Supplementary Conditions OF THE CONSTRUCTION CONTRACT

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Supplementary Conditions OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C‑700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, “Paragraph SC‑4.05.”

1. Definitions and Terminology

~~No suggested Supplementary Conditions in this Article.~~

**SC-1.01.A.8 – Add the following at the end of the Paragraph:**

**The Change Order form to be used on this Project is EJCDC C-941 (2018). Agency approval is required before Change Orders are effective.**

**SC-1.01.A.30 – Add the following at the end of the Paragraph:**

**For the purposes of Rural Development, this term is synonymous with the term “applicant” as defined in 7 CFR 1780.7 (a) (1), (2) and (3) and is an entity receiving financial assistance from the federal programs.**

**SC-1.01.A.50 – Add the following at the end of the Paragraph:**

**The Work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.**

**SC-1.01.A.51 – Add the following new paragraph immediately after Paragraph 1.01.A.50:**

**51. Agency - The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices; therefore, the Agency for these documents is USDA Rural Development.**

**SC-1.01.A.52 – Add the following new paragraph with the title “American Iron and Steel Definitions” immediately after Paragraph 1.01.A.51:**

**52.a *American Iron and Steel* *(AIS)* - Requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference for “iron and steel products,” meaning the following products, if made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials. AIS requirements apply in each of the several states, the District of Columbia, and each federally recognized Tribe, but not the U.S. Territories.**

**52.b *Coating* - A covering that is applied to the surface of an object. If a Coating is applied to the external surface of a domestic iron or Steel component, and the application takes place outside of the United States, said product would be considered a compliant product under the AIS requirements. Any Coating processes that are applied to the external surface of Iron and Steel components that would otherwise be AIS compliant would not disqualify the product from meeting the AIS requirements regardless of where the Coating processes occur, provided that final assembly of the product occurs in the United States. This exemption only applies to Coatings on the *external surface* of Iron and Steel components. It does not apply to Coatings or linings on internal surfaces of Iron and Steel products, such as the lining of lined pipes. All Manufacturing Processes for lined pipes, including the application of pipe lining, must occur in the United States for the product to be compliant with AIS requirements.**

**52.c *Construction Materials* - Those articles, materials, or supplies made primarily of iron and/or steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. Note: Mechanical and electrical components, equipment and systems are not considered Construction Materials. See definitions of Mechanical Equipment and Electrical Equipment.**

**52.d *Contractor’s Certification* - Documentation submitted by the Contractor upon Substantial Completion of the Contract that all Iron and Steel products installed were Produced in the United States.**

**52.e *De Minimis* - Various miscellaneous, incidental low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. Examples of *De Minimis* components could include small washers, screws, fasteners (such as “off the shelf” nuts and bolts), miscellaneous wire, corner bead, ancillary tube, signage, trash bins, door hardware etc. Costs for such *De Minimis* components cumulatively may comprise no more than a total of five percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed one percent of the total cost of the materials used in and incorporated into a project.**

**52.f *Electrical Equipment* - Typically any machine powered by electricity and includes components that are part of the electrical distribution system. AIS does not apply to Electrical Equipment.**

**52.g *Engineer’s Certification* - Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with AIS.**

**52.h *Iron and Steel products* - The following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials. Only items on the above list made primarily of iron or steel, permanently incorporated into the project must be Produced in the United States. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. iron or steel.**

**52.i *Manufacturer* - A Supplier, fabricator, distributor, materialman, or vendor is an entity with which the Owner, Contractor or any subcontractor has contracted to furnish materials or equipment to be incorporated in the project by the Owner, Contractor or a subcontractor.**

**52.j *Manufacturer’s Certification* - Documentation provided by the Manufacturer stating that the Iron and Steel products to be used in the project are produced in the United States in accordance with American Iron and Steel (AIS) Requirements. If items are purchased via a Supplier, distributor, vendor, etc. from the Manufacturer directly, then the Supplier, distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.**

**52.k *Manufacturing Processes* - Processes such as melting, refining, pouring, forming, rolling, drawing, finishing, and fabricating. Further, if a domestic Iron and Steel product is taken out of the United States for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a Coating are similarly not covered. Non-iron or Steel components of an Iron and Steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-Iron and Steel components do not have to be of domestic origin. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-U.S. sources.**

**52.l *Mechanical Equipment* - Typically equipment which has motorized parts and/or is powered by a motor. AIS does not apply to Mechanical Equipment.**

**52.m *Minor Components* - Components *within* an iron and/or Steel product otherwise compliant with the American Iron and Steel requirements; this waiver is typically used by Manufacturers. It differs from the *De Minimis* definition in that *De Minimis* pertains to the entire project and the minor component definition pertains to a single product. This waiver allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an otherwise domestically produced Iron and Steel product. However, unless a separate waiver for a product has been approved, all other Iron and Steel components in said product must still meet the AIS requirements. This waiver does not exempt the whole product from the AIS requirements only Minor Components within said product and the iron or Steel components of the product must be produced domestically. Valves and hydrants are also subject to the cost ceiling requirements described here. Examples of Minor Components could include items such as pins and springs in valves/hydrants, bands/straps in couplings, and other low-cost items such as small fasteners etc.**

**52.n *Municipal Castings* - Cast iron or Steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and solid waste infrastructure.**

**52.o *Primarily Iron or Steel* - A product is made of greater than 50 percent iron or Steel on a materials cost basis. An exception to this definition is reinforced precast concrete (see Definitions). All technical specifications and applicable industry standards (e.g. NIST, NSF, AWWA) must be met. If a product is determined to be less than 50 percent iron and/or steel, the AIS requirements do not apply. For example, the cost of a fire hydrant includes:**

* **The cost of materials used for the iron portion of a fire hydrant (e.g. bonnet, body and shoe); and**
* **The cost to pour and cast to create those components (e.g. labor and energy).**

**Not included in the cost are:**

* **The additional material costs for the non-iron or Steel internal workings of the hydrant (e.g. stem, coupling, valve, seals, etc.); and**
* **The cost to assemble the internal workings into the hydrant body.**

**52.p *Produced in the United States* - The production in the United States of the iron or Steel products used in the project requires that all Manufacturing Processes must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives.**

**52.q *Reinforced Precast Concrete* – Reinforced Precast Concrete structures must comply with AIS, regardless of whether or not it consists of at least 50 percent iron or steel. The reinforcing bar and wire must be Produced in the United States and meet the same standards as for any other iron or Steel product. Additionally, the casting of the concrete product must take place in the United States. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered Construction Materials and must be Produced in the United States.**

**52.r *Steel* - An alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of Steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of Steel covers carbon steel, alloy steel, stainless steel, tool steel, and other specialty steels.**

**52.s *Structural Steel* - Rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees, and zees. Other shapes include but are not limited to, H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.**

1. Preliminary Matters

2.01 *Delivery of Bonds and Evidence of Insurance*

SC‑2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:

B. *Evidence of Contractor’s Insurance:* When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

C. *Evidence of Owner’s Insurance:* After receipt from Contractor of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor copies of the policies of insurance to be provided by Owner in this Contract (if any). Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

2.02 *Copies of Documents*

SC‑2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor **~~[number]~~five** printed copies of the Contract Documents (including one fully signed counterpart of the Agreement), and **one copy ~~[none]~~** in electronic portable document format (PDF).

SC‑2.02 Delete Paragraph 2.02.A in its entirety and insert the following new paragraph in its place:

A. Owner shall furnish to Contractor **5** printed copies of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

2.06 *Electronic Transmittals*

SC‑2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:

B. *Electronic Documents Protocol:* The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol (“EDP” or “Protocol”) for exchange of electronic transmittals.

1. *Basic Requirements*

a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.

b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.

c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.

d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.

e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party’s use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.

f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.

2. *System Infrastructure for Electronic Document Exchange*

a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions (“System Infrastructure”) at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.

1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is **20** MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.

2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.

b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology (“IT”) for maintaining operations of its System Infrastructure during the Project, including coordination with the party’s individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.

c. Each party will operate and maintain industry-standard, industry-accepted, ISO‑standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.

d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.

e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.

f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.

g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

h. The Owner will operate a Project information management system (also referred to in this EDP as “Project Website”) for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website:

1) Describe the period of time during which the Project Website will be operated and be available for reliance by the parties;

2) Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website;

3) Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.); and

4) Include any other Project Website attributes that may be pertinent to Contractor’s use of the facility and pricing of such use.

C. *Software Requirements for Electronic Document Exchange; Limitations*

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.

a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.

2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Exhibit A to this EDP, including software versions, if listed.

SC‑2.06 Supplement Paragraph 2.06 of the General Conditions by adding the following paragraph:

D. *Requests by Contractor for Electronic Documents in Other Formats*

1. Release of any Electronic Document versions of the Project documents in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be at the sole discretion of the Owner.

2. To extent determined by Owner, in its sole discretion, to be prudent and necessary, release of Electronic Documents versions of Project documents and other Project information requested by Contractor (“Request”) in formats other than those identified in the Electronic Documents Protocol (if any) or elsewhere in the Contract will be subject to the provisions of the Owner’s response to the Request, and to the following conditions to which Contractor agrees:

a. The content included in the Electronic Documents created by Engineer and covered by the Request was prepared by Engineer as an internal working document for Engineer’s purposes solely, and is being provided to Contractor on an “AS IS” basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, Contractor is advised and acknowledges that the content may not be suitable for Contractor’s application, or may require substantial modification and independent verification by Contractor. The content may include limited resolution of models, not-to-scale schematic representations and symbols, use of notes to convey design concepts in lieu of accurate graphics, approximations, graphical simplifications, undocumented intermediate revisions, and other devices that may affect subsequent reuse.

b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided by Engineer to Contractor under the request are only for convenience of Contractor. Any conclusion or information obtained or derived from such data will be at the Contractor’s sole risk and the Contractor waives any claims against Engineer or Owner arising from use of data in Electronic Documents covered by the Request.

c. Contractor shall indemnify and hold harmless Owner and Engineer and their subconsultants from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from Contractor’s use, adaptation, or distribution of any Electronic Documents provided under the Request.

d. Contractor agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the Request and is limited to Contractor’s subcontractors. Contractor warrants that subsequent use by Contractor’s subcontractors complies with all terms of the Contract Documents and Owner’s response to Request.

3. In the event that Owner elects to provide or directs the Engineer to provide to Contractor any Contractor-requested Electronic Document versions of Project information that is not explicitly identified in the Contract Documents as being available to Contractor, the Owner shall be reimbursed by Contractor on an hourly basis (at $**200** per hour) for any engineering costs necessary to create or otherwise prepare the data in a manner deemed appropriate by Engineer.

1. Contract Documents: Intent, Requirements, Reuse

3.01 *Intent*

SC‑3.01 Delete Paragraph 3.01.C in its entirety.

1. Commencement and Progress of the Work

**SC-4.01.A – Delete the last sentence of paragraph.**

4.05 *Delays in Contractor’s Progress*

**SC-4.05 Paragraph is mandatory for WWD projects.**

SC‑4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

a. If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled. **Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.C.5.b.**

b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:

1) Every workday on which one or more of the following conditions exist will be considered a “bad weather day”:

i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds **2 inches** of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC‑4.05.C by reference.

ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: **-20** degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: **115** degrees Fahrenheit.

2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by **National Weather Service** weather monitoring station at **Flagstaff Pulliam Airport (KFLG) - Lat: 35.14433°NLon: 111.66637°WElev: 6994ft**.

3) Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit **B**—Foreseeable Bad Weather Days.

4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit **B**—Foreseeable Bad Weather Days will be considered as “abnormal weather conditions.” The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor’s then-current Progress Schedule’s critical path for the Project.

1. Site, Subsurface and Physical Conditions, Hazardous Environmental Conditions

5.03 *Subsurface and Physical Conditions*

SC‑5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

| Report Title | Date of Report | Technical Data |
| --- | --- | --- |
| * + - 1. **Geotechnical Report** | **3/14/2019** | **Geotechnical Exploration** |
| * + - 1. **Site Environmental Report** | **Dec. 2021** | **Project Site Environmental Report** |
| * + - 1. **On-site Waste Sampling Report** | **8/28/2019** | **Documentation of Wastes and Sampling Results**  **Painted Desert Demonstration Project Site**  **149 Leupp Road**  **Flagstaff, Arizona** |
| * + - 1. **SHPO Survey Report Summary Form** | **7/28/2018** | **SHPO Survey Report Summary Form** |

F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

| Drawings Title | Date of Drawings | Technical Data |
| --- | --- | --- |
|  |  | **[Identify Technical Data]** |
|  |  |  |
|  |  |  |

G. Contractor may examine copies of reports and drawings identified in SC‑5.03.E and SC‑5.03.F that were not included with the Bidding Documents at **The STAR School** during regular business hours, or may request copies from Engineer.

5.06 *Hazardous Environmental Conditions*

**Guidance Notes—Reports and Drawings Regarding Hazardous Environmental Conditions—**This is a mandatory Supplementary Condition. Paragraph 5.06 of the General Conditions contemplates that Owner will identify all known documents regarding Hazardous Environmental Conditions (HEC) that have been identified at or adjacent to the Site. It also requires the identification of Technical Data (upon whose accuracy Contractor may rely) contained in such documents. Use SC‑5.06, presented immediately below, to identify the known HEC documents. Refer to Guidance Note 5 preceding SC‑5.03 for examples of completed rows of tables similar to the tables in SC‑5.06. Also note that if either a geotechnical report or environmental report has been prepared for the Project, and the Supplementary Conditions neglect to expressly identify reports or drawings or reports’ or drawings’ Technical Data upon whose accuracy Contractor may rely, then the default definition of Technical Data in Paragraph GC‑1.01.A.46.b of the General Conditions will apply.

SC‑5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

| Report Title | Date of Report | Technical Data |
| --- | --- | --- |
| **On-site Waste Sampling Report** | **8/28/2019** | **Documentation of Wastes and Sampling Results**  **Painted Desert Demonstration Project Site**  **149 Leupp Road**  **Flagstaff, Arizona** |

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

| Drawings Title | Date of Drawings | Technical Data |
| --- | --- | --- |
| **N/A** | **N/A** | **N/A** |
|  |  |  |
|  |  |  |

1. Bonds and Insurance
   1. Performance, Payment, and Other Bonds

**SC-6.01 – Disregard EJCDC Guidance Notes – Performance and Payment Bonds, Note 1. Performance and Payment Bonds are required for WEP projects.**

SC‑6.01 Add the following paragraphs immediately after Paragraph 6.01.A:

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form of EJCDC® C‑610, Performance Bond (2010, 2013, or 2018 edition).

2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® C‑615, Payment Bond (2010, 2013, or 2018 edition).

**SC-6.01 – EJCDC Guidance Notes – “Other Bonds,” Warranty Bond, Note 1. RD does not require a Warranty Bond, and RD will not accept a Warranty Bond in place of a Performance and Payment Bond. The decision to include a Warranty Bond is made by the Owner and their counsel. Please refer to EJCDC.**

SC‑6.01 Add the following paragraphs immediately after Paragraph 6.01.B:

1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be **2** years after Substantial Completion.

2. After Substantial Completion, Contractor shall furnish a warranty bond issued in the form of EJCDC® C‑612, Warranty Bond (2018). The warranty bond must be in a bond amount of **15** percent of the final Contract Price. The warranty bond period will extend to a date **2** years after Substantial Completion of the Work. Contractor shall deliver the fully executed warranty bond to Owner prior to or with the final application for payment, and in any event no later than 11 months after Substantial Completion.

3. The warranty bond must be issued by the same surety that issues the performance bond required under Paragraph 6.01.A of the General Conditions.

6.02 *Insurance—General Provisions*

SC‑6.02 Add the following paragraph immediately after Paragraph 6.02.B:

1. Contractor may obtain worker’s compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the Project is located, (b) is certified or authorized as a worker’s compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker’s compensation insurance for similar projects by the state within the last 12 months.

SC‑6.02 Add the following paragraph immediately after Paragraph 6.02.H.2 of the General Conditions:

3. For the following Subcontractors, Suppliers, or categories of Subcontractor or Supplier, Contractor shall require the following specified insurance, with policy limits as stated: **[Identify Subcontractors, Suppliers, or categories of same, and insert specific insurance requirements and policy limits]**

6.03 *Contractor’s Insurance*

SC‑6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds (in addition to Owner and Engineer) the following: **None.**

E. *Workers’ Compensation and Employer’s Liability:* Contractor shall purchase and maintain workers’ compensation and employer’s liability insurance, including, as applicable, United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, stop-gap employer’s liability coverage for monopolistic states, and foreign voluntary workers’ compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

| **Workers’ Compensation and Related Policies** | **Policy limits of not less than:** |
| --- | --- |
| **Workers’ Compensation** | |
| State | Statutory |
| Applicable Federal (e.g., Longshoreman’s) | Statutory |
| Foreign voluntary workers’ compensation (employer’s responsibility coverage), if applicable | Statutory |
| **Jones Act (if applicable)** | |
| Bodily injury by accident—each accident | N/A |
| Bodily injury by disease—aggregate | N/A |
| **Employer’s Liability** | |
| Each accident | $500,000 |
| Each employee | $500,000 |
| Policy limit | $500,000 |
| **Stop-gap Liability Coverage** | |
| For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker’s compensation or commercial general liability policy with a minimum limit of: | N/A |

F. *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 claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees,

2. damages insured by reasonably available personal injury liability coverage, and

3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

G. *Commercial General Liability—Form and Content:* Contractor’s commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.

a. Such insurance must 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, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.

3. Severability of interests and no insured-versus-insured or cross-liability exclusions.

4. Underground, explosion, and collapse coverage.

5. Personal injury coverage.

6. 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). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. 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.

H. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.

5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).

6. Any limitation or exclusion based on the nature of Contractor’s work.

7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. *Commercial General Liability—Minimum Policy Limits*

| Commercial General Liability | Policy limits of not less than: |
| --- | --- |
| General Aggregate | $1,000,000 |
| Products—Completed Operations Aggregate | $1,000,000 |
| Personal and Advertising Injury | $1,000,000 |
| Bodily Injury and Property Damage—Each Occurrence | $1,000,000 |

J. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance 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 must be written on an occurrence basis.

| **Automobile Liability** | **Policy limits of not less than:** |
| --- | --- |
| **Bodily Injury** | |
| Each Person | $1,000,000 |
| Each Accident | $1,000,000 |
| **Property Damage** | |
| Each Accident | $1,000,000 |
| **[or]** | |
| **Combined Single Limit** | |
| Combined Single Limit (Bodily Injury and Property Damage) | $2,000,000 |

K. *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. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

| Excess or Umbrella Liability | Policy limits of not less than: |
| --- | --- |
| Each Occurrence | $1,000,000 |
| General Aggregate | $2,000,000 |

L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements:* Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of **$500,000** after accounting for partial attribution of its limits to underlying policies, as allowed above.

M.*Contractor’s Pollution Liability Insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor’s operations and completed operations. This insurance must be maintained for no less than three years after final completion.

| Contractor’s Pollution Liability | Policy limits of not less than: |
| --- | --- |
| Each Occurrence/Claim | $1,000,000 |
| General Aggregate | $2,000,000 |

N. *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 must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

| Contractor’s Professional Liability | Policy limits of not less than: |
| --- | --- |
| Each Claim | $1,000,000 |
| Annual Aggregate | $2,000,000 |

O. *Railroad Protective Liability Insurance:* Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

**[Insert additional specific requirements, commonly set by the railroad, here.]**

| Railroad Protective Liability Insurance | Policy limits of not less than: |
| --- | --- |
| Each Claim | $1,000,000 |
| Aggregate | $2,000,000 |

P. *Unmanned Aerial Vehicle Liability Insurance:* If Contractor uses unmanned aerial vehicles (UAV—commonly *referred* to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor’s compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

| Unmanned Aerial Vehicle Liability Insurance | Policy limits of not less than: |
| --- | --- |
| Each Claim | $1,000,000 |
| General Aggregate | $2,000,000 |

Q. *Other Required Insurance:* **None.**

6.04 *Builder’s Risk and Other Property Insurance*

SC‑6.04 Delete Paragraph 6.04.A and insert the following in its place:

A. Owner shall purchase and maintain builder’s risk insurance upon the Work on a completed value basis, in the amount of the Work’s full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder’s risk insurance are set forth in the Supplementary Conditions.

SC‑6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

F. *Builder’s Risk Requirements:* The builder’s risk insurance must:

1. be written on a builder’s risk “all risk” policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.

b. 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 will be provided through other insurance policies acceptable to Owner and Contractor.

2. 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.

3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).

4. 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). If this coverage is subject to a sublimit, such sublimit will be a minimum of $**500,000.**

5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of $**500,000**.

6. allow for the waiver of the insurer’s subrogation rights, as set forth in this Contract.

7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.

8. include performance/hot testing and start-up, if applicable.

9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner’s procurement of property insurance following Substantial Completion, whichever occurs first.

10 include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder’s risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as “insureds.” In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:

a. **[Here list by legal name (not category, role, or classification) other persons or entities to be included on the builder’s risk policy as named insureds. It is generally recommended to list the insured’s full legal/contractual name, address, contact person, telephone, and e-mail address. Include only persons or entities that have property at the Site that is to be insured by the builder’s risk insurance. If applicable, separately identify any mortgagee or lender required to be named as a loss payee.]**

11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:

a. **[Here list or provide cross-reference to specific items of Owner-furnished (or third-party furnished) equipment, and purchase value; do not list items whose value is already included in the Contract Price.]**

12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of $**[amount]**.

13. In addition to the coverage sublimits stated above, the following coverages are also subject to sublimits, as follows:

a. **[Here list a specific coverage, or cause of loss, that has been determined to be likely to be subject to a sublimit. If not applicable, then delete Paragraph SC‑6.04.F.13 in its entirety.]** If this coverage is subject to a sublimit, such sublimit will be a minimum of $**5,000.**

SC‑6.04 Supplement Paragraph 6.04 of the General Conditions with the following provision:

G. *Coverage for Completion Delays:* The builder’s risk policy will include, for the benefit of Owner, loss of revenue and soft cost coverage for losses arising from delays in completion that result from covered physical losses or damage. Such coverage will include, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, compensation for loss of net revenues, rental costs, and attorneys’ fees and engineering or other consultants’ fees, if not otherwise covered.

SC‑6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

H. *Builder’s Risk and Other Property Insurance Deductibles:* The purchaser of any required builder’s risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

1. The builder’s risk policy (or if applicable the installation floater) will be subject to a deductible amount of no more than $**10,000** for direct physical loss in any one occurrence.

SC‑6.04 Delete Paragraph 6.04.A of the General Conditions and substitute the following in its place:

A. *Installation Floater*

1. Contractor shall provide and maintain installation floater insurance on a broad form or “all risk” policy providing coverage for materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work (“Covered Property”). Coverage under the Contractor’s installation floater will include loss from covered “all risk” causes (perils) to Covered Property:

a. of the Contractor, and Covered Property of others that is in Contractor’s care, custody, and control;

b. while in transit to the Site, including while at temporary storage sites;

c. while at the Site awaiting and during installation, erection, and testing;

d. continuing at least until the installation or erection of the Covered Property is completed, and the Work into which it is incorporated is accepted by Owner.

2. The installation floater coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable.

3. The installation floater coverage will be in an amount sufficient to protect Contractor’s interest in the Covered Property. The Contractor will be solely responsible for any deductible carried under this coverage.

4. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

1. Contractor’s Responsibilities

7.03 *Labor; Working Hours*

SC‑7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C:

1. Regular working hours will be **between 6:00am and 5:00pm**.

2. Owner's legal holidays are **New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, and Christmas.**

SC‑7.03 Amend the first and second sentences of Paragraph 7.03.C to state “…all Work at the Site must be performed during regular working hours, **Monday** through **Friday**. Contractor will not perform Work on a **Saturday**, **Sunday**, or any legal holiday.”

SC‑7.03 Delete Paragraph 7.03.C in its entirety, and insert the following:

C. In the absence of any Laws or Regulations to the contrary, Contractor may perform the Work on holidays, during any or all hours of the day, and on any or all days of the week, at Contractor's sole discretion.

SC‑7.03 Add the following new paragraph immediately after Paragraph 7.03.C:

D. **Contractor** shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer’s services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

SC‑7.03 Add the following new subparagraph immediately after Paragraph SC‑7.03.D:

* + - 1. For purposes of administering the foregoing requirement, additional overtime costs are defined as **hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay**.

**SC-7.04.D – Add the following new paragraph immediately after Paragraph 7.04.C:**

**D. All Iron and Steel products must meet American Iron and Steel requirements.**

**SC-7.04.E – Add the following new paragraph immediately after Paragraph 7.04.D:**

**E. For projects utilizing a *De Minimis* waiver, Contractor shall maintain an itemized list of non-domestically produced iron or steel incidental components and ensure that the cost is less than 5% of total materials cost for project.**

**SC-7.05.A – Amend the third sentence of paragraph by striking out the following words:**

**Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item is permitted,**

**SC-7.05.A.1.a.3 – Amend the last sentence of Paragraph a.3 by striking out “and;” and adding a period at the end of Paragraph a.3.**

**SC-7.05.A.1.a.4 – Delete paragraph in its entirety and insert “Deleted.”**

**SC-7.05.B – Add the following at the end of paragraph:**

**Contractor shall include a Manufacturer’s Certification letter for compliance with American Iron and Steel requirements in support data, if applicable. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-7.06.A.3.a.2 – Remove “and” from the end of paragraph.**

**SC-7.06.A.3.a.3 – Add “; and” to the end of paragraph.**

**SC-7.06.A.3.a.4 – Add the following new paragraph immediately after Paragraph 7.06.A.3.a.3:**

**4. Comply with American Iron and Steel by providing Manufacturer’s Certification letter of American Iron and Steel compliance, if applicable. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-7.07.A – Amend by adding the following to the end of the paragraph:**

**The total amount of work subcontracted by the Contractor shall not exceed fifty percent of the Contract price without prior approval from the Owner, Engineer and Agency.**

**SC-7.07.B – Delete paragraph in its entirety and insert ”Deleted”.**

**SC-7.07.E – Delete the second sentence of paragraph and insert the following in its place:**

**Owner may not require that Contractor use a specific replacement.**

7.10 *Taxes*

SC‑7.10 Add a new paragraph immediately after Paragraph 7.10.A:

A. Owner is exempt from payment of sales and compensating use taxes of the State of **Arizona** and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.

2. Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

**SC-7.12.A Amend paragraph by adding the following after “written interpretations and clarifications,”:**

**Manufacturers’ Certifications,**

7.13 *Safety and Protection*

**Guidance Notes—Owner’s Safety Programs—**Some Owners have written safety programs with which construction contractors must comply. If such is the case, Paragraph 7.13.G of the General Conditions states that the safety program will be identified or included in the Supplementary Conditions or Specifications (and Paragraph 9.12.B requires Owner to provide a copy of such programs to Contractor).

If the identification of the Owner’s safety programs will occur in the Supplementary Conditions, use the following SC‑7.13. If there is a Specification section (typically in Division 01) that addresses the Owner’s safety programs, then SC‑7.13 is unnecessary, though it could be retained as a means of providing a cross-reference to the specific location in the Specifications.

~~SC‑7.13 Insert the following after the second sentence of Paragraph 7.13.G:~~

~~The following Owner safety programs are applicable to the Work:~~ **~~[Here expressly identify by title and/or date, any such Owner safety programs. If Owner’s safety programs are included in or addressed in the Specifications, SC‑7.13 may be used to provide a cross-reference to the Specification section]~~**~~.~~

**SC-7.16.A.1.c – Amend paragraph by deleting the last period and adding:**

**, including Manufacturer’s Certification letter for any item in the submittal subject to American Iron and Steel requirements and include the Certificate in the submittal. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-7.16.C.9 – Add new paragraph immediately after Paragraph 7.16.C.8:**

**9. Engineer’s review and approval of a Shop Drawing or Sample shall include review of Manufacturers’ Certifications in order to document compliance with American Iron and Steel requirements, as applicable.**

**SC-7.17.F – Add new paragraph immediately after Paragraph 7.17.E:**

**F. Contractor shall certify upon Substantial Completion that all Work and Materials have complied with American Iron and Steel requirements as mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. Contractor shall provide said Certification to Owner. Refer to General Contractor’s Certification Letter provided in these Contract Documents.**

1. Other Work at the Site

8.02 *Coordination*

SC‑8.02 Add the following new Paragraph 8.02.C immediately after Paragraph 8.02.B:

C. Owner intends to contract with others for the performance of other work at or adjacent to the Site.

1. **Dr. Mark Sorensen** shall have authority and responsibility for coordination of the various contractors and work forces at the Site;

2. ~~The following specific matters are to be covered by such authority and responsibility:~~ **~~[Here itemize such matters]~~**~~;~~

3. The extent of such authority and responsibilities is: **Unlimited.**

1. Owner’s Responsibilities

9.13 *Owner’s Site Representative*

SC‑9.13 Add the following new paragraph immediately after Paragraph 9.12 of the General Conditions:

9.13 *Owner’s Site Representative*

A. Owner will furnish an “Owner’s Site Representative” to represent Owner at the Site and assist Owner in observing the progress and quality of the Work. The Owner’s Site Representative is not Engineer’s consultant, agent, or employee. Owner’s Site Representative will be **Dr. Mark Sorensen, President of Painted Desert Demonstration Projects, Inc**. The authority and responsibilities of Owner’s Site Representative follow: **1. Oversee construction and other projects on behalf of the owner; 2. Coordinate other activities on-site; 3. Construction observation; 3. Communicate with contractors; 4. Perform or coordinate construction inspection; and 5. Make project decisions on behalf of the Owner, etc.**

1. Engineer’s Status During Construction

10.03 *Resident Project Representative*

SC‑10.03 Add the following new subparagraph immediately after Paragraph 10.03.A:

1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.

SC‑10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

2. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR’s own personal safety while at the Site.

3. *Liaison*

a. Serve as Engineer’s liaison with Contractor. Working principally through Contractor’s authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.

b. Assist Engineer in serving as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s on-Site operations.

c. Assist in obtaining from Owner additional details or information, when required for Contractor’s proper execution of the Work.

4. *Review of Work; Defective Work*

a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.

b. Observe whether any Work in place appears to be defective.

c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

5. *Inspections and Tests*

a. Observe Contractor-arranged inspections required by Laws and Regulations, including but not limited to those performed by public or other agencies having jurisdiction over the Work.

b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. *Payment Requests:* Review Applications for Payment with Contractor.

7. *Completion*

a. Participate in Engineer’s visits regarding Substantial Completion.

b. Assist in the preparation of a punch list of items to be completed or corrected.

c. Participate in Engineer’s visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

d. Observe whether items on the final punch list have been completed or corrected.

D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).

2. Exceed limitations of Engineer’s authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Authorize Owner to occupy the Project in whole or in part.

1. Changes to the Contract

~~No suggested Supplementary Conditions in this Article.~~

**SC-11.02.C – Add new paragraph immediately after Paragraph 11.02.B:**

**C. The Engineer or Owner shall contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective.**

**SC-11.03.A.2 - Add new Paragraph 11.03.A.2 immediately after Paragraph 11.03.A, which shall be renamed Paragraph 11.03.A.1:**

**2. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.**

**SC-11.05.B – Add the following at the end of this paragraph:**

**For Owner-authorized changes in the Work, the Contractor will provide the Manufacturer’s Certification(s) for materials subject to American Iron and Steel requirements except when sole-source is specified, in which case the Engineer will provide the Manufacturer’s Certification(s).**

**SC-11.09.B.2.c – Add new paragraph immediately after Paragraph 11.09.B.2.b:**

**c. Change orders involving materials subject to American Iron and Steel requirements shall include supporting data (name of Manufacturer, city and state where the product was manufactured, description of product, signature of authorized Manufacturer’s representative) in the Manufacturer’s Certification Letter, as applicable.**

1. Claims

No suggested Supplementary Conditions in this Article.

1. Cost of Work; Allowances, Unit Price Work

13.01 *Cost of the Work*

SC‑13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of **Rental Rate Blue Book**.

SC‑13.01 Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

* + - * 1. For purposes of this paragraph, “small tools and hand tools” means any tool or equipment whose current price if it were purchased new at retail would be less than **$500**.

**SC-13.02.C – Delete paragraph in its entirety and insert ”Deleted”.**

13.03 *Unit Price Work*

**SC‑13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:**

**E. *Adjustments in Unit Price***

**1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:**

**a. the extended price of a particular item of Unit Price Work amounts to [number] percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than [number] percent from the estimated quantity of such item indicated in the Agreement; and**

**b. Contractor’s unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.**

**2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor’s costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.**

**3. Adjusted unit prices will apply to all units of that item.**

1. Tests and Inspections; Correction, Removal, or Accceptance of Defective Work

~~No suggested Supplementary Conditions in this Article.~~

**SC-14.03.G – Add new paragraph immediately after Paragraph 14.03.F:**

**G. Installation of materials that are non-compliant with American Iron and Steel requirements shall be considered defective work.**

1. Payments to Contractor, Set Offs; Completions; Correction Period

15.01 *Progress Payments*

**SC-15.01.B.4 – Add the following language at the end of paragraph:**

**No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the Contractor.**

**SC-15.01.B.5 – Add new paragraph immediately after Paragraph 15.01.B.4:**

**5. The Application for Payment form to be used on this Project is EJCDC® C-620. The Agency must approve all Applications for Payment before payment is made.**

**SC-15.01.B.6 – Add new paragraph immediately after Paragraph 15.01.B.5:**

**6. By submitting an Application for Payment based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with American Iron and Steel requirements. Manufacturer’s Certification letter for materials satisfy this requirement. Refer to Manufacturer’s Certification Letter provided in these Contract Documents.**

**SC-15.01.C.2.d – Add the following new paragraph immediately after Paragraph 15.01.C.2.c:**

**d. The materials presented for payment in an Application for Payment comply with American Iron and Steel requirements.**

**SC-15.01.D.1 – Delete paragraph in its entirety and insert the following in its place:**

**The Application for Payment with Engineer’s recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.**

SC‑15.01 Add the following new Paragraph 15.01.F:

F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

**SC-15.02.A – Amend paragraph by striking out the following text: “7 days after”.**

15.03 *Substantial Completion*

**SC-15.03.A – Modify by adding the following after the last sentence:**

**Contractor shall also submit the General (Prime) Contractor’s Certification of Compliance certifying that to the best of the Contractor’s knowledge and belief all substitutes, equals, and all Iron and Steel products proposed in the Shop Drawings, Change Orders, and Partial Payment Estimates, and those installed for the Project, are either Produced in the United States or are the subject of an approved waiver under Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.**

SC‑15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

15.08 *Correction Period*

SC‑15.08 Add the following new Paragraph 15.08.G:

G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC‑6.01.B.1; or if no such revision has been made in SC‑6.01.B, then the correction period is hereby specified to be **2** years after Substantial Completion.

1. Suspension of Work and Termination

No suggested Supplementary Conditions in this Article.

1. Final Resolutions of Disputes

17.02 *Arbitration*

SC‑17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 *Arbitration*

A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC‑17.02). Any controversy or claim in the amount of $100,000 or less will be settled in accordance with the American Arbitration Association’s supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.

B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.

C. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.

D. The Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.

E. The award of the arbitrators must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.

F. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

G. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer’s consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:

1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;

3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and

4. the consolidation or joinder is in compliance with the arbitration administrator’s procedural rules.

H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.

I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

17.03 *Attorneys’ Fees*

SC‑17.03 Add the following new paragraph immediately after Paragraph 17.02. [Note: If there is no Paragraph 17.02, because neither arbitration nor any other dispute resolution process has been specified here in the Supplementary Conditions, then revise this to state “Add the following new Paragraph immediately after Paragraph 17.01” and revise the numbering accordingly].

17.03 *Attorneys’ Fees*

A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys’ fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties’ initial demand or defense positions in comparison with the final result.

1. Miscellaneous

18.08 *Assignment of Contract*

SC‑18.08 Add the following new paragraph immediately after Paragraph 18.08.A:

B. The contract dated **[date]** between Owner as “buyer” and **[identify seller]** as “seller” for procurement of goods and special services (“procurement contract”) **[is hereby]** **[will be]** assigned to Contractor by Owner, and Contractor **[accepts]** **[will accept]** such assignment. A form documenting the assignment is attached as an exhibit to this Contract.

1. This assignment will occur on the **[Effective Date of the Contract]**, and will relieve the Owner as “buyer” from all further obligations and liabilities under the procurement contract.

2. Upon assignment, the “seller” will be a Subcontractor or Supplier of the Contractor, and Contractor will be responsible for seller’s performance, acts, and omissions, as set forth in Paragraph 7.07 of the General Conditions just as Contractor is responsible for all other Subcontractors and Suppliers.

3. Notwithstanding this assignment, all performance guarantees and warranties required by the procurement contract will continue to run for the benefit of the Owner and, in addition, for the benefit of the Contractor.

4. Except as noted in the procurement contract, all rights, duties and obligations of Engineer to “buyer” and “seller” under the procurement contract will cease **[upon the assignment to Contractor]**.

**SC-18.11 – Add new paragraph immediately after Paragraph 18.10:**

**18.11 *Tribal Sovereignty***

**A. No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the [*insert name of Tribe*] Tribe; affecting the trust-beneficiary relationship between the Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government-to-government relationship between the United States and the Tribe.**

**SC-19 – Add the following new Article 19 immediately after Article 18:**

**Article 19 - FEDERAL REQUIREMENTS**

**19.01 *Agency Not a Party***

**A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees, is a party to this Contract.**

**19.02 *Contract Approval***

**A. Owner and Contractor will furnish Owner’s attorney such evidence as required so that Owner’s attorney can complete and execute the “Certificate of Owner’s Attorney” (Exhibit G of this Bulletin) before Owner submits the executed Contract Documents to Agency for approval.**

**B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.**

**19.03 *Conflict of Interest***

**A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings and Specifications has a corporate or financial affiliation with the Supplier or Manufacturer. Owner’s officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest or other interest in or a tangible personal benefit from the Contractor. Owner’s officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.**

**19.04 *Gratuities***

**A. If Owner finds after a notice and hearing that Contractor, or any of Contractor’s agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.**

**B. In the event this Contract is terminated as provided in paragraph 19.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.**

**19.05 *Small, Minority and Women’s Businesses***

**A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:**

**1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;**

**2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;**

**3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;**

**4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;**

**5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.**

**19.06 *Anti-Kickback***

**A. Contractor shall comply with the Copeland Anti-Kickback Act (40 USC 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.**

**19.07 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended***

**A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).**

**19.08 *Equal Employment Opportunity***

**A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”**

**19.09 *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)***

**A. Contractors that apply or bid for an award exceeding $100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.**

**19.10 Environmental Requirements**

**A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:**

**1. Wetlands – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.**

**2. Floodplains – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert 100-year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.**

**3. Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:**

**a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:**

**i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.**

**ii. The RD personnel shall notify the appropriate RD environmental staff member, the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.**

**iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; and the Advisory Council on Historic Preservation’s Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).**

**iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional’s assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.**

**v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.**

**vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.**

**vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.**

**4. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.**

**5. Mitigation Measures – The following environmental mitigation measures are required on this Project: [*Insert mitigation measures from the Letter of Conditions here*].**

**19.11 *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)***

**A. Where applicable, for contracts awarded by the Owner in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.**

**19.12 *Debarment and Suspension (Executive Orders 12549 and 12689)***

**A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.**

**19.13 *Procurement of recovered materials***

**A. The Contractor will comply with 2 CFR Part 200.322, “Procurement of recovered materials.”**

**19.14 *American Iron and Steel***

**A. Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies an American Iron and Steel requirement to this project. All iron and steel products used in this project must be produced in the United States. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials.**

**B. The following waivers apply to this Contract:**

**1. *De Minimis*,**

**2. Minor Components,**

**3. Pig iron and direct reduced iron, and**

**4. [*add project specific waivers as applicable*].**

1. Software Requirements for Electronic Document Exchange

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Item | Electronic Documents | | Transmittal Means | Data Format | Note  (1) |
| a.1 | General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form. | | Email | Email |  |
| a.2 | Meeting agendas, meeting minutes, RFI’s and responses to RFI’s, and Contract forms. | | Email w/ Attachment | PDF | (2) |
| a.3 | Contactors Submittals (Shop Drawings, “or equal” requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner’s and Engineer’s responses to Contractor’s Submittals, Shop Drawings, correspondence, and Applications for Payment. | | Email w/ Attachment | PDF |  |
| a.4 | Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals. | | Email w/ Attachment or LFE | PDF |  |
| a.5 | Layouts and drawings to be submitted to Owner for future use and modification. | | Email w/ Attachment or LFE | DWG |  |
| a.6 | Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification. | | Email w/ Attachment or LFE | DOC |  |
| a.7 | Spreadsheets and data to be submitted to Owner for future data processing use and modification. | | Email w/ Attachment or LFE | EXC |  |
| a.8 | Database files and data to be submitted to Owner for future data processing use and modification. | | Email w/ Attachment or LFE | DB |  |
| Notes | | | | | |
| (1) | All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents. | | | | |
| (2) | Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions. | | | | |
| Key | | | | | |
| Email | | Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies | | | |
| LFE | | Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive) | | | |
| PDF | | Portable Document Format readable by Adobe® Acrobat Reader Version **[number]** or later | | | |
| DWG | | Autodesk® AutoCAD .dwg format Version **[number]** | | | |
| DOC | | Microsoft® Word .docx format Version **[number]** | | | |
| EXC | | Microsoft® Excel .xls or .xml format Version **[number]** | | | |
| DB | | Microsoft® Access .mdb format Version **[number]** | | | |

1. Foreseeable Bad Weather Days

| Month | Number of Foreseeable Bad Weather Days in Month Based on Precipitation as Rain Equivalent (inches) (1) | | Ambient Outdoor Air Temperature (degrees F) | | |
| --- | --- | --- | --- | --- | --- |
| Number of Foreseeable Bad Weather Days in Month Based on Low Temperature (at 11:00 a.m.) | | Number of Foreseeable Bad Weather Days in Month Based on High Temperature (at 3:00 p.m.) |
| January |  |  | |  | |
| February |  |  | |  | |
| March |  |  | |  | |
| April |  |  | |  | |
| May |  |  | |  | |
| June |  |  | |  | |
| July |  |  | |  | |
| August |  |  | |  | |
| September |  |  | |  | |
| October |  |  | |  | |
| November |  |  | |  | |
| December |  |  | |  | |
| Notes:  1. Two inches of sleet equal one inch of rain. Five inches of wet, heavy snow equal one inch of rain. Fifteen inches of “dry” powder snow equals one inch of rain. | | | | | |

1. Geotechnical Baseline Report Supplement to the Supplementary Conditions

1.01 Definitions

SC‑1.01 Add to the list of definitions in Paragraph 1.01.A by inserting the following as numbered items in their proper alphabetical positions:

1. *Geotechnical Baseline Report (GBR)*—The interpretive report prepared by or for Owner regarding subsurface conditions at the Site, and containing specific baseline geotechnical conditions that may be anticipated or relied upon for bidding and contract administration purposes, subject to the controlling provisions of the Contract, including the GBR’s own terms. The GBR is a Contract Document.

2. *Geotechnical Data Report (GDR)*—The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner in support of the Geotechnical Baseline Report. The GDR’s content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

5.03 Subsurface and Physical Conditions

SC‑5.03 Delete Paragraph 5.03 in its entirety and replace with the following:

5.03 Subsurface and Physical Conditions

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

1. those reports of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report or Geotechnical Baseline Report) that contain Technical Data. Such reports are as follows:

a. *Report Title:* **Geotechnical Report**

b. *Date of Report:* **3/14/2019**

c. *Technical Data in report upon which Contractor may rely*: **[Identify Technical Data (for example, “Boring Log, Test Site 3”) and specify page number or other reference where Technical Data is located within the report. List multiple Technical Data line items per entry when appropriate.]**

2. those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data. Such drawings are as follows:

* + - * 1. *Drawings Title:* **[Exact title of the drawings]**
        2. *Date of Drawings:* **[Date drawings were issued]**
        3. *Technical Data in drawings upon which Contractor may rely:* **[Identify Technical Data (for example, “Plan View of Rock Outcroppings”) in drawings, or state “All information in drawing” if entire content is Technical Data entitled to reliance; and specify drawing number, page number, or other reference where the Technical Data is located. List multiple Technical Data line items per entry when appropriate.]**

3. Contractor may examine copies of reports and drawings identified immediately above that were not included with the Bidding Documents at **[location]** during regular business hours, or may request copies from Engineer, at the cost of reproduction.

B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph SC‑5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data 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 Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner’s archival documents concerning the Site; or

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

E. *Geotechnical Baseline Report*

1. This Contract contains a Geotechnical Baseline Report (“GBR”), identified as follows: **Geotechnical Examination for Painted Desert Demonstration Projects, 145 Leupp Road, Flagstaff, AZ, dated March 14, 2019, prepared by Verde Engineering Group PLLC, Inc., Payson, AZ**. This Contract also contains a Geotechnical Data Report (GDR), identified as follows: **Geotechnical Examination for Painted Desert Demonstration Projects, 145 Leupp Road, Flagstaff, AZ, dated March 14, 2019, prepared by Verde Engineering Group PLLC, Inc., Payson, AZ**.

2. The GBR and GDR are incorporated as Contract Documents. The GBR and GDR are to be used in conjunction with other Contract Documents, including the Drawings and Specifications. If there is a conflict between the terms of the GBR and the GDR, the GBR’s terms prevail.

3. The GBR describes certain select subsurface conditions that are anticipated to be encountered by Contractor during construction in specified locations (referred to here in the Supplementary Conditions as “Baseline Conditions”). These may include ground, geological, groundwater, and other subsurface geotechnical conditions, and baselines of anticipated Underground Facilities or subsurface structures.

4. The Baseline Conditions will be used to assist in the administration of the Contract’s differing site conditions clause at locations where subsurface conditions have been baselined. If a condition is baselined in the GBR, then only the pertinent Baseline Conditions will be used to determine whether there is a differing site condition; and no other indication of that condition in the Contract Documents or Technical Data, or of a condition that describes, quantifies, or measures a similar characteristic of the subsurface, will be used for the differing site condition determination.

5. The Baseline Conditions will not be used to make differing site conditions determinations at locations that have not been baselined in the GBR, or at any location with respect to subsurface conditions that the Baseline Conditions do not address. If Underground Facilities or Hazardous Environmental Conditions are expressly addressed in the Baseline Conditions, then comparison to such Baseline Conditions will be the primary means of determining (a) whether an Underground Facility was shown or indicated with reasonable accuracy, as provided in Paragraph 5.05 of the General Conditions, or (b) whether a Hazardous Environmental Condition was shown or indicated in the Contract Documents as indicated in Paragraph 5.06.H of the General Conditions. As indicated in Paragraph SC‑5.04 below, the GDR will be the primary resource for differing site conditions determinations in cases in which the GBR is inapplicable.

6. The descriptions of subsurface conditions provided in the GBR are based on geotechnical investigations, laboratory tests, interpretation, interpolation, extrapolation, and analyses. Neither Owner, Engineer, nor any geotechnical or other consultant warrants or guarantees that actual subsurface conditions will be as described in the GBR, nor is the GBR intended to warrant or guarantee the use of specific means or methods of construction.

7. The behavior of the ground during construction depends substantially upon the Contractor’s selected means, methods, techniques, sequences, and procedures of construction. If ground behavior conditions are baselined in the GBR, they are based on stated assumptions regarding construction means and methods.

8. The GBR will not reduce or relieve Contractor of its responsibility for the planning, selection, and implementation of safety precautions and programs incident to Contractor’s means, methods, techniques, sequences, and procedures of construction, or to the Work.

5.04 Differing Subsurface or Physical Conditions

SC‑5.04 Delete Paragraph 5.04 in its entirety and replace with the following:

5.04 Differing Subsurface or Physical Conditions

A. *Notice:* If Contractor believes that any subsurface condition that is uncovered or revealed at the Site:

1. differs materially from conditions shown or indicated in the GBR; or

2. differs materially from conditions shown or indicated in the GDR, to the extent the GBR is inapplicable; or

3. differs materially from conditions shown or indicated in Contract Documents other than the GBR or GDR, to the extent the GBR and GDR are inapplicable; or

4. to the extent the GBR and GDR are inapplicable, 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

5. to the extent the GBR and GDR are inapplicable, is of such a nature as to require a change in the Drawings or Specifications; or

6. to the extent the GBR and GDR are inapplicable, 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 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 SC‑5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor’s resumption or continuation 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 or continuation of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer’s written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer’s review or Owner’s issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must fall within any one or more of the categories described in Paragraph SC‑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 of the General Conditions; and

c. Contractor’s entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; 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 SC‑5.04.A.

3. If Owner and Contractor agree regarding Contractor’s entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment must be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner’s issuance of the Owner’s written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 of the General Conditions governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 of the General Conditions governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs SC‑5.03 and SC‑5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.