

Section 00700

GENERAL CONDITIONS

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## Article 1 Definitions and Terminology

### 1.01 Defined Terms

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- A. Addenda – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the bidding documents or the Contract Documents.
- B. Agreement – The written Agreement for Construction between TMWA and Contractor covering the Work to be performed; other Contract Documents are attached to, or referenced in, the Agreement and made a part thereof as provided therein.
- C. Application for Payment – The form accepted by Project Representative, which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as required by the Contract Documents.
- D. Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- E. Bid – The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- F. Bidding Documents – Invitation to Bid, Instructions to Bidders, the Bid Form including any required attachments, Bid Bond, the proposed Contract Documents, Reference Documents, and any Addenda issued prior to receipt of Bids.
- G. Bidding Requirements – The advertisement or Invitation to Bid, Instructions to bidders, and the Bid form.
- H. Bidder – One who submits a bid directly to TMWA, as distinct from a sub-bidder, who submits a bid to a Bidder.
- I. BMP or BMP's – Best management practices to reduce or prevent erosion and to control the sediment and wastes generated from construction activities and transported in stormwater runoff. BMP's on TMWA Projects shall be as defined in the BMP Handbook.
- J. BMP Field Guide – The Nevada Contractors Field Guide for Construction Site Best Management Practices. The field guide is available at [www.TMstormwater.com](http://www.TMstormwater.com).
- K. BMP Handbook – The Truckee Meadows Construction Site Best Management Practices Handbook, latest revision. The handbook is available at [www.TMstormwater.com](http://www.TMstormwater.com).
- L. Bonds – Bid, performance and payment bonds, and other instruments of security.
- M. Change Order – A document recommended by Project Representative, which is authorized prior to work begins and signed by Contractor and TMWA and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Sum or the Contract Time, issued on or after the Effective Date of the Agreement.
- N. Contract Bonds – The performance and payment bonds. Also referred to as Contract Security.
- O. Contract Documents – consist solely of the Agreement, Addenda or Amendments to the Agreement (if any), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award, but excluding any added or amended terms, conditions, or provisions limiting liability or the insurance required herein) when attached as an

exhibit to the Agreement, the Notice to Proceed, the Bonds, the General Conditions, the Supplementary Conditions, the Technical Specifications, and the Drawings as the same are more specifically identified in the Agreement, together with all written amendments, modifications, and supplements issued on or after the Effective Date of the Agreement.

- P. Contract Sum – The amount payable by TMWA to Contractor under the Contract Documents as stated in the Agreement (subject to modification for Unit Price Work).
- Q. Contract Time – The number of days or the date stated in the Agreement for the completion of the Work. Contract Time includes weekends, holidays and included weather days (if any) where work is not performed at the site. Unless otherwise noted in the Agreement or the Supplemental Conditions, Contract Time generally begins on the date of the Notice to Proceed and also includes pre-construction activities such as submittal review, surveying, potholing, etc.
- R. Contractor – The person, firm, or corporation with whom TMWA has entered into the Agreement, licensed by the Nevada (and California, where applicable) State Contractors Board.
- S. Day – A calendar day unless specifically noted as a working day. When used to calculate Liquidated Damages, each day of delay shall only include working days and shall exclude weekends, holidays and weather days.
- T. Defective – An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty, or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Project Representative's approval of final payment (unless responsibility for the protection thereof has been assumed by TMWA at Substantial Completion).
- U. Drawings – The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.
- V. Effective Date of the Agreement – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- W. Engineer – TMWA's technical representative.
- X. Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- Y. Laws and Regulations; Laws or Regulations – Laws, rules, regulations, ordinances, codes, and/or orders.
- Z. Milestone – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- AA. Notice of Award – The written notice by TMWA to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, TMWA will sign and deliver the Agreement.
- BB. Notice to Proceed – A written notice given by TMWA to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.
- CC. Owner or Company – Truckee Meadows Water Authority (TMWA).
- DD. Partial Utilization – Use by TMWA of a substantially completed part of the work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the work.

- EE. Petroleum – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
- FF. Project – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
- GG. Project Manual – Volume or volumes containing the Bidding Requirements, Contract Forms, Conditions of the Contract, and Specifications.
- HH. Project Representative – The authorized representative of TMWA assigned to the Project or any part thereof and is responsible for administration of the construction contract. May also be referred to as Construction Management Administrator, Project Administrator, or Project Coordinator.
- The Project Representative is the sole point of contact for the Contractor on matters relating to the Work. References to “Engineer” or “Architect” in the Specifications shall be understood to mean the Project Representative.
- II. Purchasing/Contracts Administrator – TMWA’s designated representative for all matters pertaining to bidding and contract award for the Project.
- JJ. Radioactive Material – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- KK. Reference Documents – Documents that provide supplemental information about TMWA furnished equipment, easements, rights-of-way, and other similar items, made available for use by the Bidder in Bid preparation. Reference Documents are not part of the Contract Documents and are provided without representation or warranty as to accuracy or completeness.
- LL. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the work and which establish the standards by which such portion of the work will be judged.
- MM. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.
- NN. Special Provisions – A section in Division 1 of the Technical Specifications that specifies Project specific requirements such as TMWA furnished equipment, construction utilities, description of work, and items of a similar nature. May also be titled “Special Conditions.” May not be used for all Projects.
- OO. Subcontractor – An individual, firm, or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- PP. Substantial Completion – The Work (or a specified part thereof) has progressed to the point where, in the opinion of Project Representative as evidenced by Project Representative definitive certificate of Substantial Completion, is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof. Substantial Completion may be defined in the Supplemental Conditions.

- QQ. Successful Bidder – The Bidder to whom TMWA awards a contract. The Successful Bidder becomes the Contractor upon execution of the Agreement by TMWA.
- RR. Superintendent – Contractor's Representative on site who has the authority to act on behalf of the Contractor.
- SS. Supplementary Conditions – The part of the Contract Documents which amends or supplements these General Conditions.
- TT. Supplier – A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any subcontractor to furnish materials or equipment to be incorporated in the work by Contractor or any subcontractor.
- UU. Technical Specifications – Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto. May also be referred to as Specifications. Reference Documents are not part of the Technical Specifications.
- VV. TMWA – Truckee Meadows Water Authority.
- WW. Underground Facilities – All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.
- XX. Unit Price Work – Work to be paid for on the basis of unit prices.
- YY. Weather Day – A weather day is defined as a day on which, in the judgment of the Project Representative, the Contractor is prevented from proceeding with at least 75 percent of the normal labor and equipment force engaged in productive contract work for at least 60 percent of a normal eight hour work day due to inclement weather or conditions resulting therefrom.
- In the event that the Project Representative and Contractor agree that the labor force should be dismissed due to adverse weather conditions, and weather conditions then improve, the Contractor will not be allowed a weather day if the labor force is subsequently mobilized and 60 percent or more of a normal eight hour work day is then completed
- ZZ. Work – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents, consisting of all work, labor, services, supplies, materials, equipment, tools, transportation, supervision, appliances, and appurtenances required for the prompt and efficient completion of the Project as described in the Contract Documents and in accordance with the contract provisions, Plans, and Specifications, together with all work incidental or reasonably inferable which is necessary to produce the results intended by the Contract Documents.
- AAA. Work Change Directive – A written directive to Contractor, issued on or after the Effective Date of the Agreement and signed by the Project Representative, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive may not change the Contract Sum or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Time.

BBB. Written Amendment – A written amendment of the Contract Documents, signed by TMWA and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

## **1.02 Terminology**

- A. “Demolish” or “Demo” means the dismantling, destroying, wrecking, or removal of buildings, structures, equipment, piping, or any part thereof and transfer of ownership of items identified for demolition to the Contractor for legal offsite disposal.
- B. “Furnish” means to supply and deliver service, materials, or equipment to the site or other specified location ready for use or installation and in usable or operable condition.
- C. “Install” means to put services, materials, or equipment into use or place in final position complete and ready for intended use.
- D. “Must” means the specified action is mandatory. Synonymous with shall.
- E. “Provide” means to furnish and install services, materials, or equipment complete and ready for intended use.
- F. “Shall” means the specified action is mandatory. Synonymous with must.
- G. “Will” means an intention to complete the specified action in the future, often after certain conditions are fulfilled.

## **Article 2 General and Preliminary Items**

### **2.01 Notices**

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### **2.02 NRS Requirements**

- A. Chapters 338 and 339 of the Nevada Revised Statutes (NRS) are hereby incorporated by reference.
- B. These Contract Documents shall be governed by NRS 338 and NRS 339; provided, nothing in the foregoing shall preclude the parties from agreeing to implementing terms or conditions that are more stringent or complementary.
- C. The Contractor’s attention is especially directed to the following sections of NRS Chapter 338:
  - 1. 338.020 – Prevailing Wage Rates (applicable to public works construction contracts exceeding \$100,000).
  - 2. 338.030 – Determination of the Prevailing Wage Rate.
  - 3. 338.035 - Discharge of obligation to pay wages by providing bona fide fringe benefits.
  - 4. 338.070 – Maintaining Wage and benefit records for Contractors and Subcontractors employees.
  - 5. 338.130 – Preferential employment in public works construction.
  - 6. 338.1377 – Contractor qualifications required for submitting a Bid.
  - 7. 338.141 – Identification of Subcontractors.
  - 8. 338.147 – Preferential bidding status.
  - 9. 338.150 – Arbitration permitted for dispute resolution.
  - 10. 338.490 – Limitations on releases or waiver of rights for receiving payments.
  - 11. 338.515 – Time for making payment; amounts; retention; interest paid.

12. 338.525 – Withholding payment for corrective work.
13. 338.550 to .610 – Payments by Contractor to Subcontractors and Suppliers; and by Subcontractors to Subcontractors and Suppliers.

### **2.03 Holidays**

- A. The days listed below are holidays observed by TMWA. Work sites will be closed on these days and access will not be permitted unless the Contractor obtains prior approval from the Project Representative:
- |                           |                              |
|---------------------------|------------------------------|
| 1. New Year's Day         | January 1 <sup>st</sup> .    |
| 2. Martin Luther King Day | Third Monday in January.     |
| 3. President's Day        | Third Monday in February.    |
| 4. Memorial Day           | Last Monday in May.          |
| 5. Juneteenth             | June 19 <sup>th</sup> .      |
| 6. Independence Day       | July 4 <sup>th</sup> .       |
| 7. Labor Day              | First Monday in September.   |
| 8. Nevada Day             | Last Friday in October.      |
| 9. Veterans Day           | November 11 <sup>th</sup> .  |
| 10. Thanksgiving Day      | Fourth Thursday in November. |
| 11. Family Day            | Friday after Thanksgiving.   |
| 12. Christmas Day         | December 25 <sup>th</sup> .  |
- B. Holidays falling on Saturday will be observed on the preceding Friday and those falling on Sunday will be observed on the following Monday.

### **2.04 ADA Requirements**

- A. All work performed under the Contract Documents shall comply with the Americans With Disabilities Act standards adopted by TMWA.
- B. Facilities completed prior to January 26, 1992 shall comply with the Uniform Federal Accessibility Standards.
- C. Facilities completed after January 26, 1992 shall comply with the Americans With Disabilities Act Accessibility Guidelines.
- D. If the Contractor believes that any portion of the Work does not meet the appropriate accessibility standards, the Project Representative shall be immediately notified.

### **2.05 Notice to Proceed**

- A. After the Agreement is executed by TMWA, and subject to satisfaction of all conditions necessary thereto, TMWA will issue a Notice to Proceed to Contractor.
- B. Contractor shall not move onto, store materials, or perform any work at the site prior to the Notice to Proceed.
- C. Any mobilization of labor, material or equipment by Contractor prior to TMWA issuing the Notice to Proceed is done at the sole risk and expense of the Contractor.

### **2.06 Preconstruction Meeting**

- A. Before Contractor starts the Work at the site, a preconstruction meeting attended by Contractor, Contractor's Superintendent, Engineer, Project Representative, and others as appropriate will be held to discuss the Contractor's schedule, procedures for handling Shop Drawings and other submittals, for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

## **2.07 Schedules**

- A. Within ten days after the Agreement is executed by TMWA (unless otherwise specified), Contractor shall submit two copies of the following to Project Representative for approval:
  - 1. An estimated construction schedule indicating the starting and completion dates of the various stages of the Work including estimated manpower and equipment requirements.
  - 2. A preliminary schedule of submittals.
  - 3. A preliminary schedule of values for all of the Work which includes quantities and prices of items aggregating the Contract Sum and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.
  - 4. Refer to the Special Provisions or Technical Specifications for additional requirements as to the form and content of the construction schedule, submittal schedule, and schedule of values. If no additional requirements are specified, use Contractor's standard format for all schedules.
- B. At least ten days before submission of the first Application for Payment all schedules shall be finalized.
  - 1. The finalized progress schedule shall be acceptable to TMWA as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on TMWA responsibility for the progress or scheduling of the Work nor relieve Contractor from full responsibility therefor.
  - 2. The finalized schedule of submittals shall be acceptable to TMWA as providing a workable arrangement for processing the submissions.
  - 3. The finalized schedule of values shall be acceptable to TMWA as to form and substance.

## **2.08 Initial Submittal of Labor and Equipment Rates**

- A. Before starting any work, the Contractor shall submit labor and equipment rates to the Project Representative for approval. TMWA shall have no obligation to issue the Notice to Proceed until such information is provided.
- B. The submittal shall include:
  - 1. The classification, prevailing hourly wage rate (including fringe benefits), and actual hourly pay rate for each worker that will be employed on the Project. Wage rates shall be broken down into direct hourly wage and fringe benefit components for each classification. For employees that may work in different classifications, the submittal shall specify the prevailing rate and actual pay rate for each classification. Prevailing wage shall only be applicable on public works contracts exceeding \$100,000.
  - 2. The number, type and cost (specifying equipment rates) of each piece of equipment that the Contractor anticipates using to construct the Work.

## **2.09 Work Hours**

- A. Before starting any work, the Contractor and Project Representative shall agree on the hours that the Contractor will work.
  - 1. The agreed to hours shall be in the range of 7 a.m. to 5:30 p.m. Monday through Friday, holidays excluded (except as modified by local ordinance, permit conditions, Addenda, or the Supplementary Conditions). Work outside these hours, including regular overtime work, shall be subject to the approval of the Project Representative.
  - 2. The agreed to work hours shall not be changed during the life of the Contract Documents except with the approval of the Project Representative.

- B. The Contractor, Subcontractors, and Suppliers shall work common hours. For example, if a normal work schedule of four 10 hour days is agreed to, then all Subcontractors shall work that schedule and material deliveries and other Supplier activities shall also be limited to those hours.

## **2.10 Contractor and Subcontractor Responsibility, Qualifications, and License**

- A. The Contractor and Subcontractors shall hold current licenses from the Nevada State Contractors Board. Licenses shall be of the proper classifications and sub-classifications required to perform the Work.
- B. Contractor represents and warrants that it has appropriate work experience to be qualified to construct the Work and has successfully constructed at least three similar projects (as defined in the Invitation to Bid) of equal or greater size, scope, type, cost, and complexity within the previous five years.
- C. Contractor and Subcontractors shall comply with the Apprenticeship Utilization Act enacted by SB207 in the 2019 Nevada Legislative Session, as well as all statutes, regulations, and laws related thereto. Contractor shall include as a mandatory requirement in all agreements with Subcontractors that Subcontractors and all lower-tiered contractors of Subcontractors, if any, shall comply with the Apprenticeship Utilization Act. Contractor shall require its Subcontractors to include a mandatory provision requiring any lower-tiered contractor to comply with the Apprenticeship Utilization Act and all related laws in any agreement with a lower-tiered contractor. Information related to the Apprenticeship Utilization Act may be found at the Office of the Labor Commissioner's website at the URL below. The information contained on the Office of the Labor Commissioner's website, and TMWA's inclusion herein, is strictly informational and is not intended to and does not constitute legal advice from TMWA related to the Apprenticeship Utilization Act or otherwise. Contractors and Subcontractors shall use the Request for Waiver Form (if applicable), Project Utilization Checklist Form, and all other forms or documents that may be implemented by TMWA relating to the Apprenticeship Utilization Act. Contractor shall complete and timely submit, and require its Subcontractors and any lower-tiered contractors to complete and timely submit, any and all additional documents as may be reasonably requested by TMWA to comply with, insure compliance with, or as otherwise related to the Apprenticeship Utilization Act. If there are any changes to the anticipated workforce, which may have an impact on compliance with the Apprenticeship Utilization Act, Contractor and all lower-tiered contractors must submit a revised Project Utilization Checklist Form and Request for Waiver (if applicable) within ten (10) calendar days of the change. Instructions for use of the Forms can be found on the Attachments tab in NGEM.

[http://labor.nv.gov/Apprenticeship\\_Utilization\\_Act/Apprenticeship\\_Utilization\\_Act/](http://labor.nv.gov/Apprenticeship_Utilization_Act/Apprenticeship_Utilization_Act/).

## **2.11 Geotechnical Report**

- A. Any geotechnical reports made available are for information purposes only, without representation or warranty of any kind with respect to its accuracy or completeness, and are not intended to and shall not be relied upon as a substitute for, or a supplement to, the independent investigation by the Bidder of site conditions. Geotechnical reports made available by TMWA are not part of the Contract Documents.
- B. Use of the information contained in any geotechnical report does not relieve the Contractor from complying with the provisions of Article 4.02 "Site Investigations and Conditions Affecting the Work" of the General Conditions. Bidders and the Contractor are advised to make independent investigations and studies as they deem necessary to be satisfied as to the conditions that will be encountered in performing the Work.

- C. Any conclusions stated in the geotechnical report relative to the character or use of materials that may be found on the site are the opinion of the geotechnical engineer who prepared the report. TMWA does not guarantee that such conclusions are correct and assumes no responsibility for conclusions or interpretations made by Bidders or the Contractor based on information or data contained in the geotechnical report, including conclusions and interpretations that affect the cost of the Work.
- D. No conclusions or interpretations based on the information contained in the geotechnical report will relieve the Contractor from fulfilling the terms of the Contract Documents.

### **Article 3 Contract Documents**

#### **3.01 Examination of Contract Documents**

- A. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements.
- B. Contractor shall promptly report in writing to Project Representative any conflict, error, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Project Representative before proceeding with any Work affected thereby. Contractor shall be liable to TMWA for costs, expenses, and liabilities arising from its failure to report any conflict, error, or discrepancy in the Contract Documents that Contractor had actual knowledge of or of which Contractor should reasonably have known.

#### **3.02 Intent and Correlation**

- A. The Contract Documents are complimentary and what is required by any one shall be binding as if required by all. If, during the performance of the Work, Contractor finds a conflict, error, or discrepancy in the Contract Documents, Contractor shall so report to Project Representative in writing at once and before proceeding with the work affected thereby, shall obtain a written interpretation or clarification from Project Representative.
- B. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied whether or not specifically called for, and shall be deemed included in Contractor's bid and the Contract Sum.
- C. In the event that the terms, provisions, conditions, or requirements of one Contract Document conflict with that contained in another Contract Document, then such conflict shall be resolved in accordance with the following order of precedence:
  - 1. Written Amendment to the Agreement.
  - 2. Change Order.
  - 3. Addenda.
  - 4. Technical Specifications.
  - 5. Supplementary Conditions.
  - 6. Drawings.
  - 7. TMWA Standards of Construction
  - 8. General Conditions.
  - 9. Agreement.
- D. Technical Specifications shall take precedence over notes on drawings, and drawing details shall take precedence over large scale drawings.

### **3.03 Standards**

- A. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids, except as otherwise specified.
- B. In the event of conflict between any referenced standard and the Technical Specifications, the Technical Specifications shall govern.
- C. The materials and methods of construction herein specified shall be furnished in accordance with:
  - 1. TMWA's Construction Standards.
  - 2. Parts 2 and 3 of the Standard Specifications for Public Works Construction (“Orange Book”) to the extent that they are referenced in the Contract Documents. Part 1 of the Orange Book does not apply to TMWA contracts or work. Sections in Parts 2 and 3 of the Orange Book that are not referenced in the Contract Documents do not apply.
  - 3. The standards of the American Water Works Association (AWWA), American Institute of Steel Construction (AISC), American Concrete Institute (ACI), American Society for Testing and Materials (ASTM), and American Welding Society (AWS).
- D. No provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of TMWA, Contractor, Engineer, or Project Representative, or any of their consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to any of TMWA's consultants, agents, or employees any duty or authority to supervise or direct the furnishing or performance of the Work.

### **3.04 Work Change Directive**

- A. The Project Representative may at any time, by written Work Change Directive, and without notice to the sureties, if any, make changes within the general scope of the Contract Documents in any one or more of the following:
  - 1. The Specifications (including drawings and designs).
  - 2. In the method or manner of performance of the work.
  - 3. In TMWA furnished facilities, equipment, materials, services, or site.
  - 4. Directing acceleration in the performance of the work.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract Documents, TMWA will modify the Contract Documents by Change Order as specified in Article 3.05 “Changes to the Contract” of the General Conditions.
- C. The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of issuance of the Work Change Directive. However, if TMWA decides that the facts justify it, the 30-day period may be extended, provided it occurs before final payment under the Contract Documents.
- D. Failure to agree to any adjustment shall be resolved under the provisions of Article 10.05, “Dispute Resolution.” However, nothing in this clause shall excuse the Contractor from proceeding with the Contract Documents as changed.

### **3.05 Changes to the Contract**

- A. TMWA reserves the right to make changes to the Contract Documents, including the right to increase or decrease the quantity of any item or portion of the Work or to delete any item or portion

of the Work, as may be deemed necessary or advisable by the Project Representative and to require such extra work as may be determined by the Project Representative to be essential for the proper completion or construction of the Project.

- B. Changes to the Contract Documents will be set forth in a Change Order that specifies the changes made to the Contract Documents, any additional work to be done as a result of the change, any adjustment of Contract Time associated with the change, and the basis of compensation for the change. The Contractor shall proceed with the work specified in the Change Order after execution by both the Contractor and TMWA or upon receipt of a Work Change Directive instructing the Contractor to proceed with the change prior to execution of the Change Order.
- C. Minor changes to the Contract Documents that do not require adjustment of the Contract Time or change of compensation to the Contractor may be authorized by Engineer's approval of a Shop Drawing or sample or by Project Representative's written interpretation or clarification as requested by Contractor.
- D. If any item of work listed in the Bid Schedule is eliminated in its entirety, payment will be made to the Contractor by Change Order for actual costs incurred in connection with the eliminated item if incurred prior to the date of notification in writing by the Project Representative of the elimination. The following rules apply for determination of actual costs incurred.
  - 1. The Contractor will not be compensated for loss of anticipated profit on eliminated items.
  - 2. No markups will be allowed on material or Subcontractor costs.
  - 3. All costs to the Contractor associated with materials ordered prior to the date of notice of elimination will be paid for by TMWA.
    - i. If the orders for the materials cannot be cancelled and the materials cannot be returned to the Supplier, the materials shall become the property of TMWA.
    - ii. If the orders for the materials cannot be cancelled but the materials can be returned to the Supplier, the materials shall be returned to the Supplier if so directed by the Project Representative and all restocking and shipping charges will be reimbursed by Change Order. If the Project Representative does not direct the Contractor to return the materials to the Supplier, the materials shall become the property of TMWA.
  - 4. The Contractor shall furnish copies of invoices or other records to the Project Representative to document the costs associated with eliminated items.
- E. For unit price items, if the total pay quantity of an item varies from the quantity listed in the Bid Schedule, the unit price may be adjusted as described below. All adjustments in unit prices will be made by Change Order.
  - 1. If the total pay quantity of a unit price item varies from the quantity listed in the Bid Schedule by 25 percent or less, no adjustment in unit price will be made and payment will be made at the unit bid price.
  - 2. Payment for quantities within  $\pm 25$  percent of the quantity listed in the Bid Schedule will be considered to include full recovery by the Contractor of fixed costs associated with that bid item.
  - 3. If the total pay quantity of a unit price item exceeds the quantity listed in the Bid Schedule by more than 25 percent either party to the Agreement may request a unit price adjustment.
  - 4. If the total pay quantity of a unit price item is less than 75 percent of the quantity listed in the Bid Schedule, an adjustment in unit price will be made if requested in writing by the Contractor. The total payment for the item will not exceed that which would be made for 75 percent of the quantity listed in the Bid Schedule at the unit bid price.
  - 5. The method used to make unit price adjustments shall be mutually agreed to by the Contractor and the Project Representative.

- F. For lump sum items, changes in scope and compensation will be made by a Change Order that specifies the increase or decrease in item price.
- G. The labor and equipment rates described in Article 7.04 “Extra Work – Payment for Time and Material Work” of the General Conditions may also be used as the basis for pricing lump sum Change Orders and for unit price adjustments if agreed to by the Contractor and Project Representative. The labor and equipment rates apply to both additive and deductive change orders and unit price adjustments.
- H. A contractor or their subcontractor’s submittal of a request for a waiver from the requirements of the Nevada Apprenticeship Utilization Act of 2019 and any subsequent denial shall not be a basis for an adjustment to the Contract Sum or Contract Time without justification in conformance with the contract requirements.

**3.06 Ownership and Return of Contract Documents**

- A. Neither Contractor nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the work under a direct or indirect contract with TMWA shall have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by TMWA.
- B. All Contract Documents shall be returned to the Project Representative at the completion of the Project. It is the Contractor’s responsibility to collect all sets of Contract Documents from Subcontractors and Suppliers for return to TMWA.

**Article 4 Physical Conditions, Lands, Reference Points**

**4.01 Availability of Lands**

- A. TMWA will furnish, as indicated in the Contract Documents, the lands upon which the work is to be performed or rights-of-way, easements or other rights for access thereto, and such other lands which are designated for the use of Contractor.
- B. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by TMWA, unless otherwise specified in the Contract Documents.
- C. If the Contractor desires to locate additional staging areas, material storage yards, material processing plants, stockpile areas, equipment parking areas, maintenance areas, employee parking areas, temporary access roads, or similar facilities on lands not designated for the use of the Contractor, the Contractor shall make all arrangements and pay all costs involved for use of the property. Arrangements shall include, but are not limited to, entering into agreements with property owners (including public agencies) and obtaining the necessary permits (including grading and dust control permits), licenses, and environmental clearances.

Agreements with property owners shall, as minimum requirements, include a description of the property and use, the time limits of the agreement, a hold-harmless clause releasing TMWA from any risk or responsibility associated with use of the property, and a requirement to return the property to its original condition or better at completion of use.

Before using each such property, the Contractor shall:

1. Submit a copy of the agreement executed by the Contractor and the property owner to the Project Representative for approval with respect to the minimum requirements listed above.
2. Submit copies of all permits, licenses, and clearances obtained by the Contractor for use of the property. It is the Contractor’s responsibility to determine permitting requirements for the proposed use and obtain the permits in a timely manner.

3. For properties 1 acre or larger in size or when required by the Technical Specifications, Supplementary Conditions, or permit conditions, the Contractor shall submit a Notice of Intent to NDEP and prepare a SWPPP for uses that involve storage or stockpiling of materials, equipment parking or maintenance, or any land disturbance. BMP's shall be installed and maintained until final cleanup has been completed regardless of whether an NOI is submitted.
4. Document the condition of the property, adjacent property, drainage facilities, and all streets that will be used by the Contractor to access the property. Documentation shall be as required by the Project Representative and may include video and still photographs submitted on DVD's.

The Contractor shall comply with the conditions of all permits issued for the use, with all terms of the agreements with property owners, and shall return each property used to its original or better condition at completion of the Work. Any damage to adjacent properties, drainage facilities, or streets shall be repaired at Contractor's expense to the satisfaction of the Project Representative.

Temporary access roads shall be constructed in a manner to avoid obstructing drainage, causing damage to other adjacent properties, or endangering the public. This may require construction of retaining structures, excavation supports, guardrails, concrete barrier railing, fences, gates, lined ditches and channels, drainage inlets, culverts, riprap, detention basins, signs, and other temporary facilities all of which shall be provided at Contractor's expense as required by agreements, permits, site conditions, or the Project Representative.

All temporary facilities shall be removed at completion of the Work or when they are no longer needed, whichever occurs first. All properties and areas where access roads were constructed shall be restored to their original lines and grades. If restoration requires placing fill, it shall be structural fill constructed per the requirements of Sections 200.01.09 "Structural Fill" and 304 "Unclassified Fill" of the latest edition of the Orange Book. Testing, including compaction testing, of structural fill shall be at the Contractor's expense. Erosion control measures shall be installed per the BMP Handbook and Article 6.14 "Construction Site Stormwater Control" of the General Conditions. Additional erosion control procedures may be specified in the Technical Specifications.

#### **4.02 Site Investigation and Conditions Affecting the Work**

- A. By submitting a Bid Proposal and executing the Agreement, Contractor agrees it has taken all steps reasonably necessary to ascertain the nature and location of the Work, and it has fully investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:
  1. Conditions bearing upon transportation, disposal, handling, and storage of materials.
  2. Availability of labor, water, electric power, and roads.
  3. Uncertainties of weather, river stages, groundwater quantity and quality, or similar physical conditions at the site.
  4. Conformation and conditions of the ground.
  5. Character of equipment and facilities needed preliminary to and during work performance.
- B. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including from the Drawings and Specifications made a part of the Contract Documents. Contractor acknowledges that the primary geologic formation underlying the surface of the Truckee Meadows is the Tahoe Outwash consisting primarily of cohesionless soils, cobbles and boulders typically classified as OSHA Type C soils. As such, the Contractor should anticipate significant sloughing of trench walls and

acknowledges it has included in the Contract Sum all costs to complete the Work in this environment, including without limitation possibilities of substantial shoring requirements, slower production rates, increased bedding and backfill quantities, increased trench width and increased pavement patching requirements inherent to trenching and excavating under these soil conditions. Any failure of the Contractor to take actions described and acknowledged in this clause will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to TMWA.

- C. TMWA assumes no responsibility for any conclusions, assumptions or interpretations made by the Contractor based on the information made available by TMWA.
- D. TMWA assumes no responsibility for any understanding reached or representations made concerning conditions, which can affect the work by any of its officers or agents before the execution of the Agreement, unless the understanding or representation is expressly stated in the Contract Documents.
- E. Reports or other information associated with geotechnical investigations or other subsurface exploratory work made available to the Contractor by TMWA are not a part of the Contract Documents and are made available for information only. Contractor acknowledges the information provided by TMWA is provided for informational purposes only, without representation or warranty of any kind with respect to its accuracy or completeness, and is not intended to and shall not be relied upon as a substitute for, or a supplement to, the independent investigation by the Contractor of site conditions. The Contractor is cautioned that soils information from test pit logs may not represent homogenous subsurface conditions throughout the site of the work. Refer to the Supplementary Conditions for additional information on any geotechnical reports that may have been prepared for the Project.

#### **4.03 Differing Conditions**

- A. For responsibility relating to locating and repairing existing underground facilities or utilities, see Section 6.04. Submittal of a Bid Proposal is prima facie evidence that the Contractor has sufficient specific experience of a similar nature to the Project to recognize conditions inherent to, or normally encountered in, the performance of such work, including providing sufficient costs in its Bid Proposal price to account for those conditions in order to complete the work as intended. For installation of underground facilities, such inherent conditions may include, but are not limited to:
  - 1. Existing underground utility lines.
  - 2. Groundwater depth, quality, and seasonal variation of these items.
  - 3. Where underground facilities are installed parallel to existing facilities, normally encountered conditions may include excavation through unstable select granular or rock backfill, accompanied by resultant trench sloughing, increased trench width and additional paving.
  - 4. The presence of rock and boulders in the vicinity of the Truckee River. Refer to Article 4.06 "Rock Excavation" of the General Conditions for additional details.
- B. During the progress of the Work, if unknown subsurface or latent physical conditions are encountered at the site which differ materially from those indicated in the Contract Documents or inherent in the Work described in the Contract Documents are encountered at the site, or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered or generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, Contractor shall immediately notify the Project Representative in writing of the specific differing conditions before the conditions are disturbed and before the affected portion of the Work is performed. Following receipt of written notification, TMWA will investigate the site conditions promptly after receiving the notice. Contractor waives and shall have no claim for

additional compensation for standby time while such investigation is conducted. If TMWA determines in its sole discretion that the conditions materially differ from those identified in the Contract Documents, those inherent in the Work, or those ordinarily encountered, and such differences cause an increase or decrease in the Contractor's cost or the time required for the performance of any part of the Work under the Contract Documents, an adjustment (excluding loss of anticipated profits) shall be made by TMWA and the Contract Documents modified in writing accordingly. No request for contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice. No request for an adjustment will be allowed after final payment under the Contract Documents.

No Contractor claims of "lost production", or "delay" will be considered, unless Contractor and Project Representative agree, at the job site at the time of the investigation by Project Representative, upon the number, type and hours of labor and equipment actually delayed by the unforeseen or unknown condition. Said agreement must be documented by Project Representative's and Contractor's signature on Contractor's Daily Extra Work Report as required by Article 7.03 "Extra Work – Request for Approval" and Article 7.04 "Extra Work – Payment for Time and Material Work" of the General Conditions.

#### **4.04 Reference Points**

- A. TMWA will provide engineering surveys to establish reference points for construction, which in TMWA's judgment are necessary to enable Contractor to proceed with the work.
- B. Contractor shall report to Project Representative whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.
- C. Unless otherwise specified in the Technical Specifications, Contractor shall be responsible for laying out the work (all construction staking), shall protect and preserve the established reference points, and shall make no changes or relocations without the prior written approval of TMWA.

#### **4.05 Hazardous Environmental Conditions**

- A. In the event the Contractor encounters on the site material reasonably believed to be asbestos, petroleum products, or any other material subject to regulation by laws or regulations (hereinafter "Hazardous Materials") which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to TMWA in writing. The work in the affected area shall not be resumed until the hazardous material is removed or rendered harmless.
- B. The Contractor will not be required to perform any work relating to hazardous materials. In proportion to its negligence, but in no event exceeding liability limitations created pursuant to NRS Chapter 41, TMWA will indemnify and hold harmless the Contractor and its employees, from and against claims, damages, losses, and reasonable expenses, including but not limited to reasonable attorney's fees, directly resulting from TMWA's negligence in discharging or knowingly failing to disclose the presence of Hazardous Materials in the Contractor's work area.
- C. The Contractor shall not knowingly incorporate into the site or into any building, building component or structure, or otherwise leave on site any Hazardous Materials.
  - 1. If the Contractor discovers any such Hazardous Materials either on site or incorporated in the Work, it shall in writing immediately notify TMWA who shall take appropriate action to alleviate the problem.

2. TMWA may require the Contractor to furnish, from time to time, a certification that to the best of the Contractor's knowledge and belief it has not incorporated into the site or building any hazardous materials.
- D. To the fullest extent permitted by law, the Contractor shall indemnify, defend, protect, and hold harmless TMWA, its agents and employees from and against claims, damages, losses, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the Contractor, its agents, employees, or anyone for whose acts Contractor may be liable, knowingly or negligently incorporating into the site or the work or leaving on the site any Hazardous Materials. Such indemnity obligation shall not negate, abridge, or reduce any other rights or obligations of indemnity, which would otherwise exist.
  - E. A Safety Data Sheet (SDS) must accompany all chemicals to be used on the project site. No chemical shall be off-loaded on the project site until the appropriate SDS has been delivered to the Project Representative.
  - F. It is the Contractor's responsibility to:
    1. Dispose of all chemicals and their by-products per State and Federal regulations.
    2. Remove all unused chemicals and products from the site at the completion of the Work.
    3. Ensure that all containers are labeled in accordance with DOT, NFPA and OSHA standards.
    4. Ensure that all potential hazards are appropriately marked or placarded in compliance with OSHA and TMWA standards.
    5. Adhere to all posted warning signs.
  - G. Contractor may be required to handle, disturb or remove certain water pipes constructed of transite and asbestos containing materials regulated as a potentially hazardous material as part of the Work. Asbestos or transite pipe which has not been cut or damaged or which is not tapped, cut, damaged or removed during performance of the Work, shall not be deemed "Hazardous Materials" for purposes of these General Conditions. If the Contractor is required to cut, remove or tap transite or asbestos pipe as part of the Work, or if the Contractor otherwise damages or cuts transite or asbestos pipe during the Work, Contractor must utilize the services of personnel or a subcontractor that has received specialized OSHA training in the handling and disposal of asbestos to perform any work on such pipe, including cutting, tapping, repairing or removing. TMWA must be provided with chain of custody forms for all transite or asbestos pipe disposed of by Contractor or its subcontractors. Any disturbance, removal, disposal, handling or work activity on transite pipe must be done in strict compliance with applicable laws and regulations governing the safe handling practices for disturbance, removal, handling and disposal of asbestos-containing material, and Contractor shall be solely responsible for all costs and actions necessary to comply with such laws and regulations. Contractor shall provide the disposal manifest to the TMWA inspector showing all transite pipe material has been disposed of in accordance with all applicable laws and regulations. Contractor shall indemnify and hold TMWA harmless from any claims, injuries, demands or liabilities arising from Contractor's handling, removal, disposal or work on or about transite pipe.
  - H. See Article 5.02-H-4 regarding insurance requirements for any Work requiring the Contractor or subcontractor to handle, disturb or remove hazardous materials including transite pipe.

#### **4.06 Rock Excavation**

- A. The term "Rock excavation" is defined as:

1. For trench excavation, rock excavation is excavation of all solid rock in place that cannot be removed by power equipment equivalent, or larger, in weight, engine power, and bucket force to a Caterpillar 345C L Hydraulic Excavator equipped as follows.
  - i. Caterpillar 1.8 cubic yard heavy duty rock bucket with 4 teeth.
  - ii. 22'-8" reach boom with a 12'-10" stick and 16,780 lb. counterweight.
2. For mass grading, rock excavation is excavation of all solid rock in place that cannot be removed by power equipment equivalent, or larger, in weight, engine power, vertical shank penetration force, and pry out force to a Caterpillar D8T Track-type Tractor equipped with a single shank, standard depth, ripper tooth.
3. For all excavations, rock excavation is excavation of boulders or detached pieces of rock greater than 54 cubic feet in volume.

The term "rock excavation" does not include or apply to any trenchless installation, including but not limited to, jack and bore installation, auger boring, tunneling, directional drilling, and similar types of construction methods. Due to the obvious presence of rock and boulders in the vicinity of the Truckee River, which Contractor acknowledges, the term "rock excavation" also does not include or apply to, nor will any associated unit adjusting price apply to, excavation and trenching performed within two hundred feet either side of the approximate centerline of the Truckee river channel.

B. If rock is encountered such that Contractor believes rock excavation, as defined above, is required, the Contractor shall notify the Project Representative in writing. If the Project Representative agrees that rock excavation is required, rock excavation will be paid for at the price per cubic yard for rock excavation (trench excavation) and/or rock excavation (mass grading) submitted in the Bid Proposal, as applicable.

1. Payment for any category of rock excavation will be in addition to the lump sum or unit prices for the Work submitted in the Bid Proposal.
2. Payment for rock excavation of boulders or detached pieces of rock greater than 54 cubic feet in volume will be paid for at the price per cubic yard for rock excavation (trench excavation) submitted in the Bid Proposal.
3. The Contractor will not be eligible for any additional payment for rock excavation associated with the Work wherever solid rock can be seen from the surface, or where indicated from geotechnical test pit investigations.

If there are no bid items covering rock excavation of the type encountered, payment for approved rock excavation will be made in accordance with Article 7.03 "Extra Work – Request for Approval" and Article 7.04 "Extra Work – Payment for Time and Material Work" of the General Conditions.

C. Blasting will be permitted when the Contractor and the Project Representative agree that it is more cost effective and/or more practical than other methods of rock excavation.

1. The entire cost associated with rock excavation by blasting shall be paid for in accordance with Article 7.03 "Extra Work – Request for Approval" and Article 7.04 "Extra Work – Payment for Time and Material Work" of the General Conditions. No additional payment for blasting will be made for any category of rock excavation listed in the Bid Proposal, and no adjustment will be made in lump sum or unit prices for the Work submitted in the Bid Proposal.
2. Blasting operations shall be carried out by person's duly licensed and insured, including but not limited to workers' compensation, general liability, and business automobile liability with limits no less than those set forth in Article 5.02 "Contractor's Insurance" of the General Conditions, to work with explosives and shall be in compliance with all applicable laws and ordinances.

3. Blasting will be permitted only when proper precautions are taken for protection of persons, work, and structures.
4. The Contractor shall be strictly liable, and shall defend, protect, indemnify, and hold harmless TMWA for any damage to persons, property, the Work, or structures arising or in connection with blasting activities, even if such damage is caused in whole or in part by its Subcontractor(s).
5. The Contractor shall be responsible for obtaining all permits required for blasting and shall furnish copies of the permits and current copies of the blaster's license and insurance, including any and all endorsements reflecting valid and collectible insurance coverage is in place to protect the interests of TMWA and Contractor as an additional insured in accordance with Article 5.02 "Contractor's Insurance" of the General Conditions and any other applicable requirement specified hereunder. The Contractor shall provide this complete evidence of insurance to the Project Representative at least 24 hours prior to commencement of blasting.

**Article 5 Bonds and Insurance**

**5.01 Performance and Payment Bonds**

- A. The Contractor shall furnish Performance and Payment Bonds, issued by a "T" listed bond company acceptable to TMWA, signed or countersigned by an agent licensed by the State of Nevada as required by NRS 680A.300, each in the amount of 100 percent of the Contract Sum as security under the Contract Documents for faithful performance and payment of all obligations under the Contract Documents, including but not limited to warranty obligations. Contractor shall furnish such bonds to TMWA no later than ten (10) calendar days after receipt of the Notice of Award.
- B. If the surety on any bond becomes insolvent or its right to do business is terminated, the Contractor shall provide another bond and surety, acceptable to TMWA within seven days.
- C. The Bonds shall remain in effect for a period of one year from the date of final completion and acceptance of the Project by TMWA.
- D. The cost of additional bond premiums for change order increases shall be a pass through cost to TMWA for the actual amount of the additional bond premiums.

**5.02 Contractor's Insurance**

- A. Contractor shall, at Contractor's sole expense, procure, maintain and keep in force the following insurance and pay all taxes and fees incident hereunto. The required insurance shall be in effect prior to the commencement of work by Contractor. TMWA shall have no liability except as specified in this Agreement. Contractor shall furnish evidence of such insurance to TMWA no later than ten (10) calendar days after receipt of the Notice of Award.

Applicable to this Contract?	Insurance Type	Minimum Limits	Insurance Certificate	Additional Insured	Waiver of Subrogation
Yes	Workers' Compensation	Statutory	✓	N/A	✓
Yes	Employer's Liability	\$1,000,000	✓	N/A	✓
Yes	General Liability/ Umbrella (Excess) Liability	\$2,000,000/ \$4,000,000	✓	✓	✓

Yes	Automobile Liability/Umbrella (Excess) Liability	\$2,000,000	✓	✓	
Yes	Pollution Liability Insurance	\$1,000,000/\$2,000,000	✓	✓	N/A
TBD	Non-Owned Disposal Site Pollution Liability Insurance	\$1,000,000/\$2,000,000	✓	N/A	N/A
No	Professional Liability, Errors & Omissions	\$1,000,000	✓	N/A	N/A

- B. Contractor shall include all Subcontractors under its coverage or shall contractually require all of its Subcontractors to procure, maintain and provide evidence of insurance coverage with limits no less than those required herein. Any limits maintained by subcontractors under their own policies shall be at least **\$1,000,000** per occurrence and at least **\$2,000,000** for any applicable coverage aggregates. If subcontractors provide their own insurance with limits less than required of the Contractor, Contractor shall include subcontractors in their coverage up to the full limits required of the Contractor. When Subcontractors provide separate coverage, they shall include TMWA as an additional insured under their commercial general liability without requiring a written contract or agreement between TMWA as the additional insured and Subcontractor. When requested by TMWA, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor. Contractor shall require its Subcontractors provide appropriate certificates and endorsements from their own insurance carriers naming Contractor and TMWA as additional insureds.
- C. Any insurance or self-insurance available to TMWA shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by TMWA, Contractor shall provide TMWA with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Agreement, an insurer or surety shall fail to comply with the requirements of this Agreement, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify TMWA and immediately replace such insurance or bond with an insurer meeting the requirements.
- D. Subject to any additional requirements in this Agreement, TMWA, its officers, employees and any other Indemnitees included under this Agreement shall be included as additional insureds under all liability policies, except Workers' Compensation, for all liability arising from the Agreement. Additional insured status for all required parties shall apply until the expiration of time within which a claimant can bring suit per applicable state law.
- E. Each liability insurance policy, unless otherwise specified below, shall be endorsed to provide that the insurance company waives all right of recovery by way of subrogation against TMWA, its officers, agents, employees, agents, in connection with damage covered by any policy.
- F. Insurance maintained by Contractor shall apply for those named as additional insured on a first dollar basis without application of a deductible or self-insured retention. Should Contractor be self-insured for any required coverage, Contractor shall notify TMWA in writing prior to the signing of a Contract. TMWA reserves the right to accept or reject a self-insured Contractor and to approve the amount of any self-insured retention(s). Contractor agrees that TMWA is entitled to obtain additional documentation, financial or otherwise, for review prior to entering into a Contract with the self-funded Contractor. The Contractor shall be responsible for satisfying any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed **\$25,000** per

occurrence unless otherwise submitted and approved by TMWA in writing. There shall be no provision providing that the self-insured retention or deductible can only be satisfied by the named insured.

G. Each insurance policy shall be:

1. Issued by licensed and admitted insurance companies authorized to do business in the State of Nevada or that meet any applicable state and federal laws and regulations for non-admitted insurance placements and acceptable to TMWA, and
2. Currently rated by A.M. Best as “A X” or better.

H. Policies required:

1. Workers’ Compensation and Employer’s Liability Insurance. Contractor shall provide proof of worker’s compensation insurance as required by NRS 616B.627 and NRS 617.210 or provide proof that compliance with the provisions of Nevada Revised Statutes, Chapters 616A-D and all other related chapters is not required. The Employers Liability limits shall not be less than **\$1,000,000** each accident for bodily injury by accident and **\$1,000,000** each employee for bodily injury by disease. If Contractor’s employees are exposed to bodily injury under the U.S. Longshoreman and Harbor Workers’ Compensation Act, the Jones Act, or under any and all applicable laws, regulations or statutes applicable to maritime employees, coverage shall be included for such claims or injuries.

Upon completion of the project, Contractor shall, if requested by TMWA, provide a Final Certificate for itself and each Sub showing that Contractor and each Sub had maintained Industrial Insurance by paying all premiums due throughout the entire course of the project.

Contractor waives all rights against TMWA, its officials, officers, employees, volunteers and agents, for recovery of damages to the extent these damages are covered by the workers compensation and employer’s liability or commercial umbrella liability insurance obtained by Contractor pursuant to this agreement. Contractor shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

2. Commercial General Liability Insurance. Contractor shall procure and maintain, during the term of this Agreement, occurrence commercial general liability and, if necessary, commercial umbrella liability insurance for limits of not less than Two Million Dollars (**\$2,000,000**) for bodily injury and property damages, per occurrence, Four Million Dollars (**\$4,000,000**) products and completed operations aggregate, and Four Million Dollars (**\$4,000,000**) general aggregate. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location or project.

Coverage shall be written on an occurrence form at least as broad as an unmodified ISO occurrence form CG 00 01 04 13 (or a substitute form providing coverage at least as broad) and shall cover liability arising from premises, operations, independent contractors, products-completed operations liability, personal and advertising injury, products, civil lawsuits and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability policy limiting the scope of coverage for liability arising from pollution, explosion, collapse, and underground property damage.

**Additional Insured.** TMWA, its officials, officers, volunteers, employees and any other Indemnified Parties included under this Agreement shall be included as insureds under the

CGL, using ISO additional insured endorsement CG 20 10 07/04 and CG 20 37 07/04 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to TMWA or any other Indemnitees under this Agreement. The status of TMWA as an insured under a CGL obtained in compliance with this agreement shall not restrict coverage under such CGL with respect to the escape of release of pollutants at or from a site owned or occupied by or rented or loaned to TMWA.

**Waiver of Subrogation.** Contractor waives all rights against TMWA and any other Indemnitees listed in section 2. INDEMNIFICATION of this Agreement for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. Contractor's insurer shall endorse CGL policy to waive subrogation against TMWA with respect to any loss paid under the policy.

**Continuing Completed Operations Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance, both applicable to liability arising out of Contractor's completed operations, with a limit of not less than the CGL each occurrence limit required above for at least five 5 years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products and completed operations aggregate of at least two times the each occurrence limit. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

**Electronic Data Liability Insurance.** If project involves work that may affect or interrupt electronically stored or transmitted data, Contractor shall maintain electronic data liability insurance applicable to the Project and insuring against liability arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. This coverage shall be maintained with a limit of liability of not less than One Million Dollars (**\$1,000,000**) per occurrence.

**Railroad Protective Liability Insurance.** For any construction or demolition work within fifty (50) feet of a railroad, Contractor shall maintain Railroad Protective Liability insurance on behalf of and in the name of the railroad, as named insured, with a limit of \$6,000,000 per occurrence or higher limit if required by the railroad. Contractor shall also ensure that any exclusions pertaining to the indemnification of a railroad are removed from its CGL policy or that ISO form CG 24 17 (Contractual Liability-Railroads Endorsements) is included in the coverage.

3. Business Automobile Liability Insurance. Contractor shall procure and maintain, during the term of this Agreement, business automobile liability insurance in the amount of not less than Two Million Dollars (**\$2,000,000**) per occurrence for bodily injury and property damage. Coverage shall be for "any auto", including owned, non-owned and hired vehicles. Business auto coverage shall be written on any of the unmodified ISO forms (CA 00 01, CA 00 05, CA 00 12, CA 00 20), or a substitute form providing coverage at least as broad. If necessary, the

policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

If Contractor does not have any owned or leased automobiles, TMWA may agree to accept Hired & Non-Owned Auto Liability Coverage included under the Contractor's Commercial General Liability.

Pollution Liability. If project involves the transport of hazardous wastes or other materials that could be considered pollutants, Contractor shall maintain pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and, if applicable, the Motor Carrier Act endorsement (MCS 90) shall be attached.

Waiver of Subrogation. Contractor waives all rights against TMWA, its agents, officers, directors and employees and any other Indemnitees listed in this Agreement for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. Contractor's insurer shall endorse policy to waive subrogation against TMWA with respect to any loss paid under the policy.

4. Contractors Pollution Liability Insurance.

If applicable, (as determined by TMWA) Contractor shall maintain in force for the full period of this contract insurance covering losses caused by pollution incidents that arise from the operations of Contractor described under the scope of services of this contract.

Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least One Million Dollars (**\$1,000,000**) per claim, with an annual aggregate of at least Two Million Dollars (**\$2,000,000**).

TMWA, its officials, officers, employees and volunteers shall be included as insureds under Contractor's pollution liability insurance.

If coverage as required herein is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time that work under the contract is completed.

**Non-Owned Disposal Site Coverage.** If the scope of services as defined in this contract includes the disposal of any hazardous or nonhazardous materials from the job site, Contractor must furnish to TMWA evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the Owner under this section must be maintained in minimum amounts of One Million Dollars (**\$1,000,000**) per loss, with an annual aggregate of at least Two Million Dollars (**\$2,000,000**).

5. Contractors Professional Liability/Errors & Omissions Insurance

If applicable, as determined by TMWA, Contractor shall maintain professional liability insurance applying to liability for a professional, error, act, or omission arising out of the scope

of the Contractor services provided under this Agreement with a limit of not less than One Million Dollars (**\$1,000,000**) each claim and annual aggregate. Contractor shall maintain professional liability insurance during the term of this Agreement and, if coverage is provided on a “claims made” or “claims made and reported” basis, shall maintain coverage or purchase an extended reporting period for a period of at least three (3) years following the termination of this Agreement.

- I. Prior to the start of any work, Contractor shall provide the following documents to TMWA, Attention: Purchasing & Contracts, P.O. Box 30013, Reno, NV 89520-3013:
  - 1. Certificate of Insurance. Prior to the commencement of any work or services under this Agreement and thereafter upon renewal or replacement of each required coverage, Contractor shall provide a Certificate of Insurance form to TMWA to evidence the insurance policies and coverage required of Contractor. TMWA reserves the right to require complete, certified copies of all required insurance policies, including all Subcontractor policies, at any time. Copies of policy forms or endorsements confirming required additional insured, waiver of subrogation and notice of cancellation provisions are required to be provided with any certificate(s) evidencing the required coverage. Additional Insured Endorsements. Original Additional Insured Endorsements, signed by an authorized insurance company representative, must be submitted to TMWA, by attachment to the Certificate of Insurance, to evidence the endorsement of TMWA as additional insured when required.
- J. Policy Cancellation Endorsement. Contractor or its insurers shall provide at least thirty (30) days' prior written notice to TMWA prior to the cancellation or non-renewal of any insurance required under this Agreement. An exception may be included to provide at least ten (10) days' written notice if cancellation is due to non-payment of premium. Contractor shall be responsible to provide prior written notice to TMWA as soon as practicable upon receipt of any notice of cancellation, non-renewal, reduction in required limits or other material change in the insurance required under this Agreement. Failure to furnish the required certificate(s) or failure to maintain the required insurance may result in termination of this Agreement at TMWA's option.
- K. If CONTRACTOR fails to furnish the required certificate or fails to maintain the required insurance as set forth herein, TMWA shall have the right, but not the obligation, to purchase said insurance at CONTRACTOR's expense.
- L. Any waiver of CONTRACTOR's obligation to furnish such certificate or maintain such insurance must be in writing and signed by an authorized representative of TMWA. Failure of TMWA to demand such certificate or other evidence of full compliance with these insurance requirements or failure of TMWA to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions at a later date.
- M. By requiring insurance herein, TMWA does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to TMWA in this Agreement. The insurance requirements of this Agreement shall be in addition to and not in lieu of any other remedy available to TMWA under this Agreement or otherwise. TMWA reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.
- N. If Contractor's liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

### 5.03 Property Insurance

If required by the Supplementary Conditions, Contractor shall provide and maintain in force builder's risk insurance upon the entire project. Such insurance shall be written on a completed value form and in an amount equal to the initial contract sum plus 10%, subject to subsequent modifications of the contract sum. The insurance shall apply on replacement cost basis and written on a form satisfactory to TMWA.

- A. The insurance as required in this section shall name as insureds TMWA, Contractor, and all subcontractors and sub-subcontractors of any tier in the work.
- B. All losses paid under property insurance policies purchased to meet the requirements in this section 5.03 shall be paid directly to the insured parties, each as respects their financial interest in the covered property.
- C. The insurance as required in this section shall cover the entire work at the site identified herein including reasonable compensation for architects' services and expenses made necessary by an insured loss. Insured property shall include portions of the work located away from the site but intended for use at the site and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation.
- D. Contractor shall purchase and maintain equipment breakdown/boiler and machinery insurance required by the contract documents or by law, covering insured objects during installation, testing and until final acceptance by TMWA. This insurance shall name as insureds TMWA, Contractor, and all subcontractors and sub-subcontractors in the work.
- E. The insurance shall, at a minimum, cover the causes of loss insured under the ISO special causes of loss form (CP 10 30) and shall be endorsed as needed to provide full coverage for earthquake and earth movement, flood and other water damage, loss or damage from collapse, including collapse resulting from design error as well as damage resulting from defective design, workmanship or material.
- F. Contractor shall be responsible for any deductible amounts and coinsurance penalties.
- G. Contractor and TMWA waive all rights against each other and each of their subcontractors, sub-subcontractors, officers, directors, agents, and employees, for recovery for damages caused by fire and other perils to the extent covered by builder's risk insurance purchased pursuant to this agreement, or any other property insurance applicable to the work.
- H. If the builders risk insurance and other property insurance policies purchased as required above do not allow the insured to waive rights of recovery against others prior to loss, Contractor shall cause them to be endorsed with a waiver of subrogation as required above.
- I. This insurance shall remain in effect until final acceptance by TMWA and the local jurisdiction(s), unless otherwise agreed in writing by both parties. Partial occupancy or use of any public building shall not commence until Contractor has secured the consent of the insurance company or companies providing the coverage required in this paragraph. TMWA and Contractor shall take reasonable steps to obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse, or reduction of insurance.
- J. If TMWA is damaged by the failure of Contractor to maintain insurance as required in this Section 5.03, then Contractor shall bear all reasonable costs properly attributable to that failure.

## **Article 6 Contractor's Responsibilities**

### **6.01 Laws and Regulations**

- A. The Contractor shall comply strictly with all laws and regulations.
- B. Contractor shall not under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety, health, air, water, noise, pollution, laws or regulations relating to the Contract Documents without TMWA's prior written approval.

### **6.02 Supervision of the Work and Subcontractors**

- A. Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
- B. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Approved copies of shop drawings and submittals shall be on site as required by the construction operation in progress.
- C. All times during performance under the Contract Documents and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent Superintendent who is satisfactory to TMWA, and has authority to act for the Contractor. Any direction given Superintendent by Project Representative shall be binding as if given directly to Contractor.
  - 1. Contractor's Superintendent shall be experienced in the type of construction required by the Work as evidenced by at least five years of experience at a supervisory level on similar projects within the preceding ten years.
  - 2. Submit Superintendent's resume to the Project Representative for approval prior to the issuance of the Notice To Proceed.
  - 3. If the Superintendent is changed during the Contract Time, the replacement Superintendent shall be subject to the same approval as the original Superintendent.
- D. Contractor shall be directly responsible for supervising, scheduling and coordinating the work of all Subcontractors and Suppliers and for the acts and omissions of all Subcontractors and Suppliers. Contractor's Superintendent shall be present at the site of the Work at all times when work is in progress or materials are being delivered.
- E. All work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of TMWA, including but not limited to the required insurance and indemnity provisions.
- F. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, as long as the aforementioned does not interfere with TMWA's facilities, but Contractor shall not be responsible for the negligence of TMWA or TMWA's consultants in the design or selection of a specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Contract Documents.

### **6.03 Contractor Personnel**

- A. In selecting employees to undertake the Work under the Contract Documents, Contractor shall select only those persons who are qualified by the necessary education, training and experience to provide high quality performance of the particular work for which each employee is responsible.

- B. The Contractor shall be responsible for insuring that all personnel installing or maintaining TMWA facilities are trained to perform the work in accordance with applicable Standards.
- C. Due to the critical nature of TMWA's operations, Contractor agrees that if TMWA, in its sole discretion, determines that any Contractor employee is unsuitable for the performance of the Work under the Contract Documents, or that the continued presence of such employee is not consistent with the best interests of TMWA, then in such instance TMWA may request that the Contractor remove such employee from the Work. Contractor shall then immediately replace such employee with an employee who fully meets the standards under the Contract Documents and will do so at no additional cost to TMWA.

#### **6.04 Location of Underground Facilities**

- A. The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to TMWA by the owners of such underground facilities or by others. TMWA is not responsible for the accuracy or completeness of any such information or data and is not intended to and shall not be relied upon as a substitute for, or a supplement to, the independent investigation by the Contractor of site conditions. Contractor agrees that underground utilities may possibly exist which are not known to TMWA or which are in a location different from that which are shown in the Contract Documents, and locating all underground facilities is the sole responsibility of Contractor.
- B. Contractor shall have sole responsibility for the following listed items, the cost of which shall be considered as having been included in the Contractor's Bid Price:
  - 1. Reviewing and checking all such information and data.
  - 2. Locating all underground facilities shown or indicated in the Contract Documents.
  - 3. Notification to and coordination with the owners of such underground facilities during construction.
  - 4. Safety and protection thereof and repairing any damage thereto arising out of the Work.
- C. The Contractor shall be responsible for obtaining underground facilities location services and complying with all provisions set forth in NRS Chapter 455 (call before you dig service).
- D. The Contractor is responsible for conducting separate "potholing" of existing underground facilities far enough in advance of the main work to identify conflicts and allow modification in the horizontal and vertical alignment of the new installation with minimal impact to cost or schedule.
- E. The Contractor shall be solely responsible for all damages to persons or property that occur as a result of the Contractor's operations in locating underground facilities, for safeguarding all existing facilities and for the prompt repair, replacement and reconnection of all facilities damaged during construction. Contractor agrees that notwithstanding any compliance with NRS 455, Contractor shall indemnify and hold TMWA harmless from any claims, liabilities, costs or expenses related to the repair, replacement or reconnection of underground facilities arising in connection with the Work.
- F. Contractor acknowledges and agrees the Contract Sum includes all Work associated with any repair or replacement of existing utility services encountered during construction. The Contractor assumes all risk for services that were not physically located during potholing operations or for not reconnecting those facilities that are encountered but reported to be abandoned.
- G. Contractor acknowledges the difficulty of locating existing underground sanitary sewer laterals and acknowledges that said laterals have been constructed to each private property parcel adjacent to the public right-of-way. As such the Contractor acknowledges the possibility that said laterals will

be damaged during Contractor's trenching operations and Contractor has included adequate costs in his bid proposal to repair and replace all sanitary sewer laterals that may be encountered.

#### **6.05 Materials**

- A. All equipment and materials required by the Contract Documents shall be furnished by the Contractor except items specifically designated in the Specifications or noted on the Drawings as TMWA furnished.
- B. All equipment, material, and articles incorporated into the Work shall be new and of most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents.
- C. The Contractor shall be responsible for properly storing and protecting all materials delivered to the site, including TMWA furnished materials. Materials damaged while in the care, custody, or control of the Contractor shall be replaced at the Contractor's expense.
- D. Contractor furnished materials that are at any time found to be defective, or otherwise not suitable for the purpose intended, shall be replaced by the Contractor at Contractor's expense whether installed or not.
- E. All Contractor-furnished materials shall be shipped FOB to the site of the work.

#### **6.06 Permits**

- A. Unless otherwise specified in the Supplementary Conditions or the Technical Specifications, the Contractor shall apply for, obtain and pay all required fees for the following permits to the extent required for the construction of the Project:
  - 1. Permits required to enter, perform and complete the work in a public rights-of-way. These may include, but are not limited to, street cut permits, excavation permits, permits for installation of temporary traffic control devices, including preparation of traffic control plans, and similar permits. Notwithstanding Contractor's obligation to obtain such permits, TMWA will pay any required street cut penalties.
  - 2. City of Reno stockpiling permits.
  - 3. Construction site stormwater permits. Refer to Article 6.14 "Construction Site Stormwater Control" of the General Conditions for detailed requirements.
- B. Unless otherwise specified in the Supplementary Conditions or the Technical Specifications, TMWA will obtain the following permits and pay all required fees:
  - 1. Occupancy permits from NDOT, the railroad, or local governments (where applicable) that grant TMWA rights to operate and maintain facilities in such rights of way following the completion of the Work.
  - 2. Health Department water project permits.
  - 3. Building permits.
  - 4. Dust control permits.
  - 5. Special use permits and other local planning agency permits except City of Reno stockpiling permits.
  - 6. Other State and federal permits, except for construction site stormwater permits which shall be obtained by the Contractor.
- C. The Contractor shall comply with the terms and conditions of all permits, licenses, and authorizations whether obtained by TMWA or the Contractor.
- D. Additional details of permitting requirements may be included in the Supplementary Conditions or Technical Specifications.

## **6.07 Submittals for Items That Will Be Incorporated Into the Work or Requests for Information**

- A. Items to be submitted will be specified in the Technical Specifications and may include Shop Drawings, calculations, catalog cuts, samples, and other descriptive material required to fully describe the item or items being provided.
1. Submittals shall be clearly identified and the data furnished shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, equipment accessories, and similar data to enable TMWA to review the information as required.
  2. Limit the information being provided to the specific item covered by the submittal.
  3. Clearly indicate the item being submitted by highlighting, circling, or other marks when using catalog cut sheets. Submittals not so marked will not be reviewed and will be returned to the Contractor for marking and resubmittal.
  4. Specific formatting requirements for submittals or Requests for Information (RFI's) are specified in the Technical Specifications. If no format for the submittal or RFI is specified in the Technical Specifications, provide the submittal in the format requested by the Project Representative.
- B. The Contractor shall review each submittal prior to transmittal for compliance with the Drawings and Specifications and shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each submittal with other submittals and with the requirements of the Work.
1. Each submittal shall bear a cover sheet verifying that the Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission.
  2. The cover sheet shall include as a minimum the following information.
    - i. Project name.
    - ii. Submittal number.
    - iii. Date of Contractor's approval.
    - iv. Notice of each variation in the submittal from the requirements of the Contract Documents.
    - v. A statement certifying that the submittal has been reviewed for and found to be in compliance with the Contract Documents except for variations noted.
    - vi. Contractor's reviewer name and signature.
  3. Submittals that do not have the completed cover sheet attached with Contractor's signature will not be reviewed and will be returned to the Contractor for attachment of the cover sheet and resubmittal.
- C. Contractor shall submit to TMWA for review and approval six copies of all submittals unless a different number is specified in the Technical Specifications.
- D. Submittals shall be made sufficiently in advance of construction to allow for review. In no case shall less than 15 working days be allowed for review and approval of any submittal or resubmittal unless otherwise specified in the Supplementary Conditions or Technical Specifications. No extension of Contract Time will be allowed because of the Contractor's failure to transmit submittals in a timely manner.
- E. TMWA will review and approve submittals with reasonable promptness, but TMWA's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto.

1. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  2. Contractor shall make corrections required by TMWA, and shall return the required number of corrected copies as a resubmittal.
  3. On resubmittals, Contractor shall direct specific attention in writing to revisions other than the corrections called for by TMWA on previous submittals.
  4. Submittals will be marked in one of six ways.
    - i. Approved as Submitted.
    - ii. Approved as Noted.
    - iii. Disapproved Make Corrections – Resubmittal Required.
    - iv. Disapproved as Noted Develop Replacement – Resubmittal Required.
    - v. Incomplete. Complete and Resubmit – Resubmittal Required.
    - vi. Incomplete. Submit Missing Portions – Resubmittal Required.
  5. Submittal comments will be furnished in memo form, written directly on the submittal, or both.
  6. Two copies of each submittal with review comments will be returned to the Contractor.
- F. One initial submittal and one resubmittal for each subject will be reviewed by Project Representative and Engineer at no cost to Contractor.
1. Subsequent resubmittals will be reviewed at an hourly cost of one hundred fifty dollars to the Contractor.
  2. The aggregate amount owed by Contractor shall be deducted from moneys owed Contractor by Change Order after completion and acceptance of the Work.
- G. TMWA's review and approval of submittals shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called TMWA's attention to each such variation at the time of submission as required above and TMWA has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the submittal approval; nor will any approval by TMWA relieve Contractor from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of this Article.
- H. Where a submittal is required by the Specifications, any related Work performed prior to TMWA's review and approval of the pertinent submission will be the sole expense and responsibility of Contractor.
- I. TMWA may duplicate, use and disclose in any manner and for any purpose submittals and shop drawings delivered under the Contract Documents.

#### **6.08 Submittals for Other Items**

- A. Items to be submitted will be specified in the Technical Specifications and may include certificates, photographs, manufacturer's instructions, operation and maintenance instructions and manuals, schedules, guarantees, material testing and inspection reports, training agenda, and similar items.
- B. The number of copies to be submitted and the format of the submittal may be specified in the Technical Specifications.
1. Submit four copies of each required submittal if no number is specified in the Technical Specifications.
  2. If no format for the submittal is specified, provide the submittal in Contractor's standard format.

#### **6.09 "Or Equal" Items**

- A. In accordance with NRS 338.140, whenever materials or equipment are specified or described in the Contract Documents by using the names of proprietary items or the names of particular Suppliers, the naming of the item is intended to establish the type, function, and quality required and at least two items will be named. The words "or equal", whether explicitly stated or not, are understood to follow the names of proprietary items except as provided below.
- B. Where the name of a proprietary item or particular Supplier is followed by the words "or equal," materials or equipment of other Suppliers may be accepted by TMWA only if sufficient information is submitted by Contractor to allow TMWA to determine that the material or equipment proposed is equivalent or equal to that named.
- C. Where the name of a proprietary item or particular Supplier is followed by words "no equal," no substitution is permitted. Per the provisions of NRS 338.140 paragraph 1(b), the "no equal" specification will be used only when it is necessary to provide the exact product to match existing equipment, to minimize spare parts inventory, or when in TMWA's opinion no equal product exists.

#### **6.10 Substitutions**

- A. Requests for review of substitute items of material and equipment will not be accepted by TMWA from anyone other than the Contractor.
- B. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to TMWA for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited to the same use as that specified.
  - 1. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of completion on time, whether or not acceptance of the substitute for use in the work will require a change in any of the Contract Documents to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the work is subject to payment of any license fee or royalty.
  - 2. All variations of the proposed substitute from that specified shall be identified in that application and available maintenance, repair, and replacement service shall be indicated.
  - 3. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by TMWA in evaluating the proposed substitute.
  - 4. TMWA may require Contractor to furnish, at Contractor's expense, additional data about the proposed substitute.
- C. If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique, or procedure of construction acceptable to TMWA, if Contractor submits sufficient information to allow TMWA to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by TMWA will be similar to that provided in the paragraph above.
- D. TMWA will be allowed a reasonable time, but no less than 15 days, within which to evaluate each proposed substitute. No Contractor claim for delay shall be accepted by TMWA for time required to evaluate substitutes proposed by Contractor.
- E. The Project Representative will be the sole judge of acceptability, and no substitute will be ordered, installed, or utilized without TMWA's prior written acceptance, which will be evidenced by either a Change Order or an approved submittal.

- F. TMWA may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. TMWA's employees and/or consultants will record time required to evaluate substitutions proposed by Contractor and in making change in the Contract Documents occasioned thereby. Whether or not TMWA accepts a proposed substitute, Contractor shall reimburse TMWA for the charges of employees and/or TMWA's consultants for evaluating each proposed substitute.

#### **6.11 Worker Safety and Accident Prevention**

- A. The Contractor shall comply with all OSHA and TMWA safety requirements. Failure to comply may result in Termination for Default.
- B. The Contractor shall plan and direct the performance of the Work in compliance with reasonable safety and work practices and applicable federal, state and local laws, rules and regulations.
- C. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Contract Documents. The presence of the Project Representative, TMWA inspectors, or other TMWA employees at the site of the Work shall in no way diminish or eliminate that responsibility.
1. Hard hats, shirts, long pants, and work boots are mandatory on all work sites.
  2. Contractor's personnel shall have safety training appropriate for the work being performed.
  3. It is the Contractor's responsibility to ensure that Contractor's personnel have and use the proper personal safety equipment appropriate for the work being performed.
  4. Job site safety meetings shall be conducted by the Contractor as necessary to maintain worker awareness of safety requirements and procedures.
- D. The Contractor shall at all times have in their possession and maintain/calibrate gas detector units capable of monitoring oxygen and carbon dioxide and combustibles per OSHA confined space requirements. The Contractor's personnel shall be trained in confined space rescue operations.
- E. The cost of all personal or crew safety equipment shall be included in Contractor's overheads and shall not be direct billed on any invoice for extra work under the Contract Documents.
- F. The Contractor shall immediately report to TMWA any OSHA Recordable accident or vehicle accident occurring during performance of the Work.
1. Contractor shall fully cooperate with TMWA and any other agency investigating accidents, which occur during performance of the Work under this contract, including interviews of Contractor's personnel.
  2. As soon as practical following any accident occurring during performance of the Work under this contract, the Contractor's personnel involved in the accident shall be tested for prohibited drugs and alcohol use.
  3. Contractor's personnel shall be relieved of safety sensitive duties pending results of the post-accident drug and alcohol testing. Post-accident drug and alcohol test results shall be provided to TMWA's Designated Official responsible for administration of TMWA's Drug and Alcohol Policy.
  4. Failure of Contractor's personnel to submit to post-accident drug and alcohol testing will result in permanent removal (and replacement) of such employee from the Work for the duration of this contract.

- G. The Drug Free Workplace Act of 1988 requires Contractors and Subcontractors of TMWA to maintain a workplace free of drugs and alcohol.
  - 1. The unlawful manufacture, distribution, possession or use of a controlled substance or alcohol is prohibited in TMWA’s workplace or job sites.
  - 2. The Contractor will be required to remove any of its employees or its Subcontractor’s employees suspected by Contractor or TMWA of being under the influence of drugs or alcohol.
- H. Contractor ‘s personnel performing work near live gas facilities with the intent to uncover or expose such gas facilities shall meet all DOT drug and alcohol testing requirements.
  - 1. Furthermore, Contractor ‘s personnel shall have successfully completed the NV Energy Natural Gas Safety Training course and maintain in their possession the certification card providing evidence of training.
  - 2. The cost of such training shall be the responsibility of the Contractor.
  - 3. In no instance shall existing gas facilities (valves, etc.) be operated, gas introduced into piping, or purging operations be performed without the continued presence and knowledge of an NV Energy Representative or Inspector.
- I. Contractor’s personnel performing work on asbestos or transite pipe, including without limitation cutting, tapping, repairing, handling or removing, must have successfully completed specialized OSHA training in the handling and disposal of asbestos prior to the performance of any such work, or Contractor shall hire a subcontractor that has successfully completed specialized OSHA training in the handling and disposal of asbestos to perform such work.

**6.12 Use of Site**

- A. The Contractor shall confine his activities to within the prescribed easements or work area boundaries and shall leave the work areas in a state equal to or better than the conditions that existed before the work began.
- B. During construction, the Contractor shall remove debris as necessary to maintain a safe and obstacle-free construction and traffic area.
- C. The Contractor shall be responsible for:
  - 1. Maintaining a reasonably dust-free work area and to prevent dust from blowing off of the site by keeping the work areas dressed, smoothed, watered and compacted as required. Refer to Article 6.15 “Dust Control” of the General Conditions for specific requirements.
  - 2. Offsite disposal of any excess or unsuitable material at the expense of the Contractor.
  - 3. Notifying all impacted residences or businesses and for maintaining adequate access for all residences/businesses.
  - 4. Trench dewatering and for the legal disposal of groundwater removed from excavations.

**6.13 Protection of Existing Vegetation and Improvements**

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract.
- B. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place.
  - 1. Trees within the city right-of-way shall not be cut or removed without the permission of the city.

2. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound.
- C. The Contractor shall protect from damage all existing improvements and utilities at or near the work site, and on adjacent property of a third party, the locations of which should be known or anticipated by the Contractor.
1. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work.
  2. If the Contractor fails or refuses to repair the damage promptly, TMWA may have the necessary work performed and charge the cost to the Contractor.
- D. The Contractor shall be responsible for security of the site of the Work including, but not limited to materials and equipment not yet incorporated into the Work and the tools and equipment provided by the Contractor to perform the Work. The Contractor shall provide his own locks on TMWA gates and temporary construction gates. Doors to buildings or other structures shall be furnished with TMWA standard locksets with the Contractor's own core/keys. Cores shall be changed out to TMWA master cores/keys on project closeout at project completion.

#### **6.14 Construction Site Stormwater Control**

- A. General.
1. The Contractor shall comply with all federal, state, and local laws and all permit conditions governing discharge of stormwater from the Project site(s).
  2. The Contractor may be required by other permitting agencies to provide information on land disturbance as part of the permit review process. It is the Contractor's responsibility to provide all information requested in a timely manner so that there is no delay in permit issuance. No time extension will be granted or addition compensation paid because of the Contractor's failure to make timely submittals to permitting agencies.
  3. The Contractor shall include the costs associated with complying with these requirements in the price bid for the Project. If there is no bid item for erosion control or construction site stormwater control, the costs for temporary and permanent BMP's shall be considered as included in the other items of work listed on the Bid Schedule.
- B. Construction Site Stormwater Permit
1. When required by the Supplementary Conditions, the Contractor shall prepare a project specific Stormwater Pollution Prevention Plan (SWPPP) and submit a Notice of Intent (NOI) to NDEP.
    - i. Copies of the SWPPP and NOI shall be furnished to the Project Representative for review and approval.
    - ii. SWPPP's shall be prepared using the Regional Program SWPPP template per Appendix C of the BMP Handbook. This template is available in Word format at [www.TMstormwater.com](http://www.TMstormwater.com).
  2. Per Article 6.06 "Permits" of the General Conditions, the Contractor is responsible for paying the filing fee when a NOI is required.
- C. Minimum Requirements for Construction Site Stormwater Control
1. Regardless of whether preparing a SWPPP and filing a NOI is required or not, BMP's shall be implemented and maintained throughout the entire time of Project construction, 24 hours per day, 7 days per week until the Work is complete.

2. Select and manage BMP's to meet the twelve Performance Standards listed in Section 3.3 of the BMP Handbook.
3. Temporary and permanent BMP's shall address all five categories listed in the BMP Handbook: Planning, Runoff Control, Erosion and Sediment Control, Drainageway Protection, and General Site and Materials Management.
4. Install and maintain temporary BMP's during construction as required by the approved SWPPP, the BMP Handbook, the BMP Field Guide, and permit conditions as applicable.
5. Implement permanent BMP's at completion of construction.
6. Establish temporary or permanent BMP's on disturbed areas as soon as practicable after construction activity in that portion of the site has temporarily or permanently ceased.
7. Additional requirements for erosion control, construction site stormwater control, and surface restoration may be specified in the Supplementary Conditions or Technical Specifications.

D. Temporary BMP's

1. BMP's in accordance with the BMP Handbook, permit conditions, and approved SWPPP as applicable shall be in place prior to beginning soil disturbing activities and shall be maintained in an operational condition at all times until permanent measures are in place.
2. BMP's shall be adjusted as required by changing site conditions or changes in the Contractor's means and methods to prevent discharge of sediment from the site. The SWPPP (if one is required) shall be revised as necessary to document all changes in BMP's.
3. Inspect BMP's at the following intervals or more frequently if found necessary by site conditions or required by permit conditions.
  - i. Weekly.
  - ii. Prior to forecast rain events to ensure that BMP's are in place and functioning properly.
  - iii. Within 24 hours of a rain event that creates runoff at the site.
  - iv. Within 24 hours of a storm event of 0.5-inch or more.
4. Repair, restore, or reconstruct BMP's as indicated by the inspection. Maintain a written record of inspections and repairs. Include photographs at Contractor's option or if requested by the Project Representative.

E. Permanent BMP's

1. Unless otherwise shown on the Drawings or specified in the Technical Specifications, the minimum permanent BMP's for disturbed soils shall be soil roughening (EC-2) followed by revegetation (EC-8) and mulching (EC-3).
  - i. Seed mix shall be a blend of native grasses and plants and shall not contain invasive species. The mix shall be the Generic Revegetation Seed Mix for Upland Sites in northern Nevada as specified in Appendix A of the BMP Field Guide and as modified to suit site conditions.
  - ii. Seed mix shall be applied at a rate of 30.35 pounds per acre of pure live seed or at a rate recommended by the seed Supplier, whichever is greater.
2. The site will be considered to be permanently stabilized when either:
  - i. A uniform perennial vegetative cover with a density of 70 percent of the native background vegetative cover is established on all unpaved areas and areas not covered by permanent structures, or
  - ii. Equivalent permanent stabilization measures as shown on the Drawings or specified in the Technical Specifications are established. If no equivalent measures are shown or specified, then vegetative cover as specified above is required.

F. Notice of Termination

1. If a NOI was filed with NDEP, the Contractor shall file a Notice of Termination with NDEP when:
  - i. All soil disturbing activities are complete.
  - ii. The site is permanently stabilized as specified above.
  - iii. Temporary BMP's have been removed.
2. A copy of the Notice of Termination shall be filed with the Project Representative as specified in the Supplementary Conditions.

## **6.15 Dust Control**

### **A. General**

1. The Contractor shall comply with all federal, state, and local laws and all permit conditions governing control of dust from the Project site(s).
2. The Contractor shall include the costs associated with complying with these requirements in the price bid for the Project. If there is no bid item for dust control, the costs for dust control shall be considered as included in the other items of work listed on the Bid Schedule.

### **B. Dust Control Permit and Requirements**

1. The Supplementary Conditions will specify whether a dust control permit is required for the Project.
2. If a permit is not required, the Contractor shall control dust from construction activities 24 hours per day, 7 days per week so as not to create a nuisance or safety hazard and shall comply with all Washoe County ordinances governing control of dust from the Project.
3. If a permit is required, TMWA will obtain the permit from the Washoe County Health Department, pay the fee, and furnish a copy of the final permit to the Contractor. The Contractor shall control dust from construction activities 24 hours per day, 7 days per week so as not to create a nuisance or safety hazard, shall comply with all permit conditions, and is responsible for the following:
  - i. Furnishing to the Project Representative the name, 24 hour phone number, and email address of two employees for listing on the permit application as persons to be contacted during non-working hours in case of dust problems.
  - ii. Preparation of the dust control plan and furnishing to the Project Representative all other information required for TMWA to submit the dust control permit application.
  - iii. Providing the dust permit informational signage. The Contractor's 24 hour phone number shall be listed on the sign. No TMWA phone numbers shall be shown on the sign unless specifically required by the permit conditions.
  - iv. Ensuring that the dust control permit is available on site at all times for inspection by a Washoe County air quality specialist.
  - v. Maintaining the Washoe County Dust Control Log on a daily basis if required by the permit conditions.
  - vi. If the area disturbed by the Contractor's operations exceeds the area on which the permit fee was calculated and the Health Department determines that an additional fee is required, the Contractor is responsible for payment.
4. At completion of construction, all disturbed areas shall be stabilized as specified in the Contract Documents. If no stabilization method is specified, a chemical sealant or other method approved by the Washoe County Health Department shall be used to stabilize the disturbed areas.
5. The Contractor shall be responsible for payment of any fines assessed by Washoe County for violation of the permit. TMWA will deduct the amounts from monies due the Contractor unless they are paid directly to the County by the Contractor.

## **6.16 Quality Control**

- A. The Contractor shall maintain an adequate quality control system and perform such inspections as will ensure that the work performed under the Contract Documents conforms to the Contract Documents requirements.
- B. The Contractor shall at Contractor's expense provide all testing required to demonstrate that the materials being furnished meet the requirements of the Contract Documents. Copies of test results and material certificates shall be furnished to the Project Representative upon request or when required by the Technical Specifications.
- C. The Contractor shall inspect equipment and materials upon arrival at the job site and again immediately prior to installation or use. Any item found to be damaged, defective, or otherwise not meeting the requirements of the Contract Documents shall be immediately removed from the site and replaced with items meeting the Project requirements.
- D. The Contractor shall maintain complete inspection records and make them available to TMWA upon request.

## **6.17 Record Drawings**

- A. The Contractor shall maintain, in a safe place at the job site, one record copy of the Drawings in good order and annotated to show all changes (vertical or horizontal alignments included) made during construction and all existing facilities exposed during construction.
- B. These record drawings shall be kept current and made available to the Engineer and Project Representative for reference upon request.
- C. Within ten calendar days following completion of the Work, these record drawings shall be delivered to TMWA. The Notice of Completion will not be issued and final payment, including any retention of progress payments made to the Contractor, will not be released until TMWA has received all record drawings.

## **6.18 Warranty**

- A. In addition to any other warranties in the Contract Documents, notwithstanding latent defects, gross mistakes or fraud, Contractor warrants that that all materials and equipment provided are new and free from defects and that work performed under this contract conforms to the Contract Documents requirements and is free of any defect in equipment, material, or design furnished, including workmanship performed by the Contractor or any Subcontractor or Supplier at any tier.
- B. With respect to all warranties, express or implied, from Subcontractors, manufacturers, or Suppliers for work performed and materials furnished under this contract, the Contractor shall obtain all warranties that would be given in normal business practice; require all warranties to be executed, in writing, for the benefit of TMWA; and enforce all warranties for the benefit of TMWA. In the event the Contractor's warranty under this clause has expired, TMWA may bring suit to enforce a Subcontractor's, manufacturer's, or Supplier's warranty.
- C. This warranty shall continue for one year from the date of the Project Representative's determination that the project is complete.
- D. TMWA shall notify the Contractor, in writing, within a reasonable time after discovery of any failure, defect or damage.
  - 1. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, TMWA shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

2. The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect, or any damage to TMWA property, when the damage arises out of the Contractor's failure to conform to contract requirements; or any defect of equipment, material, workmanship, or design furnished.
  3. The Contractor shall not be liable for the repair of any defects of material or design directly furnished by TMWA.
- E. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from date of repair or replacement.
- F. This warranty shall not limit TMWA's rights under Article 10.02 "Inspection and Testing by TMWA" of the General Conditions with respect to latent defects, gross mistakes or fraud.

### **6.19 Right to Audit**

- A. The Contractor shall keep full and detailed accounts and records and exercise such controls as necessary for proper financial management under this Agreement and for compliance with the Apprenticeship Utilization Act and all laws related thereto.
1. The accounting and control systems utilized by Contractor shall be acceptable to TMWA.
  2. TMWA shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and all other data relating to this contract.
  3. The Contractor shall preserve; and TMWA shall be entitled to audit, all such records and documents for a period of three years after final payment (or for such longer period as may be required by law).
- B. In conducting its audit of Contractor's records and documents, TMWA shall be afforded access to Contractor's facilities; allowed to interview current or former employees to discuss matters pertinent to the performance of the Contract Documents; shall be provided access to all records and documents; and shall be provided with adequate and appropriate work space to conduct the audit.
- C. If an audit inspection or examination conducted in accordance with this Article discloses overpricing or overcharges of any nature by Contractor to TMWA in excess of one-half of one percent of the total contract billings, the Contractor shall reimburse TMWA for the reasonable actual cost of TMWA's audit, in addition to repayment or credit for the overcharges. Any adjustments and/or payments, which must be made as a result of any, such audit or inspection of the Contractor's invoices and/or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of TMWA's findings to Contractor.

## **Article 7 Payment and Retention**

### **7.01 Payment for Mobilization**

- A. Obviously unbalanced Bids may be considered unresponsive and may result in such Bid being rejected by TMWA as not in conformance with the Contract Documents.
- B. The Contractor's mobilization bid item cost shall include only those items necessary and preliminary to performance of the work. Such costs may include, but are not necessarily limited to:
1. The cost of moving labor, material and equipment to the site of the work.
  2. The cost of project specific insurance premiums and bond premiums.
  3. Project startup costs such as field offices, sanitary facilities, utilities, etc.
  4. The cost of acquiring project permits and permit fees if paid by the Contractor.

- C. The Contractor shall, upon request by TMWA, provide a detailed breakdown of anticipated or estimated mobilization costs.
- D. Payment for mobilization in any one calendar month is limited to the amount bid in the Bid Schedule, 10 percent of the contract amount not including mobilization, or the pro rata amount of the mobilization actually completed in that month whichever amount is less.
- E. Mobilization costs shall not be invoiced to TMWA until the first progress payment application is submitted for the project.

## **7.02 Progress Payments**

- A. Per the provisions of NRS 338, Sections 400 through 645, Contractor shall submit application for progress payment once per month, directly to TMWA's Project Representative. Project Representative will review and if correct, approve the application for payment.
- B. Should Project Representative dispute any portion of Contractor's progress payment application, Project Representative shall provide Contractor with written explanation of the disputed amounts within five days of receipt of progress payment application.
  - 1. The Contractor shall then revise and resubmit the invoice, or follow formal dispute resolution procedures.
  - 2. To insure timely payment, the Contractor is encouraged to review preliminary progress payment applications with Project Representative prior to officially submitting the monthly invoice.
- C. Undisputed and approved invoice amounts will be paid to Contractor within 30 days of the date that TMWA receives the approved invoice.
- D. Per the provisions of NRS 338.515 paragraph 5, the Contractor's progress payment application may include the invoice cost of materials that have been purchased and stockpiled for use on the project but not yet incorporated into the work if in the opinion of Project Representative, the materials are suitably stored, protected and secured.
  - 1. Materials shall be stockpiled at the job site or at a location under the control of the Contractor that is within 30 miles of the job site.
  - 2. Materials shall be separately stockpiled and tagged or marked in such a manner that they are easily identified as materials for the Contract Documents. Materials shall not be moved, except for transportation to the job site, without the permission of the Project Representative.
  - 3. Materials shall be available for inspection by the Project Representative at all times during normal working hours.
  - 4. Materials shall be utilized on this contract only.
- E. TMWA may refuse to make payment of the full amount of the progress payment application because claims have been made against TMWA on account of Contractor's performance or furnishing of the work, or there are other items entitling TMWA to a set-off against the amount recommended, but TMWA must give Contractor immediate written notice stating the reasons for such action.

## **7.03 Extra Work – Request for Approval**

- A. When Contractor reasonably believes the work or materials required by TMWA is beyond the original scope of Work, the Contractor shall notify the Project Representative in writing that it believes such work is "Extra Work". TMWA will promptly determine whether such work constitutes "Extra Work" or Work within the original scope of the Contract Documents. TMWA

shall not be liable for delay claims by the Contractor prior to providing written determination of Contractor's Extra Work claim.

- B. Any alleged extra work performed by the Contractor without prior written authorization of TMWA is done at the sole risk of the Contractor. Contractor shall have no right or claim to additional compensation, nor may Contractor seek any such compensation in any forum, unless Contractor provides notice of the Extra Work demand pursuant to Section 7.03(A) prior to commencing such work. The requirements of this Section 7.03 can only be waived in writing by TMWA.
- C. TMWA reserves the right to request a lump sum cost proposal from the Contractor for the performance of extra work. If a lump sum cost proposal is requested, the Contractor shall also obtain competitive lump sum quotations from Subcontractors for extra work.
- D. If TMWA determines that the work or materials required are beyond the original scope of the Work and constitute "Extra Work", and TMWA authorizes Contractor in writing to perform such Extra Work, the provisions in Section 7.04 shall apply.

#### **7.04 Extra Work – Payment for Time and Material Work**

- A. The provisions of this Section 7.04 shall apply to Extra Work authorized in writing by TMWA.
- B. When the underlying Work is performed under a time and material basis, TMWA may request the Contractor to submit a Work Plan prepared specifically for the authorized Extra Work item to TMWA for approval prior to TMWA authorizing the extra work to begin.
  - 1. The Work Plan shall include at a minimum, the classification, prevailing hourly wage rate (including fringe benefits), and actual hourly pay rate for each person to be utilized in performing the work; the number of days per week and the number of hours per day that work will be performed; and the number, type and cost (specifying equipment rates) of each piece of equipment to be utilized. Prevailing wage shall only be applicable on public works contracts exceeding \$100,000.
  - 2. Whether or not a written Work Plan was requested, the Contractor and TMWA's Project Representative shall pre-determine and agree upon the above mentioned Work Plan components prior to start of the extra work.
- C. The Contractor shall complete and sign a daily labor and equipment reporting form (Daily Extra Work Report) at the end of each day for extra work performed under this contract.
  - 1. The Daily Extra Work Report shall clearly indicate the date, name of the project, detailed scope of extra work performed that day, hours worked by each employee, the employee's labor classification, each piece of equipment with hours utilized, and materials delivered to the job site which are suitably stored or incorporated into the extra work.
    - i. Invoices for materials shall be furnished to the Project Representative when available.
    - ii. Equipment shall be identified by manufacturer's name, model number, and the five letter equipment class code from the Rental Rate book (see paragraph 7.04J below).
  - 2. The Project Representative will review and approve (when correct) the form and return a copy of the form to the Contractor by the following workday.
  - 3. No payment will be made for extra work not reported on an approved Daily Extra Work Report and supported by the appropriate material invoices.
- D. A full time working foreman shall be present at the job site to supervise extra work at all times.
- E. The following rules apply to billing employee time for authorized extra work:
  - 1. Superintendent and general foreman time may be direct billed at the applicable foreman rate.

2. Time for documented safety meetings is considered compensable time for extra work performed under this contract.
  3. Job site reporting shall be utilized for extra work performed under this contract. Travel time to and from the job site will not be considered compensable time.
  4. The Contractor's billable time begins and ends at the job site with the starting and stoppage of work.
  5. Time preparing daily extra work reports, timesheets and invoices will not be considered compensable time.
  6. Overtime (time in excess of eight hours in one day or in excess of 40 hours in one week) shall be approved in writing by the Project Representative prior to the start of overtime work under time and material conditions.
- F. The following rules apply to billing and use of equipment and tools for authorized extra work:
1. TMWA will not compensate the Contractor for nonproductive time resulting from not having the required tools or equipment in his possession at the job site or the unavailability of tools or equipment resulting from breakdown, maintenance or repairs. The Project Representative shall be the sole judge as to whether the Contractor is, can be, or was productive when working without adequate tools or equipment due to breakdown or unavailability.
  2. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, will be considered to be small tools and no separate payment will be made for their use.
- G. The Contractor will be paid the total cost for labor, materials, equipment, and miscellaneous items used to perform authorized extra work that is paid for on a time and materials basis. The total cost will be calculated as the sum of the following five items:
1. The direct cost of labor, materials, and equipment determined as specified in paragraphs H, I and J below.
  2. To the total of the direct costs, the following markups shall be applied:
    - i. A labor markup of 40 percent to the direct cost of labor.
    - ii. A materials markup of 10 percent to the direct cost of materials.
    - iii. An equipment markup of 15 percent to the direct cost of equipment.
  3. The above markups shall constitute full compensation for all overhead costs and profit and any additional items of expense not specifically listed as labor, materials, and equipment costs in paragraphs H, I and J below. Additionally, the markup specified in item 2i above includes full compensation for all payments required by State and Federal laws, such as Social Security, Medicare, unemployment insurance, and similar items.
  4. When extra work is performed in whole or in part by Subcontractors at any tier, an additional markup shall be applied to cover the Contractor's expenses associated with supervising and coordinating subcontract work. The markup for subcontractor coordination shall be 5 percent applied to the total of the direct cost for labor, materials, and equipment for extra work performed by Subcontractors that is paid for on a time and materials basis. In calculating the markup for subcontractor coordination:
    - i. The subcontractor coordination markup is only applied to Subcontractor direct costs. Direct costs of the Contractor and Owner-operators are excluded from this calculation.
    - ii. The markups specified in item 2 above are not applied to the Subcontractor direct costs before applying the 5 percent markup.
    - iii. The subcontractor coordination markup only applies to the total of all extra work performed by Subcontractors. It does not apply between the various Subcontractor tiers.
  5. The cost of owner-operated equipment determined as specified in paragraph K below.

6. The cost of miscellaneous items including specialized work, professional services, permits, and fees determined as specified in paragraph H below. The markups specified above do not apply to miscellaneous items.
  7. Table 7.04C is included to further clarify how TMWA will calculate the payment for time and material work. The shaded areas of the table are where the descriptive information and amounts based on the hours reported on the Daily Extra Work Reports are entered.
    - i. The formulas shown on the right hand side of the form show how the various markups, sub-totals, and totals are calculated.
    - ii. The amounts shown in the table are for illustrative purposes only.
- H. The direct cost of labor for workers (including working foremen) for authorized extra work, whether the employer is the Contractor or a Subcontractor at any tier, shall be the sum of the following two items:
1. The actual wages paid to or on behalf of the employee. The actual wages are defined as the sum of the hourly rate of pay plus the hourly fringe benefit contributions shown on the certified payroll data submitted by the Contractor to TMWA.
    - i. For Projects where prevailing wage rates do not apply, actual wages will be the sum of the hourly rate of pay plus any hourly fringe benefit contributions shown on the employee's pay check advice.
    - ii. Actual wages do not include any payments made on behalf of the employee for which the Contractor is compensated by the markup specified in paragraph G2i above.
  2. The actual subsistence and travel allowance paid to workers up to a maximum amount of \$125.00 per worker per day. Subsistence and travel allowance will be paid only if the extra work being paid for on a time and material basis results in an extension of the Contract Time.
- I. The direct cost of materials for authorized extra work whether purchased by the Contractor or a Subcontractor at any tier shall be the actual amount paid as evidenced by invoices submitted to the Project Representative. Only materials that are incorporated into the Work will be paid for.
- In addition to the direct cost of materials, the Contractor will be paid the direct cost of labor and equipment required to unload job-site delivered materials or to obtain and deliver Contractor furnished materials which are not delivered to the job site by the Supplier, unless this is a result of a scheduling or procurement error on the part of the Contractor.
1. Direct labor costs for unloading job site delivered materials shall be determined per paragraph H1 above (no payment for subsistence and travel will be made).
  2. Direct equipment costs for unloading job site delivered materials shall be determined per paragraph J below.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
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EXAMPLE

**Table 7.04C<sup>1</sup>**  
Time and Materials Summary Calculation Sheet

Date	
Project Name	
Project Number	
Extra work description	
Change Order number	
Is this a prevailing wage project? (Y or N)	Y

	Contractor	Subcontractor 1	Subcontractor 2	Owner-operators	Totals
<b>Labor</b>					
Actual wages:	4,500.00	2,000.00	1,000.00	300.00	7,800.00
Travel and subsistence:	125.00	-	-	125.00	250.00
				Sub-total Direct Labor:	8,050.00
				40% Markup on direct labor:	3,220.00
				<b>Total Labor:</b>	<b>\$ 11,270.00</b>

<b>Materials<sup>2</sup></b>	
Direct cost per invoices:	2,500.00
	400.00
	100.00
	10% markup on direct cost of materials:
	300.00
	<b>Total Materials:</b>
	<b>\$ 3,300.00</b>

<b>Equipment</b>	
Direct cost per rental rates:	400.00
	-
	750.00
	15% markup on equipment
	145.00
	<b>Total Equipment:</b>
	<b>\$ 1,489.25</b>

<b>Calculation of 5% Subcontractor Coordination Markup</b>	
Direct cost totals without markups (Subcontractor work only):	2,400.00
	1,850.00
	5% markup for Subcontractor coordination:
	<b>\$ 212.50</b>

<b>Miscellaneous Items</b>	
Specialized Work per invoices:	2,000.00
Professional Services per invoices:	250.00
Owner-operated equipment per invoices (non-prevailing wage projects only):	-
Permits and fees:	500.00
	10% markup on above three items:
	225.00
	<b>Total Miscellaneous:</b>
	<b>3,175.00</b>

<b>Total Cost:</b>	<b>\$ 19,446.75</b>
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Notes: 1. Add or subtract columns for additional subcontractors and Owner-operators as required.  
2. Direct costs for unloading materials shall be added to the Labor and Equipment sections as appropriate.

3. Markups for direct labor and equipment costs for unloading job site delivered materials shall be applied as specified in paragraphs G2i and G2iii above. No other markups shall be applied to these items for unloading job site delivered materials.

A foreman or a designated materials coordinator shall be responsible for insuring that materials are procured and delivered to the site in a timely manner. The Contractor will not be compensated for nonproductive time nor will an extension of time be granted due to delays in delivery of material or equipment when these items are Contractor furnished.

- J. The direct cost of equipment used to perform authorized extra work whether used by the Contractor or a Subcontractor at any tier shall be the hourly rental rates listed in the CalTrans publication "Labor Surcharge And Equipment Rental Rates" (Rental Rate book) that is in effect on the date on which the extra work is done. The rates apply regardless of ownership and any rental or other agreement. The Rental Rate book is available from CalTrans at [www.dot.ca.gov/hq/construc/](http://www.dot.ca.gov/hq/construc/).
  1. Rental rates listed in the Rental Rate book are straight time rates that apply when the equipment is used 8 hours or less per day as shown on the Daily Extra Work Report.
    - i. Overtime hours occur when the equipment has worked on extra work more than eight hours per day or more than the daily equivalent of forty hours per week for special work schedules (e.g. 4/10 or 9/80).
    - ii. When work extends into overtime conditions as shown on the Daily Extra Work Report, the Overtime Factors listed in the Rental Rate book shall be used to determine the overtime rate. The Delay Factors and Labor Surcharge rates listed in the Rental Rate book do not apply to TMWA work.
    - iii. The overtime rate is the product of the straight time rate and the Overtime Factor. The overtime rate shall be applied per the instructions in the Rental Rate book for "Overtime and Multiple Shifts."
  2. For equipment not listed in the Rental Rate book, a suitable rental rate shall be established, before using such equipment on extra work, by agreement between the Project Representative and the Contractor. In establishing such rate, the Contractor shall submit cost data or other evidence to support the proposed rate if requested by the Project Representative. Submitted rates shall be consistent with similar size and type of equipment listed in the Rental Rate book. In the event that agreement on a rate cannot be reached, the rate proposed by the Project Representative will be used.
  3. The rental rates include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, all incidentals, and any labor required to provide these items.
  4. Operators of rental equipment will be paid as specified in paragraph H above.
  5. Rental time will not be allowed while equipment is inoperative due to breakdowns.
  6. The Contractor will be paid rental time for only those hours that the equipment is actually utilized in performing the extra work. Idle time for equipment located at the job site, but not being used in the work, is not billable time.
  7. When the extra work requires use of equipment that is different from the equipment on the job site being used for Contract work, the following shall apply:
    - i. The Project Representative shall approve the necessity for the use of the particular equipment on the extra work.
    - ii. The Contractor shall obtain quotes for renting the equipment from local sources. The rental rate paid for locally rented equipment will be the actual rate paid by the Contractor or the rate listed in the Rental Rate book, whichever is less.
    - iii. Rental time will be paid for the time required to move the required equipment to the location of the extra work and return it to its original location, except that moving time will not be paid for if the equipment is also used on regular contract work while on the job site.

The original location of the equipment to be moved shall be agreed to by the Project Representative in advance of movement.

- K. When owner-operated equipment is used to perform authorized extra work that is paid for on a time and materials basis, the Contractor will be paid for the equipment and operator as follows. (items 1, 2, and 3 apply to Projects subject to payment of prevailing wage rates):
4. Payment for equipment will be made in conformance with paragraph J above.
  5. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the project or, in the absence of other workers operating similar equipment, at the rates for that labor established by collective bargaining agreements for the type of workers whether or not the owner-operator is actually covered by an agreement.
  6. The markups on labor and equipment specified in paragraphs G2i and G2iii above shall then be added to determine the total compensation to the Contractor for owner-operated equipment.
  7. For Projects where prevailing wage rates do not apply, payment for owner-operated equipment shall be the actual cost as evidenced by invoices submitted to the Project Representative. A 10 percent markup shall be added to the invoice amount for overhead and profit as full compensation for owner-operated equipment. The markups specified in paragraphs G2i and G2iii do not apply to this case.
- L. The cost of miscellaneous items for authorized extra work shall be determined as follows:
1. Specialized work is work for which the Contractor is not experienced in or properly equipped for and is typically done by a specialist that is proficient in the type of work to be performed. Payment for specialized work shall be the actual cost as evidenced by invoices submitted to the Project Representative. A 10 percent markup shall be added to the invoice amount for overhead and profit as full compensation for specialized work.
  2. The cost of professional services, such as engineering and material testing, associated with the extra work and directly paid by the Contractor will be the actual cost as evidenced by invoices submitted to the Project Representative. A 10 percent markup shall be added to the invoice amount for overhead and profit as full compensation for professional services.
  3. Permits and fees required by regulatory agencies that are paid by the Contractor will be reimbursed at actual cost as evidenced by invoices submitted to the Project Representative. No markup is allowed on these items.

#### **7.05 Unit Cost Adjusting Bid Items**

- A. If unit cost adjusting bid items are included in the Bid Schedule, they will be used to compensate the Contractor for the common situations that arise during construction without the need for a Change Order. The range of applicability of items normally used are as follows:
1. The item for reduced or increased trench depth is intended to allow profile adjustments within a range of  $\pm 3$  feet.
  2. The rock excavation adjusting items are intended to allow for isolated boulders or minor pockets of bedrock. The range of applicability of these items is from 0 to 100 cubic yards.
  3. The applicable range for other adjusting items will be listed in the Technical Specifications.
- B. When the adjustments or quantities of the adjusting bid items is outside of the specified applicable range the procedures of Article 3.05 "Changes to the Contract" and Article 4.03 "Differing Conditions" of the General Conditions will apply.

## **7.06 Retention and Final Payment**

A. Retention will be withheld as follows:

1. Except as otherwise permitted in NRS 338.525, until the Work is 50 percent complete, TMWA will withhold as retainage from all progress payments an amount equal to five percent (5%) of any amount invoiced or otherwise due for payment (including approved Change Orders) from each progress payment.
2. Except as otherwise provided in NRS 338.525, after the Work is 50 percent complete and in the opinion of the Project Representative satisfactory progress is being made toward completion of the Work, TMWA may continue to withhold retainage from progress payments as follows:
  - i. If TMWA does not withhold any amount pursuant to NRS 338.525:
    - a. TMWA will withhold from each subsequent progress payment 2.5 percent of the amount invoiced or otherwise due for payment from each subsequent progress payment; and
    - b. Before withholding any amounts under 7.06(A)(2)(i)(a), TMWA will pay to Contractor fifty percent (50%) of any retainage being held pursuant to 7.06 (A)(1) in accordance with Nevada law.
  - ii. If TMWA withholds any amount pursuant to NRS 338.525, TMWA will withhold from each subsequent progress payment five percent (5%) of the amount invoiced or otherwise due for payment from each subsequent progress payment and will continue to hold amounts retained under 7.06(A)(1) in accordance with Nevada law.
3. If in the opinion of the Project Representative satisfactory progress toward completion of the Work is not being made, retention will remain as specified in 7.06(A)(1) until progress is judged to be satisfactory. At that time the retention policy of 7.06(A)(2) will take effect.
4. Pursuant to NRS 338.070 and/or NRS 338.525, TMWA may withhold additional amounts from progress payments or final payments of any amount invoiced or otherwise due for payment (including approved Change Orders) as TMWA may reasonably expect to incur as a result of the failure of the Contractor or any of its lower-tiered contractors to comply with the Agreement or applicable building code, law, or regulation, including without limitation, Contractor's or any of its lower-tiered contractor's failure to comply with the Apprenticeship Utilization Act and all laws related thereto.
5. Notwithstanding the foregoing, TMWA reserves the right to withhold additional amounts from progress payments or final payments in accordance with NRS 338.515(7) and NRS 338.525.

B. Interest will be paid to the Contractor quarterly on retainage per the provisions of NRS 338.515.

C. Retention withheld by TMWA will be paid to the Contractor within 30 days after TMWA issues the Notice of Completion, the Labor Commissioner has been notified that the Work is complete, no prevailing wage complaints or investigations remain pending, and after receipt of all other items required by the Contract Documents, in accordance with NRS 338.520. Refer to the Supplementary Conditions for a detailed list of items that must be submitted before TMWA will consider the Project to be complete.

D. The making and acceptance of final payment will constitute a waiver of all claims by Contractor against TMWA other than those previously made in writing and still unsettled.

## **Article 8 Time Extensions and Delays**

### **8.01 Time Extensions**

- A. Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work will depend upon extent, if any, by which the changes cause delay in the completion of the various elements of construction.
- B. A Change Order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed. The remaining contract completion dates for all other portions of the work will not be altered, and may further provide for an equitable readjustment of liquidated damages (if applicable) under the new completion schedule.

### **8.02 Delays**

- A. Upon mobilization to the site, the Contractor shall maintain an adequate labor and equipment workforce and diligently perform the Work to the satisfaction of the Project Representative.
  - 1. The Contractor shall include adequate costs in his Bid prices to provide sufficient levels of labor and equipment (including overtime, if required) to insure that the required completion date is met.
  - 2. Weather delay days will not extend the completion date unless both Contractor and Project Representative agree to declare a weather day.
- B. Should the timely performance of this contract be jeopardized by the non-availability of TMWA provided personnel, data, or equipment, the Contractor shall immediately notify the Project Representative in writing of the facts and circumstances, which are contributing to such delay. Upon receipt of this notification, TMWA will advise the Contractor in writing of the action that will be taken to remedy the situation.
- C. The Contractor shall advise TMWA in writing of an impending failure to meet established milestones or completion dates.
  - 1. Such notification shall include a written description of how the Contractor plans to correct the situation and comply with the project schedule.
  - 2. Notice shall be provided as soon as the Contractor is aware of the situation; however, such notice shall not relieve the Contractor from any existing obligations regarding performance.

### **8.03 Excusable Delays**

- A. Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these are:
  - 1. Acts of God, terrorism, or of public enemy.
  - 2. Acts of the government.
  - 3. Fires.
  - 4. Floods.
  - 5. Epidemics.
  - 6. Quarantine restrictions.
  - 7. Strikes.
  - 8. Freight embargoes.
  - 9. Unusually severe weather.
- B. In each instance, failure to perform must be beyond the control and without fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

- C. If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:
  - 1. The subcontracted supplies or services were obtainable from other sources;
  - 2. TMWA ordered the contractor in writing to purchase these supplies or services from a specific source; and
  - 3. The Contractor failed to comply reasonably with this order.
- D. Upon request of the Contractor, TMWA shall ascertain the facts and extent of the failure. If TMWA determines that the failure to perform results from one or more of the causes above, the completion time shall be revised, subject to the rights of TMWA under the termination clauses of this contract.

## **Article 9 Suspension and Termination of Work**

### **9.01 Suspension of Work**

- A. TMWA may at any time, by written or electronic notice to the Contractor, suspend further performance of work by the Contractor.
  - 1. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension.
  - 2. Upon receiving any such notice of suspension, the Contractor shall promptly suspend further performance of the Work to the extent specified.
- B. TMWA may at any time withdraw the suspension, in whole or in part, by written or electronic notice to the Contractor specifying the effective date and scope of withdrawal. Upon receipt of the withdrawal notice, the Contractor shall resume diligent performance of the work for which the suspension is withdrawn on the specified effective date of withdrawal.
- C. If the Contractor believes that any such suspension or withdrawal of suspension justifies a modification in Contract Sum or delivery, the Contractor shall present a written claim to the Project Representative.
  - 1. Claims shall be submitted no later than 30-days from the action precipitating the claim.
  - 2. Claims presented after 30-days or after final payment of the contract will not be considered valid by TMWA.

### **9.02 Termination for Convenience**

- A. TMWA shall have the right at any time to terminate further performance of this contract, in whole or in part, for any reason. Such termination shall be effected by written notice from the Project Representative to the Contractor, specifying the extent and effective date of the termination.
- B. On the effective date of the termination, the Contractor shall terminate all work and take all reasonable actions to mitigate expenses.
- C. The Contractor shall submit a written request for all outstanding labor and material expenses for work performed through the date of termination, and shall provide any substantiating documentation requested by TMWA.
- D. In the event of such termination, TMWA agrees to pay the Contractor within thirty days after receipt of an adequately documented written request.

### **9.03 Termination for Cause**

- A. TMWA, may, without written notice of default to the Contractor, terminate this contract in whole or part if the Contractor violates an OSHA regulation and the Contractor is found to have a repeat or willful safety violation.
  - 1. A repeat violation exists where documentation shows a serious safety violation for a substantially similar violation documented within the last three years.
  - 2. A willful violation exists where evidence shows either an intentional violation or plain indifference to a safety regulation where the hazard has caused, or was likely to cause death or serious physical harm.
- B. TMWA may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:
  - 1. Meet the delivery schedule specified in this contract.
  - 2. Make progress, so as to endanger performance of this contract.
  - 3. Perform any of the other provisions of this contract.
- C. TMWA's right to terminate this contract as specified above, may be exercised if the Contractor does not cure such failure within seven calendar days (or more if authorized by the Project Representative) after notice, specifying the failure, is sent.
- D. If TMWA issues a cure notice and the Contractor cures the failure, TMWA has the contractual right to terminate this contract without any additional cure notice if the Contractor makes any future failure.
- E. If TMWA terminates this contract in whole or in part, it may acquire, under the terms and in the manner TMWA considers appropriate, services and equipment similar to those terminated, and the Contractor will be liable to TMWA for any reasonable excess costs for those services. However, the Contractor shall continue the work not terminated.
- F. The Contractor shall not be liable for any excess costs if the failure to perform the contract arises from circumstances beyond the control and without the fault or negligence of the Contractor. These circumstances include, such causes as acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather.

## **Article 10 Other Provisions**

### **10.01 Related Work at Site**

- A. TMWA may undertake or award other contracts for additional work at or near the site of work under this contract.
- B. The Contractor shall fully cooperate with the other contractors and with TMWA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by TMWA.
  - 1. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or TMWA employees.
  - 2. Additional specific information concerning work by others will be given in the Supplementary Conditions or Technical Specifications.

## **10.02 Inspection and Testing by TMWA**

- A. All work shall be subject to TMWA inspection and testing at all places and at all reasonable times before acceptance, to ensure compliance with the terms of the Contract Documents.
- B. TMWA inspections and tests are for the sole benefit of TMWA and do not:
  - 1. Relieve the Contractor of responsibility for providing adequate quality control measures per Article 6.16 “Quality Control” of the General Conditions.
  - 2. Relieve the Contractor of responsibility for damage or loss of the material before acceptance.
  - 3. Constitute or imply acceptance.
  - 4. Affect the continuing rights of TMWA after acceptance of the completed work.
- C. The presence or absence of a TMWA inspector or Project Representative does not relieve the Contractor from any contract requirement.
- D. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by TMWA.
- E. The Contractor shall, without charge, replace or correct rejected work found by TMWA not to conform to contract requirements, unless TMWA consents to accept the work with the appropriate adjustment in the Contract Sum.
  - 1. The Contractor shall promptly segregate and remove rejected material from the premises.
  - 2. If the Contractor does not promptly replace or correct rejected work, TMWA may
    - i. By contract or otherwise, replace or correct the work and charge the cost to the Contractor or
    - ii. Terminate for default the Contractor’s right to proceed.

## **10.03 Replacement of Defective Work**

- A. If, before acceptance of the entire Work, TMWA decides to examine already completed work by removing it or tearing it out, the Contractor, on request shall comply.
  - 1. If the work is found to be defective or non-conforming in any material respect due to the fault of the Contractor or Subcontractors, the Contractor shall be responsible for the expenses of the examination and the cost of satisfactory reconstruction.
  - 2. If the work is found to meet the requirements of the Contract Documents, TMWA will pay all costs incurred the Contractor in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.
- B. Unless otherwise specified in the contract, TMWA shall accept, as promptly as practicable after completion and inspection, all work required by the Contract Documents or that portion of the work TMWA determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or TMWA’s rights under any warranty or guarantee.

## **10.04 Use and Possession Prior to Completion**

- A. TMWA shall have the right to take possession of or use any completed or partially completed part of the work.
- B. Before taking possession of or using any work, TMWA shall furnish a list of items of work remaining to be performed or corrected on those portions of the work that TMWA intends to take possession of or use. However, failure of TMWA to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract.

- C. While TMWA has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from TMWA's possession or use. If prior possession or use by TMWA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made.

#### **10.05 Dispute Resolution**

- A. Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreements with TMWA. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and TMWA may otherwise agree in writing.
- B. The Project Representative will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work.
- C. Claims, disputes, and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims in respect of changes in the Contract Sum or Contract Time (except for claims which have been waived by the making or acceptance of final payment) will be referred initially to Project Representative in writing.
  - 1. Written notice of each such claim, dispute, and other matter shall be delivered by the Contractor to Project Representative promptly (but in no event later than 15 days) after occurrence of the event giving rise to the claim or dispute.
  - 2. Data or other written evidence necessary to support such claim will be submitted to TMWA within 30 days after such occurrence, unless Contractor requests and Project Representative allows, an additional period of time to ascertain more accurate data in support of the claim.
  - 3. Within 15 days of receiving all information pertaining to a request for a formal decision in accordance with this paragraph, Project Representative will render a written decision.
  - 4. Failure of Contractor to submit a claim and any supporting data within the aforementioned time frames shall serve as a waiver by Contractor of such claim against TMWA.
- D. If Project Representative's first-step written decision is unacceptable to Contractor, Contractor shall deliver a written demand for direct negotiation to the Project Representative.
  - 1. Said demand shall be delivered within ten days from the date of the first-step written decision, but in no case will such demand for direct negotiation be accepted by TMWA until after Contractor receives the first-step written decision.
  - 2. If Contractor fails to deliver said written demand for direct negotiation within the ten-day period, the first-step written decision shall be final and binding.
  - 3. The second-step direct negotiation may include Project Representative and Contractor's Superintendent (or other on-site representative of Contractor directly responsible for the work who initiated the original claim), but will be conducted by representatives of TMWA and Contractor at least one step (in the organizational structure) above those individuals involved in the first step process.
    - i. Direct negotiation shall be conducted in good faith and may require more than one meeting between TMWA and Contractor.
    - ii. Meetings will be conducted within a reasonable time at TMWA's corporate office.
  - 4. If after a good faith effort to resolve the claim, should either party believe that a satisfactory resolution of the claim is not possible, either party may give notice to the other party demanding mediation of the issue. Said notice to mediate must be delivered prior to the Contractor applying for final payment, and must be delivered to the other party and the American Arbitration Association.

- E. If direct negotiation is unsuccessful, TMWA and Contractor intend to endeavor to resolve claims, disputes and other matters in question between them by negotiation and mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, or unless the parties mutually agree otherwise. The parties shall share the mediator's fee and any filing fee equally. The mediation shall be held in Reno, Nevada unless another location is mutually agreed upon within sixty (60) days of the notice to mediate, unless otherwise mutually agreed. Agreements reached in mediation shall be enforceable as settlement agreements in any Court have jurisdiction thereof.
- F. If the dispute is not resolved by mediation, then, at TMWA's sole discretion, any claim, dispute or other matter in question shall be subject to arbitration in accordance with the provisions of NRS 338.150. The arbitration shall be administered by the American Arbitration Association or Nevada Arbitration Association in accordance with their rules in effect at the time of the arbitration. Any award or determination rendered by the arbitrator may be entered as a judgment in any court having jurisdiction thereof.
- G. If TMWA, in its sole discretion, declines to arbitrate, such claims, disputes and other matters shall be decided by a court located in Washoe County, Nevada having jurisdiction thereof. Notwithstanding any provision contained in this Article or elsewhere in the Contract Documents, TMWA reserves the following rights in connection with claims and disputes between TMWA and Contractor:
  - 1. The right to institute legal action against the Contractor in any court of competent jurisdiction in lieu of demanding arbitration, in which case the dispute or disputes which are the subject of such action shall be decided by such court, and not by arbitration.
  - 2. The right to obtain from any Court of competent jurisdiction a stay of any arbitration instituted by the Contractor, provided that the application for such stay is made before the appointment of a neutral arbitrator, in which case the dispute or disputes which are the subject of such arbitration shall be decided by such court, and not by arbitration.

## **Article 11 Miscellaneous Legal Provisions**

### **11.01 Jurisdiction**

- A. This contract shall be construed under the laws of the State of Nevada.
- B. The sole venue for any litigation or arbitration or action to enforce the provisions of this contract shall be Washoe County, Nevada.

### **11.02 Assignment**

- A. Neither party shall assign this contract without the written consent of the other party.
- B. No assignment shall relieve either party of its obligations under this contract.

### **11.03 No Waiver**

- A. Except as otherwise provided herein, the failure at any time of either party to enforce any of the provisions of this contract, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way be construed to affect the validity of this contract or any part hereof, or the right of any party thereafter to enforce each and every such provision.

### **11.04 Severability and Integration**

- A. The invalidity, illegality, or unenforceability of any provision of this contract or the occurrence of any event rendering any portion or provision of this contract void shall in no way affect the validity or enforceability of any other portion or provision of the entire contract.
- B. Any void provision shall be deemed severed from this contract, and the balance of this contract shall be construed and enforced as if this contract did not contain the particular portion or provision held to be void.
  - 1. TMWA and Contractor further agree to amend this contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.
  - 2. The provisions of this clause shall not prevent this entire contract from being void should a provision which is of the essence of this contract be determined void.
- C. This contract represents the entire and integrated agreement between TMWA and the Contractor. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this contract.

**11.05 Indemnity**

- A. To the fullest extent permitted by law, Contractor shall defend, protect, indemnify and hold harmless TMWA, and its employees, agents, successors, and assigns (“Indemnified Parties”), and each of them, from and against any and all claims, demands, causes of action, damages, costs, expenses, actual legal fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever (“Claims”) arising out of or in connection with Contractor’s operations to be performed under this Agreement for, but not limited to:
  - 1. Personal injuries, including but not limited to bodily injury, emotional injury, sickness or disease, or death to persons.
  - 2. Workers Compensation, and any violation by Contractor of any law or regulation in any way related to the occupational safety and health of employees.
  - 3. Violation of patent, trademark and copyright laws.
  - 4. Damage or loss to real or personal property of anyone, including loss of use thereof.
  - 5. Breach of contract or related matters.
  - 6. Hazardous waste or environmental liability.
  - 7. Citations, fines, taxes, assessments, or related matters from any local, state or federal governmental authority.
  - 8. Claims of employees, agents, and subcontractors of the Contractor.
- B. Indemnified Parties shall notify the Contractor of the Claim within a reasonable period of time after it has received actual notice of the Claim and the Parties shall take all reasonable actions necessary to assist each other in determining the nature and extent of the issues contained in the Claim.
- C. If a proceeding is commenced against the Indemnified Parties which is based upon or arises out of this contract, then the Indemnified Parties shall be entitled to make the Contractor a party to the proceeding for the purpose of enforcing the terms and conditions of this clause.
- D. The Contractor shall pay all reasonable attorney fees and costs that the Indemnified Parties incurs or is subject to as a result of the Claim.
- E. Nothing in this Agreement shall be construed to waive TMWA’s right to assert available NRS Chapter 41 liability limitation against any claim.
- F. The obligations contained herein shall survive any termination of this Agreement.

**END OF GENERAL CONDITIONS**