than the amount of water allowed by the water right/permit, the water rights/permits are assumed to withdraw at the maximum amount of water licensed/permitted. Appendix Table 4 (pg. 11) shows the estimated withdrawals for CAFOs not required to report. The total estimated withdrawal for CAFO water rights/permits not required to report their withdrawals is 1,089 ac-ft/yr.

Finally, there are 102 non-irrigation water rights/permits that do not match any of the descriptions above [11]. They are conservatively assumed to withdraw at their maximum instantaneous diversion rate 60% of the time, for a withdrawal of 6,373 ac-ft/yr. This is likely to be an overestimate, based on Water Rights Staff experience. The total estimated annual withdrawal of all water rights/permits currently authorized to withdraw is 14,469 ac-ft/yr. Including the application held in abeyance, the pending application, and the future use permit, the total estimated appropriation from the Inyan Kara aquifer is 15,045 ac-ft/yr.

Balance of Statewide Hydrologic Budget

The estimated recharge to the Inyan Kara aquifer in South Dakota is approximately 27,600 ac-ft/yr [9] [10]. Table 1 (pg. 5) summarizes the withdrawals discussed in the Statewide Discharge section of this report. The total estimated appropriation including one application held in abeyance, one application pending as of the date of this report, and one future use permit is 13,232 ac-ft/yr. This application, if approved, may withdraw up to 10 ac-ft/yr. Therefore, based on the hydrologic budget, there is reasonable probability unappropriated water is available for this application.

Table 1: Summary of withdrawals and appropriations

Type	No. Permits	Est. Withdrawal (ac-ft/yr)
Irrigation, Reporting	11	131
Irrigation, not reporting	7	1,282
Standby	18	0
Non-irrigation, reporting	49	3,587
Non-irrigation, not reporting, volume limited	5	193
CAFO, non-reporting, limited by diversion rate	14	1,089
All others, limited by max. diversion rate	102	6,373
<i>Subtotal (currently permitted to withdraw)</i>	206	12,656
Held in abeyance	1	274
Pending	1	160
Future use	1	142
Grand Total	209	13,232

Local Hydrologic Budget

This application is near the outcrop of the Inyan Kara group in the Black Hills and within the study area boundaries of the Black Hills Hydrology Study, so it is appropriate to analyze whether estimated recharge is likely to exceed estimated withdrawals for a local area near the outcrop of the formation. Recharge and withdrawal boundaries were drawn based on the Inyan Kara potentiometric surface map in order to minimize groundwater flow across the northern and southern boundary lines (see Appendix Figure 3, pg. 12). Recharge in the local budget area is mostly by infiltration of precipitation on the outcrop. Some recharge may also occur by infiltration from stream flow where Rapid and Box Elder Creeks cross the outcrop. The area of the outcrop in the local hydrologic budget is approximately 4,400 acres. The average annual precipitation in the local recharge area is approximately 18.2 inches per year [21]. Driscoll and Carter [9] used a yield-efficiency algorithm to estimate total yield for various aquifers in the Black Hills. The total yield is the portion of precipitation which goes to groundwater recharge and streamflow or runoff [9]. With an average annual precipitation of 17.84 inches per year for the whole Inyan Kara outcrop, Driscoll and Carter [9] estimated an annual yield of 0.79 inches. By applying a recharge factor of 0.8, Driscoll and Carter [9] estimated recharge from precipitation to the Inyan Kara aquifer to be approximately 0.63 inches per year. By assuming average annual recharge is proportional to average annual precipitation, recharge for the local area can be estimated to be 0.64 inches per year, or approximately 236 ac-ft/yr over the 4,400 acres of area.

There are 20 water rights/permits authorized to withdraw within the local hydrologic budget boundaries (see Appendix Table 5, pg. 13). Following the same methods as the Statewide Discharge section, the estimated average annual withdrawal for all Inyan Kara water rights/permits in the local hydrologic budget boundaries is 574 ac-ft/yr.

The potentiometric surface in the Inyan Kara aquifer may have changed since Strobel et al. [7] mapped it. If it has changed, it may mean groundwater is flowing from the rest of the Inyan Kara aquifer into the area mapped in Appendix Figure 3. If that is true, a source of recharge to the

local hydrologic budget cannot be quantified with the information currently available. Since the statewide hydrologic budget and record of observation wells indicate there is reasonable probability unappropriated water is available, it is likely to be true that the potentiometric surface of the Inyan Kara aquifer has changed in the area of the local hydrologic budget. Based on that information, and the likelihood that estimates for water right/permit holders not required to report their withdrawals are higher than actual withdrawals, there is uncertainty in the recharge and withdrawal estimates. This uncertainty means it is not possible to make conclusions on the availability of water for this application based on the local hydrologic budget.

Observation Wells

Administrative Rule of South Dakota (ARSD) 74:02:05:07 requires that the Water Management Board rely upon the record of observation well data in addition to other information to determine that recharge to an aquifer exceeds withdrawals. The Water Rights Program maintains nine observation wells completed into the Inyan Kara aquifer [4]. Eight of those nine are located in or around the Black Hills [4]. The nearest Water Rights observation well to this application that is completed into the Inyan Kara aquifer is Observation Well PE-95E, located approximately 1.3 miles west of this application [4]. Figure 2 (pg. 7) shows observation well water levels for all Water Rights Program observation wells completed into the Inyan Kara aquifer in or around the Black Hills [4]. In general, water levels show a level trend, except Observation Well PE-95B, which has a slightly increasing trend and FR-95C which had an increasing trend from 1995 to approximately 2005 and has remained approximately level since. Observation Wells MD-99A, MD-89A, and PE-95E show fluctuations during the year due to seasonal withdrawals.

Observation Well MD-99A may flow at land surface when pressure in the aquifer is high enough and has had some problems with leakage, so some readings from that well may not be reflective of the aquifer [4]. All the observation wells are under confined conditions [4], which means that the water level in the well represents the hydraulic head in the aquifer, not the amount of water in the aquifer. Since the hydraulic head has remained mostly level over time even as appropriations from the Inyan Kara aquifer increase, it is likely the Inyan Kara aquifer is either inducing recharge from aquifers that underly it and are in contact with it, withdrawal rates have been overestimated, or the recharge rates have been underestimated, or any combination of the three, which means withdrawals are less than recharge to the aquifer. Therefore, based on observation well analysis, there is reasonable probability unappropriated water is available for this application.

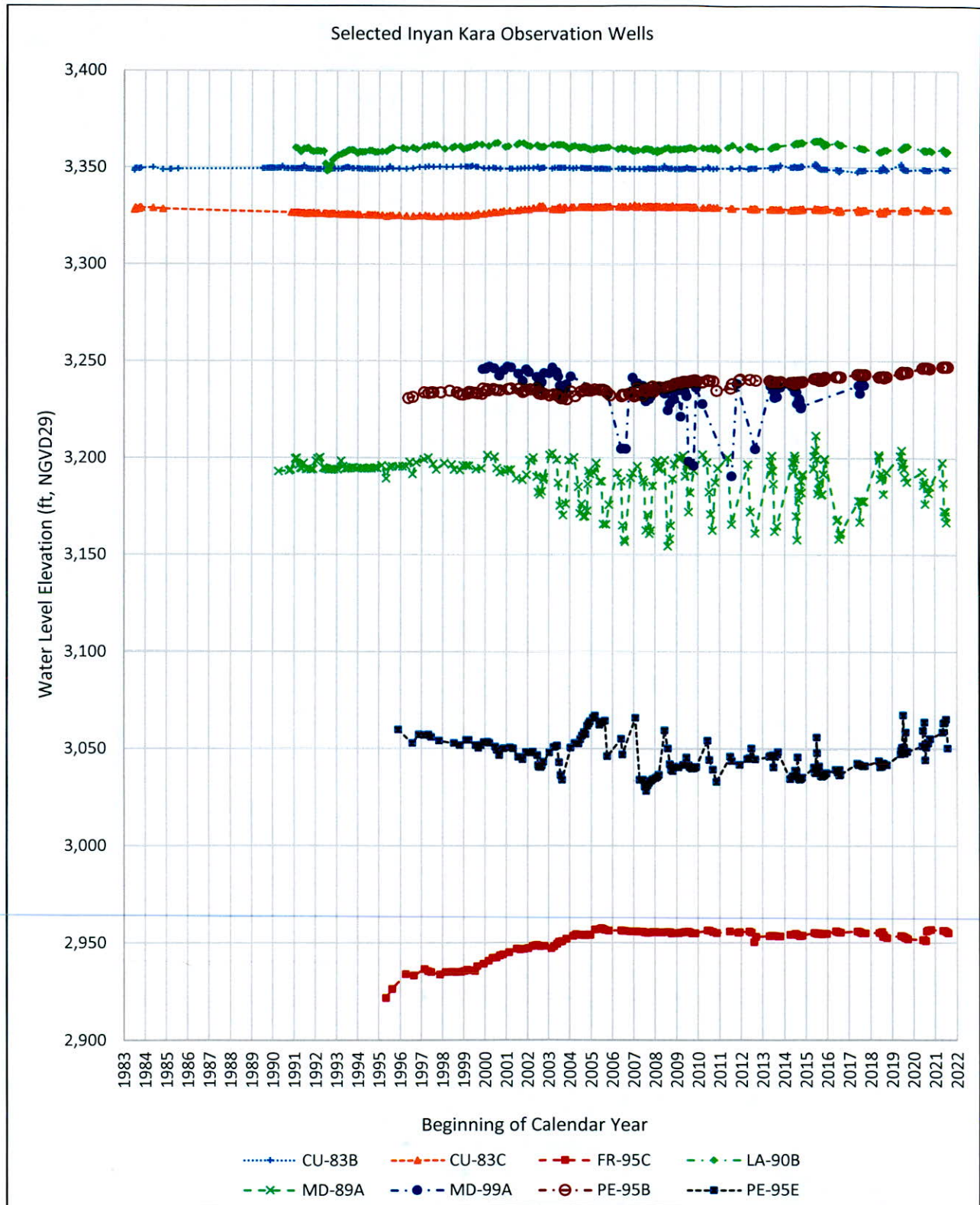


Figure 2: Water Rights Program observation wells completed into the Inyan Kara aquifer in and around the Black Hills [4]

Possibility of Unlawful Impairment of Existing Water Rights

The nearest water right/permit to this application that withdraws from the Inyan Kara aquifer is Water Right No. 2051-2, located approximately 0.3 miles southeast of this application [11]. The nearest domestic well to this application on file with the Water Rights Program that is completed into the Inyan Kara aquifer is located approximately 0.2 miles west of the existing well for this application [5]. The Water Rights Program has historically interpreted an unlawful impairment of existing water rights to occur if a junior water right/permit causes a nearby adequate well with a senior water right/permit to become unable to withdraw at the rate it is entitled to or, if an adequate domestic well is impacted, the water right/permit causes the adequate domestic well to be unable to withdraw at the rate needed to supply reasonable domestic use of water.

Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) defines an adequate well as:

...a well constructed or rehabilitated to allow various withdrawal methods to be used, to allow the inlet to the pump to be placed not less than 20 feet into the saturated aquifer or formation material when the well is constructed, or to allow the pump to be placed as near to the bottom of the aquifer as is practical if the aquifer thickness is less than 20 feet

Some drawdown from pumping for this application is likely to occur. In order to place the waters of the state to maximum beneficial use, the Water Management Board determined in the hearing on Water Permit Application No. 2313-2 for the Coca-Cola Bottling Company that hydraulic head in an aquifer is not protected as a means of water delivery [22]. Therefore, nearby well owners may be required to lower their pumps. There were 1,585 feet of hydraulic head above the Inyan Kara aquifer when the applicant's first well was completed on January 10, 2021. There are no complaints on file regarding well interference in Pennington County [23]. Therefore, based on the level of hydraulic head in the aquifer and lack of complaints of well interference, there is reasonable probability this application can be developed without unlawful impairment of existing water rights/permits or domestic wells.

Special Consideration: Adequate Wells Required

The Well Construction Standards (ARSD 74:02:04:36) allow for alternative construction of certain Inyan Kara wells for domestic use which are not adequate wells under ARSD 74:02:04:20(6). The existing well completed for this application is an adequate well since it has 5.5-inch casing through the producing formation and is grouted bottom to top. Because this application is for an appropriative use, any wells completed to meet the requested diversion rate must be adequate wells and **cannot** be constructed using the alternative construction method described in ARSD 74:02:04:36.

Conclusions

1. Water Permit Application No. 2832-2 seeks to appropriate 10 ac-ft/yr at a maximum instantaneous withdrawal rate of 0.044 cfs from one existing well completed into the Inyan Kara aquifer located in the SE ¼ SW ¼ Section 17 T2N-R8E Black Hills Meridian for a water distribution system.
2. Based on the statewide hydrologic budget and observation well analysis, there is reasonable probability unappropriated water is available for this application.

3. There is reasonable probability this application can be developed without unlawful impairment of existing water rights/permits or domestic wells.



Kimberly C. Drennon, E.I.

Natural Resources Engineer II – DANR Water Rights Program

Appendix: Additional Tables and Figures

Table 2: Water rights/permits on standby [13] [1]

Permit No.	Status	Name/Business	Priority Date	Use Type	Max. Diversion Rate (cfs)	County
1360-2	License	Aladdin Investments Inc	04/01/1976	SHD, COM	0.150	PE
2279-3	License	Camelot Land	05/08/1975	SHD	0.220	HU
591-2	License	City of Box Elder	03/31/1960	COM	0.180	PE
870-2	License	City of Box Elder	12/27/1965	MUN	0.180	PE
934-2	License	City of Box Elder	09/21/1967	MUN	0.240	PE
1488-1	License	City of Box Elder	04/10/1990	SHD, COM	0.200	MD, PE
1689-2	License	City of Box Elder	12/19/1979	MUN	0.360	PE
6735-3	License	City of Eureka	07/12/1960	MUN, REC	1.480	MP
1712-3	License	City of Ipswich	01/01/1919	MUN	0.190	ED
595-3	License	City of Onida	04/08/1959	MUN	1.110	SU
2224-3	License	Sunshine Acres Water System	03/05/1975	SHD	0.220	HU
2263-2	License	Town of Belvidere	03/02/1993	MUN	0.170	JA
473-1	License	Town of Fruitdale	06/09/1960	MUN	1.000	BU
1198-3	License	Town of Mound City	04/14/1965	MUN	0.170	CA
1647-2	License	Town of Quinn	09/21/1978	MUN	0.200	PE
1975-3	License	William Coady	03/07/1973	SHD	0.340	BN

COM – Commercial, MUN – Municipal, REC – Recreational, SHD – Suburban Housing Development

BN – Brown, BU – Butte, CA – Campbell, ED – Edmunds, HU – Hughes, JA – Jackson, MD – Meade, MP – McPherson, PE – Pennington, SU – Sully

Table 3: Non-irrigation water rights/permits required to report [11] [17] [14]

Permit:	Status:	Name/Business:	County:	Type of Use:	Priority:	Max. CFS	Est. Ac-ft/yr
8299-3	Permit	Aberdeen Energy LLC	ED	IND	09/28/2018	1.33	968.0 ^V
8197-3	Permit	Aberdeen Farm LLC	BN	COM	01/29/2016	0.16	72.1 ^V
1793-1	License	Autumn Meadows Sanitary District	MD	SHD	05/13/2003	0.17	2.2 ^D
1903-1	License	Castle Rock Group	BU	DOM	05/19/2009	0.11	15.5 ^A
716-1	License	City of Newell	BU	MUN	09/27/1963	0.44	77.3 ^D
731-1	License	City of Newell	BU	MUN	06/10/1964	0.44	
1906-1	License	City of Sturgis	MD	MUN	08/21/2009	0.222	2.2 ^A
1958-1	License	City of Sturgis	MD	MUN	04/11/2016	0.088	
2596-2	License	City of Wall	PE	MUN	07/24/2006	0.60	145.6 ^A
1983-1	Permit	Continental Resources	HR	IND	07/10/2018	0.50	360.0 ^V
1597-1	License	Crooked Oaks Canyon HOA	MD	SHD	03/22/1994	0.1	3.4 ^D
1846-1	License	Dennis or Anna Mae Beckham	MD	SHD, DOM	05/26/2005	0.10	2.4 ^A
1996-1	Permit	Dylan Gingras	MD	SHD	04/14/2020	0.133	48.0 ^V
1920-1	License	Elk Valley Ranchettes HOA	MD	SHD	01/24/2011	0.10	7.3 ^A
2635-2	License	Fall River Water Users District	FR	SHD, DOM	07/17/2008	0.10	2.6 ^A
2819-2	Permit	Fall River Water Users District	FR	RWS	06/01/2021	0.09	24.6 ^V
1826-1	License	Golden Valley Water Company LLC	MD	SHD	09/01/2004	0.267	15.9 ^A
2601-2	License	Grandview Land LLC	PE	SHD	09/01/2006	0.33	1.4 ^A
1837-1	License	Guy Mann	MD	SHD	02/28/2005	0.22	1.2 ^A
2448-2	License	Heartland Country Ranchettes	CU	SHD	10/04/2000	0.089	6.7 ^D
1645-2	License	Hermosa Water Users Assn	CU	RWS	08/17/1978	0.60	158.0 ^A
1861-1	License	Horseshoe Acres HOA	MD	SHD	04/20/2006	0.17	10.0 ^D
2538-2	Permit	JKRK Properties LLC	PE	SHD	08/30/2004	0.244	12.8 ^A
1278-2	License	Lakeside Water Users District	PE	RWS	07/21/1975	0.5	57.2 ^D
1656-1	License	Lofty Pines HOA	MD	SHD	01/02/1998	0.085	2.2 ^D
1989-1	Permit	Luff Exploration Company	HR	IND	04/09/2019	0.10	58.8 ^V
2622-2	License	Owanka Rural Water Association Inc	PE	RWS	10/09/2007	0.39	16.7 ^A
2268-2	License	Prairie Acres LLC	PE	SHD	03/09/1993	0.22	23.5 ^D
1999-1	Permit	Rafter Properties LLC	MD	SHD	07/23/2020	0.17	74.0 ^V
2543-2	License	Southern Black Hills Water System	PE	SHD	09/30/2004	0.19	13.0 ^A
2752-2	Permit	Southern Black Hills Water System	CU	RWS	04/25/2016	0.33	170.0 ^V
2752A-2	Permit	Southern Black Hills Water System ¹	CU	RWS	04/25/2016	0.00	0.0 ^V
794-2	License	Town of Buffalo Gap	CU	MUN	03/11/1963	0.19	10.6 ^D
2550-2	License	Town of Hermosa	CU	MUN	01/25/2005	0.22	45.8 ^A
660-2	License	Town of New Underwood	PE	MUN	03/03/1961	0.45	62.8 ^D
1947-2	License	Town of New Underwood	PE	MUN	06/03/1981	0.41	
366-1	License	Town of Nisland	BU	MUN	01/01/1939	0.15	19.5 ^D
1968-1	Permit	Venekamps LLC	MD	SHD	04/27/2017	0.11	29.0 ^V
1874-1	License	Viewfield Rural Water Assoc Inc	MD	RWS	01/03/2007	0.212	36.7 ^A
1898-1	License	Viewfield Rural Water Assoc Inc	MD	RWS	11/14/2007	0.394	
8420-3	Permit	Vogel Farms PTR	FA	GEO	01/28/2020	0.12	88.7 ^V
2464-2	License	West River Lyman Jones	PE	RWS	07/26/2001	0.76	433.6 ^A
2465-2	License	West River Lyman Jones	PE	RWS	07/26/2001	1.00	
2797-2	Permit	West River Lyman Jones RWS	PE	RWS	04/01/2019	1.00	455.0 ^V
2778-2	Permit	Western Construction Inc	PE	COM, IND	11/13/2017	0.17	31.0 ^V
1855-1	License	Wink Cattle Co	MD	COM, DOM	01/26/2006	0.087	21.7 ^A
1975-1	Permit	Wink Cattle Co ²	MD	COM, DOM	02/20/2018	0.069	
Total							3,587
1. Extends construction period. 2. Adds permitted use types HOA – Homeowners Association BN – Brown, BU – Butte, CU – Custer, ED – Edmunds, FA – Faulk, FR – Fall River, HR – Harding, MD – MD, PE – Pennington COM – Commercial, DOM – Domestic, GEO – Geothermal, IND – Industrial, MUN – Municipal, RWS – Rural Water System, SHD – Suburban Housing Development A – Average reported to Water Rights, V – Volume limit permitted/licensed, D – Drinking Water Report							

Table 4: Non-irrigation permits not required to report that are associated with a permitted CAFO [19] [20] [11]

Water Permit No:	Status:	Name/Business:	Use Type	County:	Priority:	Pump Rate (cfs):	Ann. Limit (ac-ft/yr)	Animal needs (ac-ft/yr)	Est. Use (ac-ft/yr)
6091-3	Permit	Brentwood Colony	COM	Faulk	07/13/1998	0.100	72	34	34
4965-3	License	Dakota Feeding Company LLC	COM	Sully	06/21/1983	0.330	239	168	168
6128-3	License	Deerfield Httrn Brethren	DOM, COM	Edmunds	03/03/1999	0.270	196	45	45
5890-3	License	Evergreen Colony	DOM	Faulk	11/14/1995	0.140	101	28	28
2178-2	License	Fall River Feed Yard LLC	COM	Fall River	05/14/1991	0.620	449	280	280
6376-3	License	LDL Cattle Company	COM	Edmunds	12/26/2002	0.220	159	112	112
6377-3	License	LDL Cattle Company	COM	Edmunds	12/26/2002	0.270	196		
7098-3	License	Mike & Jessie Fuller	DOM, COM	Sully	02/19/2009	0.040	29	54	29
6619-3	Permit	P J Werdel & Sons	COM	Hand	03/14/2005	0.330	239	112	112
7209-3	License	Paul Oberlitner	COM	Potter	10/19/2010	0.040	29	62	29
6011-3	License	Plainview Colony Httn	COM	Edmunds	07/07/1997	0.220	159	30	30
6257-3	Permit	Thunderbird Colony	DOM	Faulk	04/05/2001	0.200	145	77	77
6851-3	License	Todd Cowan	COM	Hyde	04/25/2007	0.150	109	99	99
7034-3	License	Vogel & Sautner Farms	COM	Potter	05/19/2008	0.123	89	45	45
Total							2,212	1,147	1,089

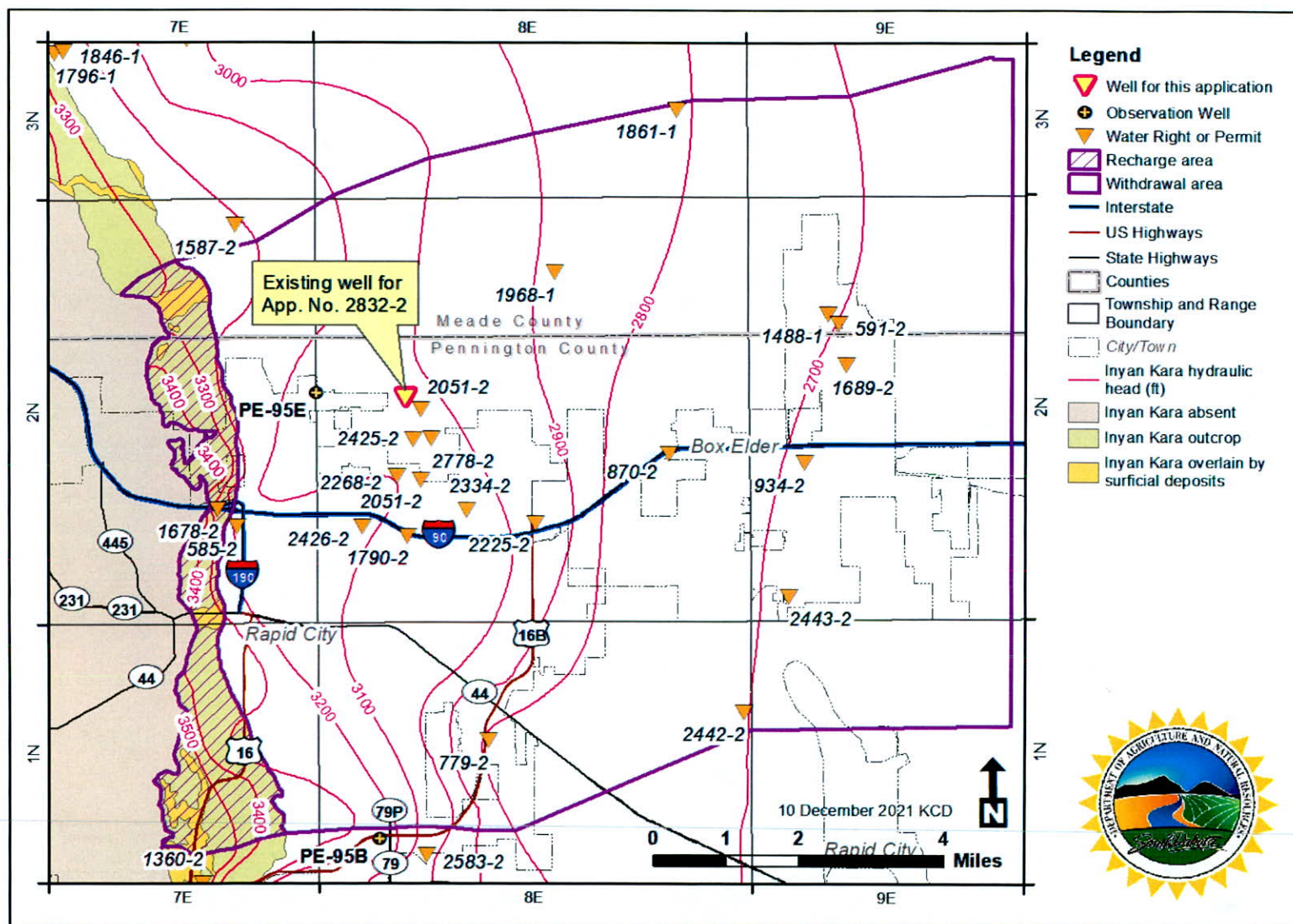


Figure 3: Outcrop and hydraulic head of the Inyan Kara aquifer (in feet above NGVD29) [7], nearby Inyan Kara water rights/permits [11], DANR observation wells [4], and local recharge and withdrawal area for the hydrologic budget for this application

Report on Water Permit App. No. 2832-2

Table 5: Water rights/permits in the boundaries of the local hydrologic budget [11]

Permit No.	Name/Business	Priority	Status	Use Type	Max. CFS	Irrigation Acres	Volume Limit (ac-ft/yr)	Report Required
585-2	T G Scholl	1960-03-04	License	SHD	0.110	N/A	N/A	No
591-2	City of Box Elder*	1960-03-31	License	COM	0.180	N/A	N/A	No
779-2	Rapid Valley Sanitary District	1962-08-03	License	SHD	1.000	N/A	N/A	No
870-2	City of Box Elder*	1965-12-27	License	MUN	0.180	N/A	N/A	No
934-2	City of Box Elder*	1967-09-21	License	MUN	0.240	N/A	N/A	No
1488-1	City of Box Elder*	1990-04-10	License	SHD, COM	0.200	N/A	N/A	No
1678-2	Harmony Heights Water Co	1979-07-13	License	SHD	0.040	N/A	N/A	No
1689-2	City of Box Elder*	1979-12-19	License	MUN	0.360	N/A	N/A	No
1790-2	Berry Patch Campground	1981-10-09	License	COM	0.170	N/A	N/A	No
1861-1	Horseshoe Acres Water Assoc Inc	2006-04-20	License	SHD	0.170	N/A	N/A	No
1968-1	Venekamps LLC	2017-04-27	License	WDS	0.110	N/A	29	No
2051-2	CVRC Limited Partnership	1987-12-18	License	COM	0.356	N/A	N/A	No
2225-2	Flying J Travel Plaza	1992-03-26	License	COM	0.155	N/A	N/A	No
2268-2	Prairie Acres LLC	1993-03-09	License	SHD	0.220	N/A	N/A	No
2334-2	GLM Land Corporation	1995-03-24	License	RWS	0.067	N/A	N/A	No
2425-2	Bob Young	1999-07-12	License	SHD	0.111	N/A	N/A	No
2426-2	Pirates Cove Rapid City	1999-07-12	License	IRR, COM	0.067	1.45	N/A	No
2442-2	Rainbow Water Co Inc	2000-07-03	License	SHD	0.090	N/A	N/A	No
2443-2	Carlton Peterson	2000-07-07	License	IRR, DOM	0.070	4.80	N/A	Yes
2778-2	Western Construction Inc	2017-11-13	Permit	COM, IND	0.170	N/A	31	No
COM – Commercial, DOM – Domestic, IND – Industrial, IRR – Irrigation, RWS – Rural Water System, SHD – Suburban Housing Development, WDS – Water Distribution System * System on standby								

References

- [1] J. E. Martin, J. F. Sawyer, M. D. Fahrenbach, D. W. Tomhave and L. D. Schulz, "Geologic Map of South Dakota," SD DANR Geological Survey Program, Vermillion, South Dakota, 2004. General Map 10.
- [2] J. S. Downey, "Geohydrology of bedrock aquifers in the northern Great Plains in parts of Montana, North Dakota, South Dakota, and Wyoming," United States Geological Survey, Denver, Colorado, 1986. Professional Paper 1402-E.
- [3] J. C. Allen, D. L. Iles and A. K. Petres, "Analysis of groundwater and streamflow data Western Dakotas region of South Dakota: Tasks 3A.B.C. and 4A.B.: Groundwater resource inventory," U.S. Army Corps of Engineers, Omaha, Nebraska, 1985.
- [4] SD DANR Water Rights Program, "Observation wells," Pierre, South Dakota, 2021.
- [5] SD DANR Water Rights Program, "Well completion reports," Pierre, South Dakota, 2021.
- [6] R. A. Schoon, "Geology and Hydrology of the Dakota Formation in South Dakota," SD DANR Geological Survey Program, Vermillion, South Dakota, 1971. Report of Investigations No. 104.
- [7] M. L. Strobel, J. M. Galloweay, G. R. Hamade and G. J. Jarrell, "Potentiometric surface of the Inyan Kara aquifer in the Black Hills Area, South Dakota," United States Geological Survey, Rapid City, South Dakota, 2000. Hydrologic Investigations Atlas 745-A.
- [8] J. R. Keene, "Ground-water resources of the western half of Fall River County, S.D.," SD DANR Geological Survey Program, Vermillion, South Dakota, 1973. Report of Investigations No. 109.
- [9] D. G. Driscoll and J. M. Carter, "Hydrologic Conditions and Budgets for the Black Hills of South Dakota, through Water Year 1998," United States Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigation 01-4226.
- [10] J. D. Bredehoeft, C. E. Neuzil and P. C. D. Milly, "Regional Flow in the Dakota Aquifer: a Study of the Role of Confining Layers," United States Geological Survey, Alexandria, Virginia, 1983. Water-Supply Paper 2237.
- [11] SD DANR Water Rights Program, "Water right permit file database," SD DANR Water Rights Program, Pierre, South Dakota, 2021.
- [12] SD DANR Water Rights Program, "Irrigation questionnaire summaries," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, SD, 2021.

- [13] B. Friedeman, Personal Communication, *Environmental Scientist II, SD DANR Drinking Water Program*. [Interview]. 6 February 2020.
- [14] SD DANR Drinking Water Program, "Drinking Water Reports," SD DANR Drinking Water Program, Joe Foss Bldg., Pierre, South Dakota, 2021.
- [15] K. Cain, Personal Communication, *Water Distribution Sytem Operator for City of Edgemont*. [Interview]. 21 December 2021.
- [16] B. Kaufman, Personal Communication, *City Engineer for City of Box Elder*. [Interview]. 16 December 2021.
- [17] SD DANR Water Rights Program, "Non-Irrigation Yearly Reports," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2021.
- [18] D. Wink, Personal Communication, *Water right permit holder for Wink Cattle Company*. [Interview]. 6 November 2021.
- [19] SD DANR Livestock Services Program, "Animal Table," SD DANR Livestock Services Program, Joe Foss Bldg., Pierre, South Dakota. Unpublished, 2021.
- [20] Ag-Info Centre, "Farm water supply requirements," Government of Alberta - Agriculture and Forestry, Edmonton, Alberta, Canada, 2009.
- [21] J. M. Carter, D. G. Driscoll and G. R. Hamade, "Estimated Recharge to the Madison and Minnelusa aquifers in the Black Hills Area, South Dakota and Wyoming, Water Years 1931-98," U.S. Geological Survey, Rapid City, South Dakota, 2001. Water-Resources Investigations Report 00-4278.
- [22] South Dakota Water Management Board. *On the Matter of Water Permit Application No. 2313-2 for Coca Cola Bottling Company*, 1995.
- [23] SD DANR Water Rights Program, "County Files," SD DANR Water Rights Program, Joe Foss Bldg., Pierre, South Dakota, 2021.

*** Proof of Publication ***

STATE OF SOUTH DAKOTA)

County of Pennington)

SS:

S.D. DEPT. OF AGRICULTURE
AGRICULTURAL SERVICES
523 E. CAPITOL AVE.
PIERRE SD 57501

ORDER NUMBER 41250

RECEIVED

JAN 20 2022

WATER RIGHTS
PROGRAM

The undersigned, being duly sworn, upon his/her oath says: That he/she is now and was at all time hereinafter mentioned, a clerk of the RAPID CITY JOURNAL, a corporation of Rapid City, South Dakota, a legal and daily newspaper printed and published in Rapid City, in said County of Pennington, and has full and personal knowledge of all the facts herein stated as follows: that said newspaper is and at all of the times herein mentioned has been a legal and daily newspaper with a bonafide paid circulation of at least Two Hundred copies daily, and has been printed and published for at least one year prior to the first date of the published notice.

This affidavit is a true and corrected copy of notice which appeared

in said newspaper once each day for 1

successive week, the first publication there of being on the

13th day of January, 2022

Kelly L. Hansen
Section: Legal

Category: 0072 Public Notices

PUBLISHED ON: 01/13/2022

TOTAL AD COST: 69.12

FILED ON: 1/13/2022

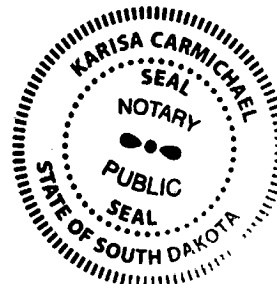
Subscribed and sworn to before me this

13 day of January, 2022

Karisa Carmichael Notary Public

My commission expires

May 18, 2027



Jan 13 L41250

NOTICE OF APPLICATION NO.

2832-2 to Appropriate Water

Notice is given that Reel Simple LLC c/o Randy Dowdy, 1912 Country Road, Rapid City SD 57701 has filed an application for a water permit to appropriate 10 acre-feet of water annually at a maximum pump rate of 0.044 cubic feet of water per second from one well completed into the Inyan Kara Aquifer (1,780 feet deep) located in the SE 1/4 SW 1/4 Section 17 for a water distribution system located in the SE 1/4 SW 1/4 Section 17; all in T2N-R8E. This site is located on the north side of Rapid City SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2832-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duval for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form

provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by January 24, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by January 24, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition

(Published one time at the approximate cost of \$69.12)

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, January 6, 2022 8:25 AM
To: RCY Legals (legals@rapidcityjournal.com)
Subject: 2832-2, Reel Simple LLC
Attachments: 2832-2public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on January 13, 2022.

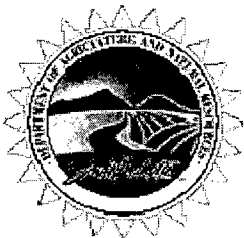
Reel Simple LLC, c/o Randy Dowdy, 1912 Country Road, Rapid City SD 57701 (605 593-1014) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPER RIGHT AWAY.**

January 6, 2022

Reel Simple LLC
c/o Randy Dowdy
1912 Country Road
Rapid City SD 57701

Dear Mr. Dowdy:

Water Permit Application No. 2832-2 for a water distribution system has been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Rapid City Journal printed at Rapid City SD (Ph # 605 394-8336). You will need to contact the newspaper and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspaper to authorize publication of your Notice and to arrange for payment. Early contact with the paper can eliminate delays. Upon receiving authorization from you, the publisher has been instructed to publish your notice. The newspaper has also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Karen Schlaak

Karen Schlaak
Water Rights Program
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.

NOTICE OF APPLICATION NO. 2832-2 to Appropriate Water

Notice is given that Reel Simple LLC c/o Randy Dowdy, 1912 Country Road, Rapid City SD 57701 has filed an application for a water permit to appropriate 10 acre-feet of water annually at a maximum pump rate of 0.044 cubic feet of water per second from one well completed into the Inyan Kara Aquifer (1,780 feet deep) located in the SE 1/4 SW 1/4 Section 17 for a water distribution system located in the SE 1/4 SW 1/4 Section 17; all in T2N-R8E. This site is located on the north side of Rapid City SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2832-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by January 24, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by January 24, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of _

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, March 30, 2022 11:36 AM
To: joe.noble@AE2S.com
Subject: Water Permit No. 2832-2, Reel Simple LLC
Attachments: 3149.pdf

FYI – attached is a copy of Water Permit No. 2832-2, Reel Simple LLC

Karen Schlaak
DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

MAR 30 2022

Reel Simple LLC
c/o Randy Dowdy
1912 Country Road
Rapid City SD 57701

Dear Mr. Dowdy:

Enclosed is Water Permit No. 2832-2 authorizing construction of your water diversion system and beneficial use of the water, not exceeding the limits as specified in the Water Permit.

A Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, is enclosed. Please return this completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An information sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
605 773-3352

enclosures