**DIVISION OF SOIL CONSERVATION**
**DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP**
**STATE OF IOWA**

# MIT981810C CREP WETLAND PROJECT

# CONSTRUCTION CONTRACT
# BID NO. 15-01

SECTION 10, TOWNSHIP 98 NORTH, RANGE 18 WEST
MITCHELL COUNTY, IOWA

PREPARED FOR: IOWA DEPARTMENT OF AGRICULTURE & LAND STEWARDSHIP
DIVISION OF SOIL CONSERVATION
WALLACE STATE OFFICE BUILDING
DES MOINES, IOWA 50319
515-281-4246

PREPARED BY: SEH YAGGY
215 NORTH ADAMS AVENUE
MASON CITY, IOWA 50401
641-424-6344

**JANUARY 2015**

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# GENERAL REQUIREMENTS

# NOTICE-TO-BIDDERS

**Mit981810C Conservation Reserve Enhancement Program (CREP) Wetland Project**
**Section 10, Township 98 North, Range 18 West**
**Mitchell County, Iowa**

Sealed bids will be received by the Iowa Department of Agriculture & Land Stewardship, Division of Soil Conservation, Wallace State Office Building, Des Moines, Iowa, 50319, until 3:00 p.m. local time, on the 17th day of February, 2015 and opened at a public meeting and read aloud on the date last mentioned. Bids must be submitted on the appropriate bid forms provided and shall include a bid bond in the amount of ten percent (10%). Bidders must also be registered with the Iowa Division of Labor.

In general, the work involves, but is not limited to, significant clearing, excavation, grading, steel sheet pile weir construction, CMP water control structure, and seeding. This project includes 13,296 cubic yards of earthwork, 1,077 square feet of sheet pile, 779 tons of riprap, 68 cubic yards of grout, and 29.5 acres of seeding. The estimated construction cost range for this project is $165,000 to $180,000.

A pre-bid conference will be held at 10:00 a.m., on February 3, 2015 at the Mitchell SWCD, 1529 Main Street, Osage, Iowa, 51334, telephone: 641-732-5504. Attendance at the pre-bid conference by prospective bidders is not mandatory, but is encouraged.

The Plans and Construction Specifications governing the construction of the proposed improvements have been prepared by Robert Larget, P.E., SEH Yaggy, and are hereby made a part of this notice by reference and the proposed contract shall be executed in compliance therewith. Copies of the Contract Documents, including Plans, Construction Specifications, and Bid Package, are only available through the website link - http://www.iowaagriculture.gov/minesAndMinerals.asp. In order to be included on the plan holders list, which is required to be able to receive meeting minutes, addenda and an updated plan holders list, interested parties must make a written or verbal request to the Division of Soil Conservation by telephone; 515-281-4246, fax; 515-281-6170; or by e-mail; mary.baker@iowaaagriculture.gov. Plans and Construction Specifications can be viewed at the Mitchell Soil and Water Conservation District. Printed copies of specifications and plans will be provided to the successful bidder.

The successful bidder shall be required to furnish a Performance/Payment Bond in an amount equal to one hundred percent (100%) of the contract price.

Questions concerning the Plans and Construction Specifications should be addressed to Robert Larget, P.E., Engineer, SEH Yaggy, 215 North Adams Avenue, Mason City, Iowa, 50401, 641-424-6344. All other questions concerning other Contract Documents should be addressed to Michael Bourland, Water Resource Bureau, 515-242-6130. In order to be considered in a final addendum, written questions must be received by 4:00 p.m. no later than February 12, 2015.

The Division of Soil Conservation reserves the right to reject any or all proposals and to waive technicalities and irregularities.

Published the week of January 18, 2015.

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## 01 BIDDER'S KNOWLEDGE & PRE-BID CONFERENCE

The proposed project is located as specified in the Notice-to-Bidders. Bidders shall familiarize themselves with the Contract Documents and conditions that will affect the construction. Specific items relating to the preparation of bids and the submission thereof are listed elsewhere in the Contract Documents. It will be the responsibility of the bidder to examine all Contract Documents and to make a personal examination of the job site and the physical conditions that may affect bidding and performance under the Contract.

A pre-bid conference will be held at the location, date and time as set forth in the Notice-to-Bidders. Attendance at the pre-bid conference by prospective bidders is not mandatory, but is encouraged.

## 02 BIDDER'S QUALIFICATIONS

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit, within ten (10) days of Division's request, written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below.

- Contractors are required to be registered with the Iowa Division of Labor.
- Bidder must verify the number of years engaged in the contracting business under the present firm name, and the name of the state where incorporated.
- A Bidder must show ownership of 20% of their own equipment and list equipment that will be rented or subcontracted by the Bidder to evaluate if the Bidder can complete the Work in accordance with the Bidding Documents.
- Bidder must provide performance record giving the description, location, and telephone numbers of similar projects constructed in a satisfactory manner by the Bidder.
- Bidder must submit a list of projects presently under contract, the approximate contract amount, and percent of completion of each.
- Bidder must provide a list of contracts which resulted in lawsuits, contracts defaulted, and a statement of the Bidder indicating whether or not the Bidder has ever filed bankruptcy.
- Bidder must provide the technical experience of personnel guaranteed to be employed in the responsible charge of the Work stating whether the personnel have or have not performed satisfactorily on other contracts of like nature and magnitude or comparable difficulty at similar rate of progress.
- Bidder must provide such additional information as will assist the Division in determining whether the Bidder is adequately prepared to fulfill the contract.

If the successful bidder is a non-Iowa corporation, the bidder shall submit proof to the Division, prior to the execution of the contract, of authorization by the Secretary of State to do business in Iowa.

## 03 OBTAINING BID DOCUMENTS

An electronic copy of all of the bidding documents for this project has been posted to the Iowa Department of Agriculture and Land Stewardship website: http://www.iowaagriculture.gov/minesAndMinerals.asp. These include Document AA – Notice to Bidders, Document BB – Instruction to Bidders, Document CC – Proposal and Schedule of Prices, Document DD – Construction Contract, Document EE – Proposal Guarantee (Bid Bond), Document FF – General Conditions, Document GG – Special Conditions, Document NN – Performance Bond. The website also contains the Construction Specifications and the Construction Plans developed by the engineer. The documents on this website can be viewed or printed by those interested in the project.

The Division will maintain an updated plan holders list for this project. In order to be added to the plan holders list, the interested party must contact the Division by phone, fax, letter, or e-mail. Viewing the documents on line does not automatically add you to the plan holders list. Those listed as a plan holder will receive meeting minutes, any and all addenda

and an updated plan holders list. The website will NOT be updated with the meeting minutes, plan holders list, and any addenda. These documents must be received directly from the Division.

## 04 METHOD OF BIDDING

Bidders shall submit unit price bids as required for the work items covered by the Bid Documents. Failure to submit unit prices as required shall result in disqualification of the bid. Prices shall cover complete work and include all costs incidental thereto, unless otherwise indicated.

The Division may change location, quantities, and combination of units as required during the progress of construction. If work is added to the Contract that is not covered by a bid price set forth in the Proposal and Schedule of Prices (*Document CC*), a Change Order, including the negotiated cost for said work, will be issued by the Division prior to the work being performed.

Bids will be compared using quantities shown in the proposal. The quantities of work so shown represent the Engineer's estimate of work to be completed as shown on the plans and measured in accordance with provisions in this Contract defining the method to be used in measuring such quantities. The Contractor's compensation will be computed on the basis of final quantities of completed work. Where a lump sum is shown on the proposal as a unit bid price for a specified work item, the Contractor will be paid that amount for the completed and accepted work.

**In the event of discrepancies between unit prices and unit price extensions listed in bidder's proposal, unit prices shall govern.**

## 05 SUBMISSION OF BIDS

The bids shall be submitted on the proposal form included herewith. The proposal shall be submitted in a sealed envelope separate from the bid security. The envelope shall bear the return address of the bidder and shall be addressed as follows:

TO: Division of Soil Conservation
Department of Agriculture and Land Stewardship
502 East 9th Street
Des Moines, Iowa 50319-0050
Attn: Michael Bourland

PROPOSAL FOR: Project ID: MIT981810C CREP Wetland Project
Mitchell County, Iowa
Job No. 15-01

- A legally authorized representative of the bidder shall sign the bid.
- The bid securities shall be placed in a **separate** No. 10 envelope attached to the envelope containing the bid.
- Only the Proposal and Schedule of Prices (*Document CC*) and other required documents should be included in the envelope with the bid. Do not submit Plans and/or Specifications with the bid.
- The project job number 15-01 must be printed on the outside of the bid security envelope and on the envelope containing the bid.

## 06 BID SECURITY

Bidder shall provide a bid bond in the form of a cashier's check, certified check or surety bond for the project in the amount of 10% of the base bid (no alternates included). The bid security shall be made payable to the Division, and shall be forfeited and become the property of the Division in case the bidder fails or refuses to enter into contract and furnish bond within fourteen (14) calendar days after his proposal has been accepted. Checks will be returned to the bidders.

## 07 WITHDRAWAL OF BIDS

Bids may be withdrawn anytime prior to the scheduled closing time for receipt of bids; but no bid may be withdrawn for a period of thirty (30) calendar days thereafter.

## 08 EVALUATION OF BIDS AND AWARD OF CONTRACT

The Contract shall be awarded to the lowest responsible bidder as determined by the Division. In evaluating the bids, the Division may consider such factors as bid price and bidder qualifications outlined in Section 02 to determine which bid is deemed to be in the best interest of the Division for this project. In comparing bid prices, the total bids of the various bidders shall be determined by applying the unit prices bid for each work item against the estimated work item quantities set forth in the proposal.

## 09 TAXES

Materials purchased for this construction contract let by the Iowa Department of Agriculture-Division of Soil Conservation are exempt from sales and use tax, including local option taxes. This exemption applies only to materials that are components of the final project. The contractor and subcontractors will be issued a Sales Tax Exemption Certificate from the Division of Soil Conservation that is specific for this contract. A sample of this form is included in the appendix. Refer to Iowa Department of Revenue and Finance's website for additional information: http:www.state.ia.us/tax.

The bidder shall include in his proposal all other federal and state taxes required by law.

## 10 EXECUTION OF CONTRACT

The party to whom the contract is awarded will be required to execute the Contract; obtain the appropriate insurance coverage and the Performance Bond; and provide their Iowa Department of Labor Public Registration Number within fourteen (14) calendar days from the date when Notice-of-Award is delivered to the Bidder. The necessary Contract and bond forms shall accompany the Notice-of-Award. In case of failure of the Bidder to execute the Contract, the Division shall have the option to consider the Bidder in default, in which case the bid security accompanying the proposal shall become the property of the Division.

The Division, within fourteen (14) days of receipt of acceptable Performance Bond and Contract, signed by the party to whom the Contract was awarded, shall sign the Contract and return to such party an executed copy of the Contract. Should the Division not execute the Contract within such period, the Bidder may with written notice withdraw the signed Contract. Such notice of withdrawal shall be effective upon receipt of the notice by the Division.

The Notice-to-Proceed shall be issued within (5) days of the execution of the Contract by the Division. Should there be reason why the Notice-to-Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Division and Contractor. If the Notice-to-Proceed has not been issued within a thirty (30) day period or within a greater period mutually agreed upon, the Contractor may terminate the Contract without further liability on the part of either party.

The Contractor must attend a Preconstruction Conference at a time and place designated by the Division. This Preconstruction Conference will be held within ten (10) days from the receipt of the Notice-to-Proceed. Additionally the initial Construction Progress Schedule must be submitted to the Division within ten (10) days of the receipt of the Notice-to-Proceed. Should there be any reason why either the Preconstruction Conference cannot be held or the initial Construction Progress Schedule cannot be completed within such a period, the time may be extended by mutual agreement between the Division, Landowner, and Contractor. No work may commence on site prior to the Preconstruction Conference.

The Contractor shall commence work within fourteen (14) days of the date that the Notice-to-Proceed is received. Should there be any reason why the construction work on site cannot commence within this period, the time may be extended by mutual agreement between the Division and Contractor.

The Contract when executed shall be deemed to include the entire agreement between the parties; the Contractor shall not claim any modifications resulting from representation or promise made by representatives of the Division or other persons.

## 11 QUANTITIES

Estimated quantities shown on the proposal form are provided for the Contractor's information and for comparative purposes in awarding a construction contract. Such quantities are intended to represent the work shown on the Plans, measured as defined in the Construction Specifications. However, said quantities are only estimates and are subject to increases and/or decreases during construction of the project.

## 12 QUESTIONS AND ADDENDA

If any person contemplating submitting a bid for the proposed work, material or equipment is in doubt as to the true meaning of any part of the Plans, Construction Specifications, or other Contract Documents, that person may request an interpretation thereof. The person submitting the request will be responsible for its prompt delivery.

Questions concerning interpretation or intent of the Plans and Construction Specifications should be directed to the Engineer. All other questions concerning Contract Documents should be addressed to the Water Resource Bureau (515-242-6130).

Any oral interpretation given will be valid only if confirmed by written addendum. Information obtained from an officer, agent, or employee of the Division shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract. All interpretation requests should be addressed in writing and received no later than the date stipulated in the Notice-to-Bidders so that responses may be included in an Addendum prior to bid opening. The Division reserves the right to revise or amend the Bid Documents prior to the date set for receipt of bids. Such revisions and amendments, if any, will be announced by an addendum or addenda to the Bid Documents. Copies of such addenda will be furnished to all holders of the Bid Package. **Bidders are required to acknowledge receipt of all addenda by listing such addenda in the Proposal and Schedule of Prices (Document CC).**

## 13 PRECONSTRUCTION CONFERENCE

Following the award of Contract, the Contractor and all subcontractors will be required to attend a preconstruction meeting at a mutual time and place designated by the Division.

## 14 SUMMARY OF BID SUBMITTAL REQUIREMENTS

Before submitting a bid, be certain that all documents have been completed properly. Failure to complete and sign all documents and to comply with the requirements listed below can cause the bid not to be read.

A. Bid Security

The bid security must be in an envelope marked BID SECURITY and attached to the outside of the PROPOSAL AND SCHEDULE OF PRICES envelope. The bid security must be in the minimum amount of ten percent (10%) of the total base bid amount. Bid security must be either:

| | | |
|---|---|---|
| CERTIFIED CHECK OR CASHIER'S CHECK<br>*(Drawn on a bank in the State of Iowa, or a bank chartered under the laws of the United States)* | **OR** | SURETY BOND<br>*(Executed by a corporation authorized to contract as surety in the State of Iowa - Use Document EE attached)* |

B. Bid Documents

1. The following documents shall be completed, signed, and returned in the Bid envelope.

   a. PROPOSAL AND SCHEDULE OF PRICES (*Document CC*):
      - Identity of Bidder *(Name and Address)*
      - Name of Bidder, unit prices and extensions with total bid amount noted.
      - Affidavit notarizing signature of bidder.
      - Acknowledge receipt of any and all addendum.

*THE BID CANNOT BE READ IF ANY OF THESE DOCUMENTS ARE OMITTED FROM THE ENVELOPE, OR ARE NOT PROPERLY COMPLETED.*

NOTE: ALL BID DOCUMENTS MUST BE SUBMITTED AS PRINTED. NO ALTERATIONS, ADDITIONS, or DELETIONS ARE PERMITTED.

END OF DOCUMENT BB

Time and Date of Bid Opening: 3:00 p.m., February 17, 2015
Conference Room 2
Division of Soil Conservation – IDALS
502 East 9th Street
Des Moines, IA 50319-0050

Project Description and Location: MIT981810C CREP Wetland Project
Section 10, Township 98 North, Range 18 West
Mitchell County, Iowa

---

Proposal of _____
(Name of Bidder)

Located at _____ (  ) _____
(Address) (Telephone Number)

| Amount of Proposal Guarantee | Description of Work | Specified Completion Date | Liquidated Damages |
|---|---|---|---|
| 10% of Base Bid | All Work | December 15, 2015 | $14,652.00 |

The undersigned hereby agrees, if awarded the contract, to execute the proposed contract and to furnish satisfactory performance bond in an amount not less than one hundred percent (100%) of the contract award within fourteen (14) days after the date of approval of award of the contract, and to provide all supervision, labor, materials, and equipment required to complete the project designated above, for the prices hereinafter set forth, in strict compliance with the Contract Documents prepared by the Division.

The undersigned agrees, if awarded the contract, to commence the work after the Preconstruction Conference and within fourteen (14) calendar days of receipt of the Notice-to-Proceed. The undersigned further agrees to complete the work within the contract period, or to pay liquidated damages.

A proposal guarantee in the amount stipulated herein is included with this proposal, to be forfeited to the Division, if the undersigned fails or refuses to execute the contract and furnish satisfactory performance bond, if awarded the contract.

By _____
(Signed)

_____
(Title) (Date)

---

In executing this proposal, Bidder acknowledges receipt of Addenda Number _____ dated _____

In executing this proposal, Bidder acknowledges receipt of Addenda Number _____ dated _____

In executing this proposal, Bidder acknowledges receipt of Addenda Number _____ dated _____

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**THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND NOTARIZED, OR THIS BID WILL BE REJECTED**

## AFFIDAVIT

The signatory, being duly sworn, does depose and say that the undersigned is an authorized representative of:

_____
(Name of Firm)

Located at _____

hereinafter referred to as "Bidder" and does hereby affirm to have personal knowledge that said Bidder has thoroughly examined the Contract Documents, carefully prepared the proposal form, and has checked the same in detail before submitting; and that said Bidder, or the agents, officers, or employees thereof, have not, either directly or indirectly, entered into any agreement, participated in any collusion or fraud, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

_____
(Signed)

Subscribed and sworn to before me this _____ day

of _____, 20_____

_____
(Signed, Notary)

My Commission Expires _____, 20_____

# SCHEDULE OF PRICES

MIT981810C CREP Wetland Project
Contract No. 15-01
Section 10, Township 98 North, Range 18 West, Mitchell County, Iowa

**Name of Bidder:_____**

| Item Amount No. | Work or Material | Spec No. | Estimated Quantity | Unit | Unit Price | Total |
|---|---|---|---|---|---|---|
| 1 | Site Stripping | IA-1 | 5,265 | CY | | |
| 2 | Tree Removal | IA-1 | 1 | LS | | |
| 3 | Structure Seeding | IA-6 | 1.3 | AC | | |
| 4 | *Buffer Seeding | IA-6 | 28.2 | AC | | |
| 5 | Mobilization | IA-8 | 1 | LS | | |
| 6 | Steel Sheet Pile | IA-13 | 1,077 | SF | | |
| 7 | Tile Investigation & Removal | IA-21 | 1 | LS | | |
| 8 | Pool Excavation | IA-21 | 4,116 | CY | | |
| 9 | Earthfill | IA-23 | 3,545 | CY | | |
| 10 | Tile Berms | IA-23 | 360 | CY | | |
| 11 | Corrugated Plastic Tubing, 6" | IA-46 | 1,573 | LF | | |
| 12 | Corrugated Plastic Tubing, 8" | IA-46 | 200 | LF | | |
| 13 | Corrugated Plastic Tubing, 10" | IA-46 | 250 | LF | | |
| 14 | Corrugated Plastic Tubing, 12" | IA-46 | 200 | LF | | |
| 15 | Tile Outlet,8" | IA-51 | 20 | LF | | |
| 16 | Tile Outlet, 10" | IA-51 | 20 | LF | | |
| 17 | Tile Outlet, 12" | IA-51 | 20 | LF | | |
| 18 | Corrugated Metal Pipe, 24" | IA-51 | 131 | LF | | |
| 19 | Water Control Structure, 48" | IA-51 | 1 | LS | | |
| 20 | Riprap | IA-61 | 779 | TONS | | |
| 21 | Grout | IA-62 | 68 | CY | | |

**TOTAL BASE BID……$_____**

*Refer to Document GG, Section 7.02 for payment limitations for this bid item.

END OF DOCUMENT CC

*State of Iowa*
***DIVISION OF SOIL CONSERVATION***
*Iowa Department of Agriculture and Land Stewardship*

***THIS AGREEMENT,*** made this _____ day of _____, 2015, by and between the State of Iowa, acting through:

Division of Soil Conservation
Iowa Department of Agriculture and Land Stewardship

hereinafter called the ***DIVISION,*** and

_____
(Name of Company)

_____
(Address)

_____
(City, State, Zip)

hereinafter called the ***CONTRACTOR.***

***WITNESSETH:*** that the ***DIVISION*** agrees to pay the ***CONTRACTOR*** the contract price provided herein for the fulfillment of the work and performance of the covenants set forth herein, and the *CONTRACTOR* agrees to commence and complete the project described as follows:

MIT 981810C CREP Wetland Project Construction Contract
Section 10, Township 98 North, Range 18 West, Mitchell County, Iowa
Project ID: MIT981810C
Bid No. 15-01

for the sum of _____ _____/100 Dollars ($_____.__) and all extra work in connection therewith as modified by approved Change Orders and Amendments, all in accordance with the terms and conditions herein contained; and to furnish at the ***CONTRACTOR'S*** own proper cost and expense, all materials, equipment, supervision, labor, insurance, and other accessories and services necessary to construct and complete, in a workmanlike manner, ready for continuous operation, the above-mentioned project. The work shall be performed in accordance with the requirements and provisions of the following documents, all of which are made a part hereof and collectively evidence and constitute the contract:

1. Notice to Bidders *(Document AA)*
2. Instructions to Bidders *(Document BB)*
3. Proposal and Schedule of Prices *(Document CC)*
4. This Instrument *(Document DD)*
5. General Conditions *(Document FF)*
6. Special Conditions *(Document GG)*
7. Approved Change Orders *(Document HH)*
8. Approved Construction Contract Amendments *(Document II)*
9. Construction Specifications
10. Drawings, Sheet Numbers C.01 to C.07
11. Notice-of-Award *(Document LL)*
12. Notice-to-Proceed *(Document MM)*
13. Performance Bond *(Document NN)*

The ***CONTRACTOR*** shall commence the construction work within fourteen (14) days of the date that the Notice-to-Proceed is received. Should there be any reason why the construction work on site cannot commence within this period, the time may be extended by mutual agreement between the ***DIVISION*** and the ***CONTRACTOR***.

The ***CONTRACTOR*** shall schedule and attend a Preconstruction Conference with the ***DIVISION*** and the ***ENGINEER***. The Preconstruction Conference shall be held within ten (10) days from the receipt of the Notice-to-Proceed. Should there be any reason why the Preconstruction Conference cannot be held within this period, the time may be extended by mutual agreement between the ***DIVISION*** and the ***CONTRACTOR***. No work may commence on site prior to the Preconstruction Conference.

The ***CONTRACTOR*** hereby agrees to complete the work within the contract period, or to pay liquidated damages.

It is understood that the ***CONTRACTOR*** consents to the jurisdiction of the courts of Iowa to hear, determine and render judgments as to any controversy arising hereunder, and that this contract shall be governed by, and construed according to the laws of the State of Iowa.

***IN WITNESS WHEREOF***, the parties hereto have executed this Agreement, in the day and year first aforementioned.

***FOR THE DIVISION***

_____
(Division Director)

_____
(Date)

***FOR THE CONTRACTOR***

_____
(Company Representative)

_____
(Date)

_____
(Name of Company)

_____
(Address of Company)

_____
(City, State, Zip Code)

Seal if by a corporation

Identification Number
Soc. Sec. No. _____
or
Fed. ID No. _____

Iowa Division of Labor
Public Registration No. _____

END OF DOCUMENT DD

*State of Iowa*
***Division of Soil Conservation***
*Iowa Department of Agriculture and Land Stewardship*

***KNOW ALL MEN BY THESE PRESENTS:***

That we, _____

of _____ as

**PRINCIPAL,**

and _____

of _____ as

**SURETY(S),** are hereby held and firmly bound unto the State of Iowa in the penal sum of _____

_____ ____ /100 Dollars ($_____) for the payment, whereof, the said

**PRINCIPAL**

and **SURETY(S)** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the **PRINCIPAL** is herewith submitting to the Division of Soil Conservation-Iowa Department of Agriculture and Land Stewardship, hereinafter called the **DIVISION** its sealed contract for the following:

MIT981810C CREP Wetland Project
Section 10, Township 98 North, Range 18 West, Mitchell County, Iowa
Bid No. 15-01

***NOW THEREFORE,***
the conditions of this obligation are such that, if said proposal is rejected by the **DIVISION**, or if said proposal is accepted by the **DIVISION** and the **PRINCIPAL** shall enter into a contract in the form specified by the **DIVISION** in accordance with the terms of the Proposal and Schedule of Prices (Document CC) and shall furnish a bond for the faithful performance of said contract in the form specified by the **DIVISION**, this obligation shall be null and void. Otherwise it shall remain in full force and effect.

In the event that the said proposal is accepted by the **DIVISION** and the **PRINCIPAL** shall fail to enter into the contract as defined herein or shall fail to furnish the performance bond as noted above, within fourteen (14) days of the approval of the award, the **PRINCIPAL** and **SURETY(S)** agree to forfeit to the **DIVISION** the penal sum herein mentioned, it being understood that the liability of the SURETY(S) shall in no event exceed the penal sum or this obligation.

***IN WITNESS WHEREOF,***
the above bounden parties have executed this instrument under their several seals this _____ day of _____, 2015, the name and corporate seal of each party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

| **PRINCIPAL** | **SURETY** |
|---|---|
| By_____ | By_____ |
| _____ | |
| _____ | |
| _____ | |

**If a partnership, all partners must sign.**

END OF DOCUMENT EE

# GENERAL CONDITIONS

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## SECTION 1 - DEFINITIONS

**1-01 GENERAL:** In the interpretation and construction of these Contract Documents, or in any documents or instruments dealing with the work governed by these Contract Documents, the following words, terms and abbreviations, or pronouns in place of them, shall each be construed as defined below. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

Omissions of words or phrases such as "the Contractor shall," "in conformance with," "shall be," "as noted on the Plans," "according to the Plans," "a," "an," "the," and "all" are intentional, and Contractor must supply omitted words and phrases by inference.

**1-02 CONTRACT DOCUMENTS:** Those documents listed in the Construction Contract *(Document DD)*, including all additions, deletions and modifications incorporated therein before the execution of the Contract. These documents are as follows:

1. Notice to Bidders *(Document AA)*.
2. Instructions to Bidders *(Document BB)*.
3. Proposal and Schedule of Prices *(Document CC)*.
4. Construction Contract *(Document DD)*.
5. Proposal Guarantee Bond (Bid Bond) *(Document EE)*.
6. This Instrument - General Conditions *(Document FF)*.
7. Special Conditions *(Document GG)*.
8. Approved Change Orders *(Document HH)*.
9. Approved Construction Contract Amendments (*Document II)*.
10. Construction Specifications.
11. Drawings, Sheet Numbers C.01 to C.07.
12. Notice-of-Award *(Document LL)*.
13. Notice-to-Proceed *(Document MM)*.
14. Performance Bond *(NN)*.
15. Addendum.

**1-03 DIVISION:** Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship, State of Iowa.

**1-04 ENGINEER:** As defined in Special Conditions.

**1-05 WORK OR PROJECT:** Work to be done and equipment, supplies, and materials to be furnished under the Contract, General Conditions, Special Conditions, Construction Specifications, Plans, Addenda, and Modifications to these Contract Documents issued subsequent to their initial printing, unless some other meaning is indicated by the context.

**1-06 SPECIFICATIONS:** The directions and requirements of the detailed Construction Specifications as contained herein, as supplemented by such detailed specification requirements as may be provided, pertaining to the manner of performing the work or the quantities and quality of materials to be furnished under the Contract.

**1-07 SPECIAL CONDITIONS:** The Special Conditions are contract requirements peculiar to the project which are not otherwise thoroughly or satisfactorily detailed and set forth in these General Conditions.

**1-08 PLANS:** The official drawings, profiles, typical cross sections and supplemental drawings, or reproductions thereof, approved by Engineer, which show the location, character, dimensions and details of work to be performed. Any and all such drawings, as listed in the Special Conditions, are to be considered as a part of the Contract Documents whether attached to the Contract Documents or separate therefrom.

**1-09 BIDDER:** An individual, firm, co-partnership or corporation, or combination thereof, submitting a Proposal for the work contemplated and acting directly or through a duly authorized representative.

**1-10 PROPOSAL:** The written offer or copy thereof of a Bidder to perform the work described by the Contract Documents. This written offer shall be made out and submitted on the prescribed Proposal and Schedule of Prices *(Document CC)*, properly signed and guaranteed. A complete Proposal shall contain all of the properly completed and signed documents as described in Article 13 of the Instructions-to-Bidders *(Document BB)*.

**1-11 PROPOSAL GUARANTEE:** Bid security accompanying the Proposal submitted by the Bidder, as a guarantee that the Bidder shall enter into Contract with the Division for performance of the work and furnish required insurance forms and bond or bonds if the Contract is awarded to the Bidder, in accordance with the Instructions-to-Bidders *(Document BB)*.

**1-12 CONTRACT:** The written agreement (*Document DD*) covering the performance of the work described in the Contract Documents including all signed Change Orders and Amendments thereto and all general and special provisions pertaining to the work or materials therefor.

**1-13 AMENDMENT:** The written agreement covering the performance of changed work from the original Contract Documents which meets one or more of the following criteria:

1. The total cost of the Contract, at the time of Contract award, is increased or decreased by more than twenty percent (20%);

2. Any one major Contract bid item is increased or decreased by more than twenty percent (20%);

3. The Contract completion date is revised;

4. Contractor requests full payment when ninety-five percent (95%) or more of the total Contract (as modified by signed Amendments and Change Orders) has been completed and approved for final acceptance by Division and the remaining Contract work cannot proceed (due to conditions beyond the control of Contractor) for a period of more than sixty (60) days;

5. Work outside the original scope of the Contract Documents is added;

6. Both parties agree an Amendment is necessary to address material changed to the original scope of the Contract.

For criteria "2." above, a major item is defined as any bid item, with the exception of those listed exceptions or as designated in the Special Conditions as exceptions, for which Contractor's unit price contained in the Proposal and Schedule of Prices (*Document CC*) amounts to ten percent (10%) or more of the cost of the original Contract award.

Only Amendments duly signed and executed by both Contractor and Division, with written consent of the Surety, constitute authorized modifications to the Contract.

**1-14 CHANGE ORDER:** A written order to Contractor, signed by Division, ordering a change in the work originally shown by the Contract Documents, which has been found necessary by the Division. Only Change Orders duly signed and executed by Division constitute authorized modifications of the Contract.

**1-15 CONTRACTOR:** The individual, firm, partnership or corporation, and any heirs, executors, administrators, successors or assigns, or the lawful agent of any such individual, firm, partnership, or corporation, or the surety under the contract bond, constituting one of the principals to the Contract and undertaking to perform the work herein specified. Where any pronoun is used as referring to the word "Contractor" it shall mean Contractor as defined above.

**1-16 SUBCONTRACTOR:** Any person, firm, partnership or corporation who under a direct contract with Contractor acts for or on behalf of Contractor in executing any part of the Contract, but not including one who merely furnishes material.

**1-17 PERFORMANCE BOND:** The approved form of security furnished by Contractor and Contractor's surety, as required in the Contract Documents *(see Document NN)*, which shall be conditioned upon Contractor's and Contractor's Surety's promise to faithfully perform all provisions of the Contract, and complete the work in accordance with the Contract Documents, including making full payment for labor and materials used in the work.

**1-18 SURETY:** The person, firm or corporation who executes Contractor's Performance Bond.

**1-19 WRITTEN NOTICE:** Written notice shall be considered served when delivered in person or sent by registered mail to the individual, firm, partnership or corporation, or to the last known business address of such individual, firm, partnership, or corporation known to the person who serves the notice. It shall be the duty of each party to advise the other parties to the Contract of any change in business address prior to completion of the Contract.

**1-20 GOVERNMENTAL AGENCY:** Any governmental unit having jurisdiction.

**1-21 ACT OF GOD:** Means an earthquake, flood, cyclone or other cataclysmic phenomenon of nature. Rain, wind, flood or any other natural phenomenon of normal intensity for the locality shall not be construed as an Act of God.

**1-22 DAYS:** Unless otherwise designated, days as used in the Contract Documents shall be understood to mean calendar days.

**1-23 WORKING DAYS:** Any day weather conditions or other conditions allow Contractor to pursue any major item of work, excluding Sundays and holidays.

**1-24 TIME OF COMPLETION:** Time of completion of all work involved in this project shall be as specified in the Special Conditions. See also Paragraph 3-21.

**1-25 ALTERNATES:** Alternates are defined as alternate products, materials, equipment, installations or systems for the work, which may, at Division's option and under terms established by the Contract Documents, be selected and recorded in the Contract to either supplement or displace corresponding basic requirements of the Plans and Construction Specifications. Alternates may or may not substantially change the scope and general character of the work, and should not be confused with "allowances", "unit prices", "change orders", "substitutions", and other similar provisions.

**1-26 COMMON TERMS:** Certain terms are used in the Contract Documents and are defined generally in this Section. Definitions in this Section are not necessarily either complete or exclusive, but are general in nature and intended to add clarification where more explicit definitions are not stated in the Construction Specifications.

A. ***Indicated:*** The term "indicated" is a cross-reference to details, notes, or schedules on the Plans; to other paragraphs or schedules in the Construction Specifications; and to similar requirements in the Contract Documents. Where terms such as "shown," "noted," "scheduled," and "specified" are used in lieu of "indicated," for the purpose of helping the reader locate cross-reference, and no limitation of location is intended except as specifically noted.

B. ***Directed, Requested, etc.:*** Where not otherwise further defined, terms such as "directed," "requested," "authorized," "selected," "approved," "required," "accepted," and "permitted", mean "directed by the Division or Engineer," etc. However, no such implied meaning shall be interpreted to extend Division's or Engineer's responsibility to Contractor's responsibility for construction supervision, safety, or means and methods of construction.

C. ***Approve:*** Where used in conjunction with Division's or Engineer's response to submittals, requests, applications, inquiries, reports and claims by Contractor, the meaning of the term "approved" will be held to limitations of Division's or Engineer's responsibilities and duties as specified in General and Special Conditions. In no event shall "approval" by Division or Engineer be interpreted as releasing Contractor from responsibilities to fulfill requirements of the Contract Documents.

D. ***Furnish:*** Except as otherwise or further defined, the term "furnish" shall mean to supply and deliver to project site, ready for unloading, unpacking, assembly, installation, etc., as applicable in each instance.

E. ***Install:*** Except as otherwise or further defined in greater detail, the term "install" is used to describe operations at project site including unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning and similar operations, as applicable in each instance.

F. ***Provide:*** Except as otherwise or further defined in greater detail, the term "provide" means to furnish and install, complete and ready for intended use, as applicable in each instance.

G. ***Installer:*** The entity (person or firm) engaged by Contractor or its subcontractor or sub-subcontractor for the performance of a particular unit of work at the project site, including installation, erection, application and similar required operations. Installers shall be experts in operations in which they are engaged to perform.

H. ***Testing Laboratory:*** An independent entity engaged to perform specific inspections or tests of the work, either at project site or elsewhere, and to report and (if required) interpret results of those inspections or tests.

**1-27 ABBREVIATIONS:** The following abbreviations as referenced in the Contract Documents are defined to mean the associations noted below:

| | |
|---|---|
| **SWCD** | Soil and Water Conservation District |
| **DSC** | Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship |
| **NRCS** | Natural Resources Conservation Service, USDA |
| **ENGINEER** | Engineer (See Special Conditions for definition) |
| **FSA** | Farm Service Agency |

## SECTION 2 - PLANS, SPECIFICATIONS AND RELATED DATA

**2-01 INTENT OF PLANS AND SPECIFICATIONS:** The intent of the Contract Documents is that Contractor furnish all supervision, labor, materials, equipment, and transportation necessary for proper execution of the work unless otherwise specifically noted. Contractor shall complete all work shown on the Plans and described in the Contract Documents and all incidental work considered necessary to complete the project in an acceptable manner, or to fully complete the work or improvement, ready for use, occupancy and operation by Division and/or Landowner.

Any minor work not specifically mentioned in the Contract Documents or shown on the Plans, but reasonably inferable as necessary for the proper completion of the work, shall be considered as being a part of and included in the Contract and shall be executed in a proper manner. Contractor shall not be entitled to extra or additional compensation for such work.

It is further the intention of the Contract Documents to set forth requirements of performance, type of equipment and structures, and standards of materials and construction, to require new material and equipment unless otherwise indicated, and to require complete performance of the work without specific reference to any minor component part. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class or trade of the Contract Documents be supplied unless expressly so noted. Materials or work described in words, which as applied have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

Whenever any article, material, or equipment is defined in the Contract Documents by describing a proprietary product or by using the name of a manufacturer or vendor, the term "or equal," if not inserted shall be implied. The specific article, material, or equipment mentioned shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired and shall not be construed in such manner as to exclude manufacturers' products of comparable quality as approved by Division.

**2-02 CONFLICT:** In the event of conflict between the Plans, Construction Specifications, or other Contract Documents, the level of precedence shall be as provided below. In the event of conflict within a Contract Document, the most stringent provision of that Contract Document is intended and shall control.

A. Special Conditions over General Conditions.

B. Indicated dimensions over scaled dimensions.

C. Large scale details over small scale details, Plans, and elevations.

D. Construction Specifications over Plans.

E. Addenda over Construction Specifications and Plans.

F. Approved Change Orders and Contract Amendments over prior Contract Documents to the extent of inconsistency with other Contract Documents.

**2-03 DISCREPANCIES IN PLANS:** Any discrepancies found between individual Contract Documents and site conditions, or any errors, omissions or ambiguities in the Contract Documents shall be immediately reported to the Division.

Questions as to meaning of the Contract Documents shall be interpreted by Division in consultation with Engineer. Division's decision shall be final and binding on all parties concerned. Division shall provide Contractor with such information as may be required to show revised or additional details of construction. Contractor shall not be allowed to take advantage of any errors or omissions in the Contract Documents. Division shall provide full information when errors or omissions are discovered. Any work done by Contractor, after Contractor's discovery of such discrepancies, errors, or omissions and prior to a decision by Division, shall be at Contractor's risk.

**2-04 ADEQUACY OF PLANS AND SPECIFICATIONS:** Responsibility for adequacy of the design and sufficiency of the Contract Documents shall be borne by the Division. The complete requirements of the work to be performed under the Contract shall be set forth in the Contract Documents supplied by Division.

**2-05 PLANS AND SPECIFICATIONS AT JOB SITE:** One complete record set of all Contract Documents shall be maintained by Contractor at the job site and shall be available to Division at all times. Contractor shall maintain a set of the Plans and shop drawings in clean, undamaged condition, with mark-up and actual installation which vary from the work as originally shown. Record documents shall not be used for construction purposes and shall be protected from deterioration. Contractor shall provide access to record documents for Division's reference during all working hours.

Specific requirements for record documents are indicated below. Other requirements are indicated in the Construction Specifications.

A. **RECORD PLAN**

1. Mark whichever drawing is most capable of showing "field" condition fully and accurately; however, where shop drawings are used for mark-up, record a cross-reference at corresponding location on working drawings.

2. Mark up new information which is recognized to be of importance to Division, but was for some reason not shown on either contract drawings or shop drawings.

3. Give particular attention to concealed work which would be difficult to measure and record at a later date.

4. Note related change-order numbers where applicable.

B. **RECORD CONSTRUCTION SPECIFICATIONS**

1. Give particular attention to substitutions, selection of options, and similar information on work where it is concealed or cannot otherwise be readily discerned at a later date by direct observation.

2. Note related record drawing information and product data, where applicable.

C. **RECORD SURVEY NOTES**

Maintain a minimum of two copies of all construction survey notes continuously throughout project completion. One copy of all such notes shall be furnished to the Division immediately (daily) as field construction surveys are completed by Contractor-retained survey personnel. A copy of these notes shall be preserved by Contractor and submitted to Division along with other record document submittals prior to final project acceptance.

**2-06 DIMENSIONS:** Figured dimensions on the Plans shall be used in preference to scaling the drawings. Where the work of Contractor is affected by finish dimensions or manufacturer's equipment, these shall be determined by Contractor at the site, and Contractor shall assume responsibility therefor.

## SECTION 3 - ENGINEER-DIVISION-CONTRACTOR RELATIONS

**3-01 - PROJECT MEETINGS:** Except as provided below for the Preconstruction Meeting, Progress Meetings may be held as necessary to address specific problems, issues or questions. Division shall coordinate with Engineer and Contractor to establish acceptable schedules for the Preconstruction Meeting, and any Progress Meetings. All project meetings shall be held at the project site unless a different location is identified and agreed upon in advance by the parties.

The minimum project meeting and preconstruction meeting agenda requirements are detailed below. The Contractor shall also meet the attendance requirements outlined below.

A. **MINIMUM AGENDA**

1. Identify problems which impede planned progress.
2. Develop corrective measures and procedures to regain planned schedule.
3. Identify anticipated quantity differences in any pay item, e.g. shortages, overruns, etc.
4. Identify and address any landowner concerns made known to Division, Engineer, or Contractor.
5. Complete other current business.
6. Review monthly pay estimate.

B. **ATTENDANCE**

1. To the maximum extent practicable, the same person or persons shall be assigned to represent Contractor at the project meetings held throughout progress of the work. Contractor's Superintendent shall be present at all meetings. In the Superintendent's absence, Contractor shall provided a representative with the required authority to commit Contractor to any decisions made at the meeting.
2. Subcontractors, material suppliers, and others may be invited to attend those project meetings in which their aspect of the work is involved.

C. **MINUTES**

1. Minutes of all meetings shall be compiled, published, and distributed by the Division. The Division shall furnish one copy to Contractor's home office, one copy to Contractor's Superintendent. Recipients of copies may make and distribute other copies as necessary.
2. Unless published minutes are clarified in writing prior to the next scheduled meeting, they shall be accepted as properly stating the activities and decisions of the meeting. Persons wishing to amend or clarify published minutes shall reproduce and distribute copies of the supplemental information to all indicated recipients of the particular set of minutes. Clarifications and amendments to minutes shall be settled as priority portion of "old business" at the next regularly scheduled meeting.

D. **PRECONSTRUCTION MEETING**

A Preconstruction Meeting shall be held within ten (10) days of Division issuance of the Notice-to-Proceed, and prior to commencement of work at the site. The time and place shall be mutually agreed upon by Division, Engineer, and Contractor. Contractor shall assure the attendance of an authorized representative of Contractor, Contractor's Superintendent for the project, major subcontractors, and if deemed advisable, material suppliers whose performance is considered critical to the success of the project. Division and Engineer shall also be in attendance. Division shall be responsible for advising other

interested parties (e.g. landowners and governmental agencies) and requesting their attendance when their presence is deemed advisable by the Engineer or Division.

The following items, at a minimum, shall be discussed at the Preconstruction Conference:

1. Organizational arrangement of Contractor's forces and personnel, and those of subcontractors and materials suppliers

2. Channels and procedures for communication;

3. Construction schedule, including sequence of critical work;

4. Contract Documents, including distribution of required copies of original documents and revisions;

5. Processing of Shop Drawings, submittals and other data submitted to Engineer for review;

6. Processing of bulletins, field decisions, Change Orders, Contract Amendments, and Applications for Payment;

7. Rules and regulations governing performance of the work;

8. Temporary construction facilities and controls;

9. Procedures for safety and first aid, security, quality control, housekeeping, and related matters.

**3-02 SUSPENSION OF WORK BY DIVISION OR ENGINEER:** When, in the judgment of Division or Engineer, unfavorable weather or any other condition makes it impractical to secure first-class results in accordance with the Contract Documents, or Contractor fails to carry out the provisions of the Contract Documents or supply materials meeting the requirements of the Contract Documents, Division or Engineer may issue to Contractor a written order to suspend work on all or any part of the work. When conditions are again favorable for prosecution of the work, Division or Engineer shall issue to Contractor a written order to resume the suspended work. Orders to suspend work shall not be written for intermittent shutdowns due to weather condition unless the suspension of work is for an extended period of time. Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the work during the time it is closed down.

Suspension of the work by Engineer shall not furnish any grounds for claims by Contractor for damages or extra compensation. The period of such suspension may be considered in determining the revised date for completion as hereinafter provided. Contractor shall not suspend work under the Contract, except as permitted in Paragraph 3-04, without the written order of Division or Engineer as stated in the preceding paragraph. Contractor shall be required to work a sufficient number of hours per day and days per week in order to complete the project on or before the completion date set forth in the Contract. Questions as to the desirability of discontinuing any portion of the work by reason of unfavorable weather conditions shall be determined by Division or Engineer.

**3-03 SUSPENSION OF WORK BY DIVISION:** Division may at any time suspend the work, or any part thereof, by giving ten (10) days' notice to Contractor in writing. The work shall be resumed by Contractor within ten (10) days after the date fixed in the written notice from Division to Contractor to do so.

If the work, or any part thereof, shall be stopped by the notice in writing aforesaid, and if Division does not give notice in writing to Contractor to resume work at a date within a year of the date fixed in the written notice to suspend, then Contractor may abandon that portion of the work so suspended, and Contractor shall be entitled to the estimates and payments for all work done on the portions so abandoned, if any. See also Paragraph 7-09.

If suspension of all or part of the work causes additional expense not due to the fault or negligence of Contractor, Division shall reimburse Contractor for the additional expense incurred due to suspension of the work. Claims for such compensation, with complete substantiating records, shall be filed with Division within ten (10) days after the date of order to resume work in order to receive consideration. This paragraph shall not be construed as entitling Contractor to compensation for delays due to inclement weather, failure to furnish additional surety or sureties specified herein, suspension made at the request of Contractor, or for any other delay provided for in the Contract Documents.

**3-04 SUSPENSION OF WORK BY CONTRACTOR:** Contractor may suspend work upon ten (10) days' written notice to Division and Engineer, for any of the following reasons:

1. If an order of any court or other public authority caused the work to be stopped or suspended for a period of ninety (90) days through no act or fault of Contractor or Contractor's employees.

2. If Division fails to act upon any Request for Payment, in the manner set forth in Paragraph 7-05, within thirty (30) days after the date on which Division receives Engineer approved Request for Payment (within sixty (60) days for the initial Request for Payment).

**3-05 EXAMINATION OF COMPLETED WORK:** At the request of Division or Engineer, Contractor at any time before acceptance of the work shall remove or uncover such portions of the finished work as may be directed. After examination, Contractor shall restore said portions of the work to the standard required by the Contract Documents. In the event work thus exposed or examined proves acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be paid for as Extra Work in accordance with requirements of Paragraph 7-03. In the event work so exposed or examined proves unacceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be at Contractor's expense.

**3-06 CONTRACTOR'S SUPERINTENDENCE:** Contractor shall retain a qualified Superintendent to provide efficient supervision of the work covered by the Contract Documents, until its completion. The Superintendent shall have full authority to act on behalf of Contractor, and all directions given to the superintendent shall be considered given to Contractor.

**3-07 CONTRACTOR'S EMPLOYEES:** Incompetent, incorrigible, or otherwise objectionable employees shall be dismissed from the project by Contractor or Contractor's representative at the request of Division or Engineer, and such persons shall not be permitted to return to the project without the written consent of the objecting party.

A. Neither Contractor nor Subcontractors shall employ any person whose physical or mental condition is such that his or her employment could reasonably be expected to endanger said employee, Contractor, other employees, or any other person on the project.

B. Contractor ***shall not***:

1. Discharge from employment or refuse to hire any individual because of race, creed, color, sex, national origin, ancestry, religion, economic status, age, disabilities, experience or education, political opinions, or affiliations.

2. Discriminate against any individual in terms, conditions, or privileges of employment because of race, creed, color, sex, national origin, ancestry, religion, economic status, age, disabilities, experience or education, political opinions, or affiliations.

Contractor agrees to include clauses in any subcontracts entered into for work covered by the Contract Documents prohibiting the practices described in Paragraph 3-07 B.1. and B.2.

**3-08 ENGINEER:** Engineer may be requested by the Division to assist in assuring that the work is performed in accordance with the Contract Documents.

Engineer shall have authority to condemn and reject defective work and materials, subject to the final decision of Division.

Engineer shall have no authority to permit deviation from the Contract Documents, and Contractor shall be liable for any deviation made without a written order from Division.
See also Paragraphs 3-03 and 3-04.

**3-09 DIVISION LAND RIGHTS:** Division shall be responsible for obtaining all necessary land rights, including rights-of-way for construction access as specified, with respect to lands upon which work under the Contract is to be performed. Any delay in obtaining land rights by Division shall be deemed proper cause for consideration of adjustment of the Contract amount and/or the time of completion.

**3-10 CONTRACTOR LAND RIGHTS:** Contractor shall confine equipment, materials, and operations, to those areas described in the Contract Documents. Any additional land rights Contractor deems necessary for temporary construction facilities or for storage of materials shall be provided by Contractor with no liability to Division.

**3-11 ENTRY ON PROPERTY:** Contractor shall not enter upon public or private property outside of the easement area for any purpose without first obtaining permission from the appropriate landowner or official, and shall be responsible for the preservation of all property along and adjacent to the street and/or right-of way, and shall use every precaution necessary to prevent damage thereto. Contractor shall take suitable precautions to prevent damage to pipes, conduits, and other underground structures, and shall take all reasonable steps to prevent damage and disturbance to monuments and property markers until an authorized agent has witnessed or otherwise referenced their location. Monuments and property markers shall not be removed until Division has been afforded the opportunity to independently observe and note the type and location of the monument or marker and to verify landowner's concurrence for removal.

**3-12 REMOVAL OF CONSTRUCTION EQUIPMENT, TOOLS AND SUPPLIES:** Upon termination of this Contract, and before final acceptance of the work by Division, Contractor shall remove from the project site all equipment, tools, supplies, excess materials, and wastes generated from the work. In the event Contractor fails to remove such items, Division or its representative shall have the right to remove them unless an agreement is made between Contractor and Landowner. See also Paragraph 7-10.

**3-13 DIVISION'S RIGHT TO CORRECT DEFICIENCIES:** In the event Contractor neglects to prosecute the work properly, or fails to perform any provision of this Contract, Division, after ten (10) days' written notice to Contractor, may without prejudice to any other remedy Contractor may have, make good such deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor.

See also Paragraph 7-10.

**3-14 DIVISION'S RIGHT TO TERMINATE CONTRACT AND COMPLETE THE WORK:** Division may, without prejudice to any other right or remedy, and after giving Contractor seven (7) days' written notice, terminate the employment of Contractor and take possession of the premises and all equipment, and materials thereon and finish the work by whatever method deemed expedient in the event of any one or more of the following:

1. Contractor is adjudged a bankrupt; or
2. Contractor makes a general assignment for the benefit of Contractor's creditors; or
3. A receiver is appointed on account of insolvency; or
4. Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials; or
5. Contractor fails to make prompt payment to subcontractors or for materials or labor; or
6. Contractor persistently disregards laws, ordinances, or instructions of Division or
7. Contractor is otherwise guilty of substantial violations of any provisions of the Contract.

Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price exceeds the cost of finishing the work, including compensation for additional material, administrative services, and Designing fees, such excess shall be paid to Contractor. If the costs exceed the unpaid balance, Contractor shall pay the difference to Division.

See also Paragraph 7-11.

**3-15 TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW:** Not withstanding anything in this Agreement to the contrary, and subject to the limitations, conditions, and procedures set forth below, Division shall have the right to terminate this Agreement without penalty by giving sixty (60) days written notice to Contractor as a result of any of the following:

1. The legislature or governor fail to appropriate funds sufficient to allow Division to operate as required and to fulfill its obligation under this Agreement;
2. If funds are de-appropriated or not allocated;
3. If Division’s authorization to operate is withdrawn or there is a material alteration in the programs administered by the Division.
4. If Division’s duties are substantially modified.

Division agrees to make reasonable requests for the necessary funds. If any appropriation to cover the costs of this Agreement becomes available within sixty (60) days subsequent to termination under this clause, the Division agrees to re-enter the Agreement with Contractor, if Contractor is still available to provide staff to complete the services under the same provisions, terms, and conditions as the original Agreement.

**3-16 CONTRACTOR'S RIGHT TO TERMINATE CONTRACT:** Contractor may terminate this Contract upon ten (10) days' written notice to Division if an order of any court or other public authority causes the work to be stopped or suspended for a period of ninety (90) days through no act or fault of Contractor or Contractor's employees. See also Paragraph 7-12.

**3-17 SEPARATE CONTRACTS:** Separate contracts may be let with other contractors in connection with the work of Contractor. Contractor shall cooperate with other contractors with regard to storage of materials and execution of their work. Contractor shall report to Division any irregularities which Contractor may detect which will not permit completion of the work in a satisfactory manner. Contractor shall not be responsible for defects which develop due to the work performed under separate contracts after the work is completed. Contractor shall report to Division immediately any difference between completed work by others and the Contract Documents.

**3-18 SUBCONTRACTS:** At the time specified by the Contract Documents or when requested by Division, Contractor shall submit in writing to Division for approval the names of the Subcontractors proposed for the work. Subcontractors may not be changed or substituted without Division approval. Contractor shall be responsible to Division for the acts and omissions of its Subcontractors, and their direct and indirect employees, to the same extent as Contractor is responsible for acts and omissions of its employees. The Contract Documents shall not be construed as creating any contractual relationship between any Subcontractor and Division.

Contractor agrees to bind every Subcontractor to the terms of the Contract Documents.

Contractor shall not assign, sublet, or transfer the whole or any part of the work herein specified without the written consent of Division. No such assignment, sublet, or transfer shall in any way relieve Contractor from any of the responsibilities assumed herein.

**3-19 WORK DURING AN EMERGENCY:** Contractor shall perform any work, and furnish and install any materials and equipment necessary, during an emergency endangering life or property. In all cases, Contractor shall notify Division of the emergency as soon as practicable, but shall not wait for instructions before proceeding to properly protect both life and property. In cases where Contractor cannot or does not meet the emergency, as determined by Division, Division may take such action as it deems necessary to address the emergency.

**3-20 ORAL AGREEMENTS:** No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than waiver or modification agreed to in writing, signed by the parties to be bound.

**3-21 CONSTRUCTION SCHEDULE:** After being awarded the Contract, Contractor shall immediately prepare and submit to Division for acceptance a construction progress schedule which shall provide for completion of the project within the time specified. Adequate equipment and forces shall be made available by Contractor to start work within fourteen (14) days after the Notice-to-Proceed is received unless otherwise mutually agreed to by the Contractor, Division, and Landowner. The proposed construction progress schedule shall be submitted to Division within a period not to exceed ten (10) days from receipt of the Notice-to-Proceed. No pay requests by Contractor shall be processed until the proposed construction progress schedule has been submitted to, and approved by Division.

Contractor shall coordinate all work to be accomplished in completing this project, including preparation and updating of completion schedules, coordination of work of all Subcontractors, and complete control of site utilization, from the beginning of construction activity through the warranty period following final acceptance of the Project by Division. Contractor shall keep Division and Engineer continually advised regarding the scheduling of construction activities.

A. **CONSTRUCTION PROGRESS SCHEDULE REQUIREMENTS:** Contractor shall include, at a minimum, the following items in each construction progress schedule.

1. The complete sequence of construction by major activity, identifying work of separate stages, and other logically grouped activities.

2. The time of start and completion of each work component.

3. All critical dates, including beginning and ending seeding period dates, and required waiting periods, (e.g. lime-mulch reaction time period).

4. The projected percentage of completion for each bid item of work at the time of submittal of each construction progress schedule.

5. Dates for all submittals required in the Construction Specifications.

6. All projected product delivery dates.

B. **SUBMITTAL OF CONSTRUCTION PROGRESS SCHEDULE:** Contractor shall submit the initial construction progress schedule within ten (10) days of the receipt of the Notice-to-Proceed. Contractor shall submit updated construction progress schedules at each monthly Progress Meeting and with all requests for Progress Payment. This requirement does not apply during approved shut down periods.

**3-22 DELAYS AND EXTENSION OF CONTRACT TIME:** Delays caused by injunction or legal actions, "Acts of God" as determined herein, or other causes beyond the control of Contractor, may entitle Contractor to an extension of time within which to complete the work.

All applications for extension of time shall be submitted to Division by Contractor within ten (10) days of the occurrence of such delay, and shall state reasons for the request.

No extension of time shall be deemed valid unless included in a duly signed and executed Contract or Amendment.

**3-23 SUBMITTALS:** Contractor shall deliver all submittals to the Division prior to performing work under Construction Specifications requiring submittals. The Division shall review the submittal for adequacy and will notify Contractor accordingly.

A. **GENERAL REQUIREMENTS:** Contractor shall meet the following requirements for all submittals:

1. Consecutively number and date all submittals;

2. Label with the Project name;

3. Include Contractor's name;

4. Include all pertinent subcontractor, and major suppliers names;

5. Identify pertinent Plan Sheet and detail numbers;

6. Include Construction Specification Section number, as appropriate;

7. Include Contractor's stamp, initialed or signed, indicating review.

B. **CERTIFICATES:** Contractor shall submit all certificates of compliance with the requirements of the Contract Documents as referenced in Construction Specifications. All certificates shall be sworn to by Contractor, and, where applicable, by the manufacturer, supplier, subcontractor, acceptable laboratory or testing authority, etc.

**3-24 SEVERABILITY:** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

## SECTION 4 - SCOPE OF WORK

**4-01 ADDITIONAL INSTRUCTIONS:** If any Contract Documents are not sufficiently clear to permit Contractor to proceed with the work, the Division, may upon their own initiative or upon the request of Contractor, furnish additional written instructions, together with additional drawings as may be necessary. Requests by Contractor must be made sufficiently far in advance to permit preparation of instructions and drawings by the Division before commencement of the work.

For purposes of avoiding delays in the preparation of any additional instructions and drawings, the Division and Contractor shall jointly prepare a schedule showing the time for commencement of the work to be included in them and the time by which Contractor shall furnish the shop drawings necessary for their preparation. No work shall be performed by Contractor without proper drawings or instructions. Contractor shall at Contractor's expense, replace any wrongly executed work.

**4-02 INCREASED OR DECREASED QUANTITIES OF BID WORK:** Division reserves the right to make such alterations in bid item quantities included in the Proposal and Schedule of Prices (*Document CC*) as authorized by law and deemed necessary by Division. Such alterations shall be made by Change Order or Amendment approved by Division, and shall not be deemed a waiver of any conditions of the Contract Documents or an invalidation of any of the provisions thereof; provided, however, that the execution of an Amendment to the Contract acceptable to all parties of the Contract shall be necessary before any alteration is made which meets the definition in Paragraph 1-13 above.

When an alteration requires the execution of a Contract Amendment, the Amendment shall be fully executed before any work on the alteration is started.

See Paragraph 7-03 for method of payment.

**4-03 EXTRA WORK:** Any work outside the scope of the original bid item work made necessary by alteration of or additions to the Contract Documents, or by other reasons for which no price is provided in the Contract, shall be performed by Contractor as directed by Division and Contractor shall be compensated therefore as provided under Paragraph 7-03.

Extra work which by reason of its character or extent is covered by a Contract Amendment between Division and Contractor, shall have the written consent of the surety on the bond, but extra work and change orders not covered by an amendment to the Contract shall not require the consent of the surety.

See also Paragraph 4-02.

**4-04 CHANGED CONDITIONS:** In the event Contractor encounters subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract, which changed or unusual conditions will be considered by Contractor as the basis for a claim for extra compensation, Contractor shall promptly, and before any such conditions are disturbed, notify the Division in writing, of the alleged conditions, including an expected cost and/or time impact to the Contract.

Contractor shall be deemed to have waived any claim or claims for extra compensation in any manner arising out of the changed or unusual conditions in the event Contractor fails to provide Division written notice prior to disturbing the conditions.

Division and Engineer shall investigate and issue decisions on claims within a reasonable time. Engineer’s decision, in consultation with Division, shall cover any changes in time, money, or both.

If Division determines conditions justify a claim for additional compensation, Division shall provide for additional payment for the particular phase of work in question by negotiated agreement with Contractor upon existing and/or new unit Contract prices, by cost plus an agreed percentage, or by any other equitable arrangement mutually agreed upon by Division and Contractor, and consented to in writing by the bond Surety. In any event, Contractor shall not be relieved, unless permitted by Division, from the obligation of resuming construction operations pending decision as to the validity of a claim, or pending the execution of a negotiated agreement to cover additional costs, if the claim is recognized under the provisions of this Paragraph of the General Conditions.

**4-05 SALVAGE**: Unless otherwise indicated in the Contract Documents, all castings, pipe and other material taken from the project site, except fencing, shall be the property of Contractor.

**4-06 CLEANUP:** Contractor shall at Contractor's expense remove and properly dispose of refuse and unused materials of any kind resulting from the work. Upon failure to do so within seventy-two (72) hours after request by the Division the work may be done by Division and the cost thereof charged to Contractor and deducted from the final estimate.
See also Paragraph 7-10.

## SECTION 5 - MATERIALS AND WORKMANSHIP

**5-01 QUALITY OF EQUIPMENT AND MATERIALS:** Contractor shall maintain quality control over subcontractors, suppliers, manufacturers, products, services, site conditions, and workmanship to produce first class work. Contractor shall comply with industry standards, except when the Contract Documents indicate more restrictive tolerances or more rigid standards. All work shall be performed by persons qualified to produce first class workmanship.

In order to establish standards of quality, Division has, in the detailed Construction Specifications, referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design. Whenever a material is specified or described using the name of a proprietary product or the name of a particular manufacturer or vendor, the item specified shall be understood as establishing the type, function, and quality desired. Other manufacturers' products may be accepted provided sufficient information, including any necessary certifications, are submitted to allow the Division to determine that the products proposed are equivalent to those named. See Paragraph 3-22.

A. **DEFINITIONS:** The following definitions shall apply with respect to products specified in Construction Specifications:

1. Products specified by Reference Standard: Any product meeting that standard.

2. Products specified by "similar and equal to" preceding a single proprietary name: Any product meeting specified requirements; named product complies with Construction Specifications.

3. Products specified by "Basis of Design" preceding a single proprietary name: "Similar and equal to" is implied unless additional manufacturer's characteristics of named product were used in the design.

4. Products specified by naming products of manufacturers, without qualification: Contractor shall submit request for substitution for product or manufacturer not named.

B. **SUBSTITUTIONS WILL BE CONSIDERED ONLY WHEN:**

1. A specified product or material becomes unavailable or not practical due to no fault of Contractor;

2. The substitution is substantially to Division's advantage (equal product for less life cycle cost or higher quality product at no change in the Contract sum);

3. Under no circumstances shall a substitution be considered absent a separate written change order request, even when indicated or implied on Shop Drawings or Product Data submittals.

C. **SUBSTITUTIONS SHALL BE PROCESSED AS FOLLOWS:**

1. Contractor shall document each request for substitution with complete data substantiating compliance of proposed substitution with Contract Documents. Such data must be submitted prior to submittal of first progress payment estimate, and shall at a minimum include:

a. Comparison of Qualities of proposed substitution with that specified including all points of difference;

b. Samples, drawings, or notes, where required or requested to show specific construction, finishes, etc.;

c. Availability of maintenance service and source of replacement parts;

d. Changes required in other elements of the work because of the substitution;

e. Effect on Construction Schedule;

f. Name and address of similar projects on which product was used and date of installation.

2. Contractor shall abide by the Division's judgment when proposed substitute materials or items of equipment are judged to be unacceptable and shall furnish the specified material or item of equipment in such case. All proposals for substitutions shall be submitted in writing by Contractor and not by individual trades or material suppliers. Division shall approve or disapprove proposed substitutions in writing within a reasonable time. No substitute materials shall be used unless approved in writing.

3. Contractor shall bear all costs for the Division's services required to check proposed substitute methods or type of construction and, if accepted, to prepare record drawings. Products include material, equipment, and systems necessary to complete the project. These products shall, at a minimum, comply with Construction Specifications and referenced standards. Product components required to be supplied in quantity within a Construction Specification shall be identical and interchangeable.

4. Each substitution request shall constitute a representation that Contractor:

a. Has investigated the proposed product and determined it meets or exceeds the specified quality and product standards in all respects;

b. Shall provide the same warranty for substitution as for specified product;

c. Shall coordinate installation and make other changes which may be required to complete work in all respects;

d. Waives claims for additional costs which may subsequently become apparent.

**5-02 MATERIALS FURNISHED BY DIVISION:** Division shall furnish materials specifically indicated in the contract documents. Contractor shall notify Division if any defects in materials furnished are discovered. Contractor shall be responsible for any and all material loss or damage, including that caused by third parties, after receipt of material.

**5-03 MATERIALS FURNISHED BY CONTRACTOR:** All materials used in the work shall meet the requirements of the Contract Documents. All other materials not furnished by Division and used in the work whether specified or not shall be furnished by Contractor.

Contractor shall transport products by methods designed to avoid product damage, and shall deliver products to the project site in an undamaged condition and in the manufacturer's unopened containers or packaging. Contractor shall provide adequate equipment and personnel to handle products so as to prevent damage. Contractor shall promptly inspect all product shipments to assure compliance with all requirements, correctness of quantities, and that the products are undamaged. Contractor shall where necessary furnish all shop and installation drawings, product data, and samples, as indicated in Construction Specifications and Paragraph 3-22 of this Document.

**5-04 TESTING SERVICES:**

Required inspection and testing services are intended to assist in determination of compliance of the work with requirements of the Contract, but shall not relieve Contractor of responsibility for completion of all work in accordance with requirements of the Contract Documents. Requirements for specified inspections and tests are not intended to limit Contractor's quality control program, but are instead intended to establish a minimum testing level considered necessary to adequately monitor compliance of construction materials and methods with Contract Documents. If special testing is required for the project, details will be described in the Special Conditions (*Document GG*).

A. **RESPONSIBILITY FOR TESTING:** Contractor shall retain and pay, at Contractor's expense, a qualified testing agency or laboratory (laboratories) as described below, to conduct materials and construction compliance tests as required by the Contract Documents. Type, number and extent of the materials testing program is described in each respective Section of Construction Specifications. The testing laboratory shall be available throughout the construction period to insure prompt compliance with these requirements.

B. **QUALIFICATION OF TESTING AGENCIES:** Except as otherwise indicated, and except where manufacturer's testing facilities are indicated as acceptable, Contractor shall retain recognized testing laboratories specializing in the required services and routinely having provided those services for a continuous period of at least three (3) years prior to execution of the Contract.

C. **REPORTS:** Test/inspection reports, including analysis of results and recommendations where applicable, shall be submitted in triplicate to the Division except as otherwise indicated. Where required or requested, copies shall also be submitted directly to governing authorities.

D. **COORDINATION:** Contractor shall cooperate with laboratory personnel; provide access to work; notify laboratory sufficiently in advance of operations to allow for assignment of personnel and scheduling of tests; furnish labor and facilities to provide access to work for testing purposes; and obtain and handle samples at the site.

E. **DIVISION'S TESTS:** Division reserves the right to conduct independent tests from time to time as it considers necessary to validate or amplify Contractor tests. Division may engage and pay the costs of an independent testing agency meeting the requirements set forth above when such tests are considered necessary or advisable. Any work found to be in non-compliance with requirements of the Contract Documents shall be corrected by Contractor and retested. Costs of retesting shall be paid by Contractor.

F. **CODE COMPLIANCE TESTING:** Inspections and tests required by codes, ordinances, or a plan approval authority, and conducted by a legally constituted authority, shall be the responsibility of, and be paid for by, Contractor, unless otherwise provided in the Contract Documents.

G. **CONTRACTOR'S CONVENIENCE TESTING:** Inspection or testing performed exclusively for Contractor's convenience shall be the sole responsibility of Contractor.

H. **LABORATORY TEST REPORTS:** Contractor shall submit copies of all laboratory reports describing results of tests on materials, products and workmanship, as such reports are made available by the testing agency. Contractor shall submit copies in triplicate to the Division.

**5-05 STORAGE OF MATERIALS:** Materials shall be stored in such manner as to ensure the preservation of their quality and fitness for the work. Contractor shall provide personnel to receive, unload, and store all materials and equipment delivered to the project site. Stored materials shall be located so as to facilitate prompt inspection. Contractor shall maintain the storage yard in a neat and orderly manner. In addition, the following shall apply to storage of materials:

A. Materials and equipment may be stored inside the project limits in locations approved by Division and Landowner. All areas disturbed for equipment and material access or storage must be reclaimed after final use.

B. Products shall be stored in accordance with manufacturer's instructions, with labels intact and legible. Sensitive products shall be stored in weather-tight enclosures, and maintained within temperature and humidity ranges required by manufacturer's instructions.

C. Any fabricated products stored outside shall be placed on sloped supports above ground. Products subject to deterioration shall be covered with impervious sheet coverings, with ventilation provided to avoid condensation.

D. Loose granular materials shall be stored on solid surfaces in well drained areas so as to prevent mixing with foreign matter.

E. Private property outside the work limits shall not be used for storage purposes without the written permission of Division, landowner and/or other private property owner.

**5-06 REJECTED WORK AND MATERIALS:** All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Division, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected. Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause shall be removed and the work re-executed by Contractor.

Defective work or material may be condemned by the Division at any time before final acceptance of the work. Notice of condemnation shall be given in writing by the Division. Condemned work or material shall be removed or disposed of to the satisfaction of the Division within ten (10) days after written notice is given by the Division. In the event Contractor fails to remove rejected work or materials within ten (10) days after written notice to do so, Division may remove and store the materials at Contractor's cost. Failure or neglect on the part of the Division to condemn unsatisfactory material or reject inferior workmanship shall in no way release Contractor, nor shall it be construed as an acceptance of such work, nor shall the final acceptance bar Division from recovering damages in cases where fraud was practiced, or where defective work results from Contractor's dishonesty. No compensation shall be made for defective work or materials.

Work done contrary to or without regard to the instructions of the Division, work done without lines, grade and/or cross section stakes and grades shown on the Plans or as given by the Division, or deviation made from the Contract Documents, without written authority, shall be considered unauthorized and at the expense of Contractor, and shall not be measured or paid for by Division. Any and all work so done may be ordered removed and replaced immediately at Contractor's expense.

See also Paragraph 7-08.

**5-07 MANUFACTURER'S DIRECTIONS:** Manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the Manufacturer unless herein specified to the contrary. In the event any such instructions conflict with Contract Documents, Contractor shall seek clarification from the Division before proceeding.
When required by individual sections of Construction Specifications, Contractor shall provide the following:

1. Manufacturer's printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing, as appropriate. One (1) copy shall be maintained by Contractor for inclusion in the project record documents.

2. Qualified personnel to observe and, as applicable, provide appropriate recommendations regarding field conditions, conditions of surfaces and installation quality workmanship, and startup of equipment.

**5-08 PATENTS:** All fees or royalties for patented inventions, equipment, or arrangements, that may in any manner be used in connection with the construction or erection of the work, or any part thereof, shall be included in the Contract unit price.

Contractor shall protect and hold harmless Division against any and all claims or litigation by reason of infringement of any patent rights on any materials, equipment, or construction furnished by Contractor.

**5-09 GUARANTEE:** Contractor guarantees all work and material against all defects for the period specified below and in the Performance Bond, or in the Special Conditions. Contractor shall repair or replace any such defective work and/or material to conform to the provisions of the Contract Documents and without expense to Division, within ten (10) days (or an agreed to time allowance by Division and Landowner) of notification in writing by Division of such defective work or material. If Contractor fails to make the repairs or replacements or fails to make arrangements for the correction thereof within the period specified above, Division may do so and charge the cost to Contractor. Contractor shall perform the work so as to cause Division a minimum of inconvenience and interruption of services.

Neither the final certificate of payment, nor partial use or occupancy of the premises by Division or Landowner, or any provision of the Contract Documents, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve Contractor or the sureties of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

Contractor or the Surety shall remedy any defects in the work and pay for any damages to other work resulting therefrom which may appear within a period of one (1) year from the date of final acceptance unless a longer period is otherwise specified in the Special Conditions. Division shall give notice of observed defects with reasonable promptness.

In case of default on the part of Contractor in fulfilling any part of the Contract Documents, Division may correct the work or repair the damage, and the cost and expense incurred in such event shall be paid by or become recoverable from Contractor.

Should Contractor be required to perform tests that, due to climatic conditions, must be delayed, it is understood that such tests shall be accomplished by Contractor at the earliest possible date, with the provision that the General Guarantee period begins upon satisfactory completion of said test. Contractor's responsibility under this Section shall not be abrogated, in the event Division elects to initiate final payment.

See also Paragraph 7-16.

**5-10 UNFAVORABLE WEATHER CONDITIONS:** During unfavorable weather, including but not limited to conditions involving wet or frozen ground, or other unsuitable construction conditions, Contractor shall confine operations to work which will not be adversely affected by such conditions, unless special means or precautions, as referenced in Construction Specifications, are taken by Contractor to perform the work in a proper and satisfactory manner.

**5-11 BOND:** Prior to signing the Contract, Contractor shall furnish a good and sufficient performance bond on the provided form *(Document NN)* in the full amount of the Contract.

Bond shall guarantee faithful performance of the provisions of the Contract, including the guarantee of all work and materials against all defects for the period specified in the Performance Bond *(Document NN)*, and the payment of all bills and obligations arising from said Contract.

The Performance Bond, in the amount of one hundred percent (100%) of the Contract amount, shall remain in place for one year following the date of final acceptance by Division of ***all*** work included in the Contract.

See also Paragraph 1-17.

**5-12 PREFERENCE FOR LABOR AND MATERIAL:** By virtue of statutory authority, preference shall be given to products and provisions grown and coal produced within the state of Iowa.

Contractor shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. Contractor declares

that it has complied with all federal, state, and local laws regarding business permits and licenses that may require to carry out the work performed under this Agreement.

## SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

**6-01 INSURANCE AND RELATED PROVISIONS:** Contractor assumes full responsibility for the safekeeping of all materials and equipment and for all unfinished work until final acceptance by Division, and if any of it be damaged or destroyed from any cause, Contractor shall replace it at Contractor's own expense.

Contractor shall be responsible for all areas used by Contractor and all subcontractors in the performance of the construction activities on site. Contractor shall exert full control over the actions of all employees and other persons with respect to the use and preservation of property, and new and existing facilities.

Contractor shall indemnify and hold harmless Division against any liens filed for nonpayment of bills in connection with the Contract work. Contractor shall furnish Division satisfactory evidence that all persons who have done work or furnished materials, equipment, or service of any type under this Contract have been fully paid prior to acceptance of the work by Division. See also Paragraph 7-13.

Contractor shall indemnify and hold harmless Division and Engineer from any and all liability, loss, cost, damage, and expense (including reasonable attorney's fees and court costs) resulting from, arising out of, or incurred by reason of any claims, actions, or suits based upon or alleging bodily injury, including death, or property damage arising out of or resulting from Contractor's operations under this Contract, whether such operations be by Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. Contractor shall obtain insurance for this purpose, which shall insure the interests of Division as the same may appear, and shall file with Division certificates of such insurance.

A. **INSURANCE REQUIREMENTS:**

1. Contractor shall not commence work under this Contract until all insurance required hereunder has been obtained and such insurance has been approved by Division, nor shall Contractor allow any subcontractor to commence work on subcontracts until all insurance required of subcontractor has been so obtained and approved. Insurance required under this article shall remain in effect during the life of the Contract, and for no less than one (1) year thereafter.

2. Contractor shall furnish for filing with Division a Certificate of Insurance, complete in all respects, showing compliance with requirements of this Section. Any certificate filed with Division which any time is found to be incomplete or not according to form shall be returned as unsatisfactory.

3. A rejected Certificate of Insurance shall be corrected as necessary and resubmitted until approved.

4. Each and every insurance policy, procured by Contractor, shall contain an endorsement stating that the insurance company shall not, prior to completion of project plus one (1) year thereafter, or any policy expiration date shown on policy and certificate, whichever occurs first, terminate policy or change any coverage therein without first mailing by registered mail written notice of such action at least thirty (30) days prior to termination or change, to Division.

5. Minimum insurance required is as specified below and in the amounts indicated.

| KIND OF INSURANCE | | | LIMITS OF LIABILITY |
|---|---|---|---|
| (a) | Workmen's Comp. | | Statutory Workmen's Comp. |
| (b) | Employer's Liability | | $500,000/$500,000/$500,000<br>Accident/Aggregate/Disease |
| (c) | Comprehensive - Gen. Liability | | $1,000,000 Each Occurrence - Premises and Operations<br>$1,000,000 Each Occurrence - Independent Contractors<br>$1,000,000 Each Occurrence - Operations and Products<br>$1,000,000 Each Occurrence - Contractual<br>$1,000,000 Aggregate - Completed Operations and Products |
| (d) | Comprehensive - Automobile Liability | | |
| | (i) | Bodily injury | $ 500,000 Each Occurrence |
| | (ii) | Property Damage | $ 500,000 Each Occurrence |
| | (iii) | Hired and Non-Owned | $ 500,000 |
| (e) | (Other) Umbrella | | $1,000,000 |

6. XC or U coverage is optional and not required by the contractor unless specified in the Special Conditions. (XC – excavating caisson, U – underground).

7. Coverage shall include endorsement for broad-form property damage and broad-form personal injury.

8. Contractor agrees to assist in every possible manner the reporting and investigation of any accident, and upon request, to cooperate with all interested insurance carriers in the handling of any claim by securing and giving evidence and obtaining attendance of witnesses as required for any claim or suit.

9. The required insurance shall be written by a company licensed to do business in Iowa at the time the policy is issued. In addition, the company shall be acceptable to Division.

B. **NOTICES AND FEES:** Contractor shall procure and pay for all permits, fees, licenses, and bonds necessary for the prosecution of the work.

Contractor shall give all notices, pay all fees, and comply with all Federal, State, County, and municipal laws, ordinances, rules and regulations, and building and construction codes bearing on the conduct of the work. Contractor, as to all matters not particularly referred to and defined herein, shall notwithstanding be subject to the provisions of all pertinent ordinances which are hereby made a part hereof with the same force and effect as if specifically set out herein. Permit forms and affidavits which are known to be required in completing this Project shall be the responsibility of Contractor.

1. Contractor shall notify landowners of adjacent property and utilities when prosecution of the work may affect them. When it is necessary to temporarily deny access by landowners or tenants to their property, or when any utility service connection must be interrupted, Contractor shall give notices sufficiently in advance to enable the affected persons to provide for their needs. Notices shall conform to any applicable local ordinance and, whether delivered orally or in writing, shall include appropriate information concerning the interruption and instructions as to how to limit their inconvenience.

2. Utilities and other concerned agencies shall be contacted at least forty-eight (48) hours, not counting weekends and/or legal holidays, prior to excavation near underground utilities or pole lines. Existing utilities at the construction site may include, but are not limited to, storm sewer, sanitary sewer, water, electric, telephone, gas, pipelines, cables, and tile lines.

3. Contractor shall make all necessary arrangements with utility companies for the preservation of all utility lines and shall at Contractor's expense, replace and/or relocate utility lines as required for construction.

C. **SECURITY:**

1. Contractor shall be responsible for protecting the site, and all work materials, equipment, and existing facilities thereon, against loss or damage attributable to vandals, livestock, and any unauthorized persons.

2. No claim shall be made against the landowner, tenant or the Division by reason of any act of any employee, trespasser, or any Subcontractor or agent of the Contractor, and Contractor shall repair any damage to landowner's property resulting from Contractor's failure to provide security measures as specified above.

**6-02 USE OF PREMISES:** Contractor shall confine equipment, materials, and work operations to the Project limits, as indicated in both the Contract Documents and any laws, ordinances, permits, or directions of Division, and shall not unreasonably encumber the premises with materials. Contractor shall use care in placing construction tools, equipment, excavated materials, and construction materials and supplies so as to cause the least possible damage to, and interference with, the property surrounding the site. Use of premises outside the Project limits, indicated in the Contract Documents, shall be at Contractor's sole risk. Contractor shall be responsible to coordinate and obtain written approvals for such use with landowners and appropriate governmental agencies.

**6-03 CONFINEMENT OF OPERATIONS ON PROPERTIES SUBJECT TO RIGHTS-OF-WAY AND EASEMENTS:** It shall be Contractor's responsibility to confine construction activities within the limits of easements, property lines and limits of construction. Any damage to persons or property resulting from encroachments beyond these limits shall be the sole responsibility of Contractor.

**6-04 SAFETY:** Contractor shall at all times exercise reasonable precautions to protect persons, employees, and property. The safety provisions of applicable laws and local building and construction codes shall be observed.

Contractor's operations shall meet the requirements of all applicable laws relative to protection of persons, and the guarding against hazards of machinery and equipment.

Contractor shall provide and maintain, at Contractor's expense and on a twenty-four (24) hour basis, all necessary safeguards including, but not limited to, watchmen, warning signs or signals, barricades, and night lights at all unsafe places at or near the work. Special care shall be exercised to prevent vehicles, pedestrians, and livestock from falling into open trenches or being otherwise harmed as a result of the work.

Contractor shall in all cases maintain safe passageways at all road crossings, crosswalks and street intersections, and shall take all other reasonable precautions necessary to prevent accident or loss of any kind.

All work included under this Contract shall be done in accordance with the Occupational Health Act of 1970 (Williams-Steiger Act) as amended and enforced by the governmental authority responsible for the local enforcement of the Act. Enforcement and responsibility for fulfilling this provision of the Contract Documents shall rest solely with Contractor, superintendent, and foremen, and in no way shall rest with Division or Engineer.

Contractor shall comply with OSHA 2207 and Interpretation Document; Iowa Occupational Safety and Health Standards for Construction Industry (IOSH); and other applicable laws which are in effect on the date of issuance of the Notice-to-Bidders.

**6-05 FAILURE TO PAY FOR LABOR AND MATERIALS:** In addition to any other requirements imposed under Iowa law, if Contractor at any time fails to pay Subcontractors or laborers employed to perform work under the Contract, or fails to pay for the materials used therein, Division may withhold from the money which may be due Contractor under this agreement such amount or amounts as may be necessary for the payment of such Subcontractors, laborers, or for the cost of materials, and may, acting as agent for Contractor, apply the same to such payments and deduct the same from the final estimate of Contractor.

**6-06 MOVING OF PUBLIC AND PRIVATE UTILITIES:** Prior to completing any work, Contractor shall notify all affected utilities to move such portions of their installations as would be within the confines of the finished improvement. It shall be Contractor's responsibility to coordinate construction work with the utilities so as to cause the least possible interference, and avoid any conflicts with provisions of the Contract Documents.

No utility, private or public, shall be moved to accommodate Contractor's equipment or method of operation when such utility does not conflict with the installation of the improvement under construction, unless Contractor assumes all costs associated with such removal.

**6-07 PROTECTION OF PUBLIC AND PRIVATE UTILITIES:** Contractor shall support and protect, by timbers or otherwise, all pipes, conduits, poles, wires or other apparatuses which may in any way be affected by the work. If, through Contractor's operations, any of said pipes, conduits, poles, wires, or apparatuses should be damaged, they shall be repaired by the authorities having control of same, and the cost of such repairs shall be borne by Contractor.

Contractor shall be further responsible for any damage to streets or other public property, or any private property, by reason of breaking of any water pipe, sewer or gas pipe, electric conduit, or other utility by or through Contractor's or any subcontractor's negligence.

**6-08 DAMAGE TO EXISTING PUBLIC AND PRIVATE PROPERTIES:** Underground utilities of record will be shown on the Contract Documents. These, however, are shown for general information only, and neither the Division nor Engineer assume any responsibility for improper locations of, or failure to show, utility locations on the Contract Documents.

Contractor shall take all reasonable and necessary precautions to protect lawns, trees and shrubs outside rights-of-way, sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto. Contractor shall at Contractor's expense completely repair any damage thereto caused by Contractor's operations to the satisfaction of Division, except as otherwise provided in other portions of the Contract Documents.

Contractor shall further be responsible for maintaining all existing fences affected by the construction work until completion of the Contract. Fences that interfere with construction operations shall not be removed, relocated, or dismantled until approval is obtained from the Division and Landowner. In areas where the existing fences cannot be maintained due to construction operations, Contractor may be required, as deemed appropriate by Division, to provide temporary fences or other means to prevent unauthorized vehicular, pedestrian, or livestock access.

Contractor shall take all reasonable and necessary precautions to prevent dust from becoming a nuisance to the public, to neighbors, and to other work being performed on or near the site. Earth surfaces subject to dusting shall be kept moist with water or by application of a chemical dust suppressant. Dusty materials in piles or in transit shall be covered when practical to prevent blowing.

**6-09 MAINTENANCE OF TRAFFIC:** Contractor shall be responsible for maintenance, control, and the safeguarding of traffic within and immediately abutting the project during construction. When necessary, all barricades, signs, lights, and other protective devices shall be installed and maintained in conformity with the applicable statutory requirements of the authority having jurisdiction. Street closures, either partial or full, shall only be made with the approval and coordination of the appropriate Governmental Agencies.

When crossing existing public bridges for access and delivery to the site, the Contractor shall abide by posted weight limits or seek variances from the owner(s). If no weight is posted, the Contractor shall contact the bridge owner and obtain permission to cross it with any equipment.

**6-10 USE AND OCCUPANCY PRIOR TO COMPLETION OF CONTRACT:** Division and/or Landowner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be

deemed an acceptance of any portion of the work not completed in accordance with the Contract Documents. Any claims Division may have against Contractor shall not be deemed waived by such occupancy.

If Division's prior use increases the cost, or delays the completion of uncompleted work, or causes refinishing of completed work, Contractor shall be entitled to such extra compensation, or extension of time, or both, as Division in consultation with Engineer determines reasonably necessary.

**6-11 PERSONAL LIABILITY:** Neither the Division, their employees, Engineer, or any state or federal employee shall be personally responsible for any liability arising under or growing out of the Contract.

See also Paragraph 6-01.

**6-12 NO WAIVER OF LEGAL RIGHTS:** Should an error be discovered in or payment of unauthorized work be made by the final estimate, or should dishonesty on the part of Contractor be discovered in the work, Division reserves the right, after final payment has been made, to claim and recover by any lawful means such sums as may be sufficient to correct the error, to recover the overpayment, or to make good the defects in the work resulting from Contractor's dishonesty.

## SECTION 7 - MEASUREMENT AND PAYMENT

**7-01 MEASUREMENT:** The determination of pay quantities for work performed under the Contract shall be made by the Division based upon the lines, grades, and cross sections given, or measurements made by Engineer. All items shall be computed in the units in the Proposal and Schedule of Prices *(Document CC)*.

The method to be used in measuring and calculating the payment quantity for each work item set forth in the Proposal and Schedule of Prices *(Document CC)* is described in the particular section of Construction Specifications in which work to be accomplished under that particular work item is described.

**7-02 SCOPE OF PAYMENT:** Contractor shall accept the compensation, as provided in the Contract Documents, in full payment for:

1. Furnishing all supervision, labor, materials, tools, and equipment necessary to complete the work covered by the Contract Documents;
2. Loss or damage arising from the nature of the work, the action of the elements, or any unforeseen difficulties encountered during the prosecution of the work until final acceptance by Division,
3. All risks of every description connected with the prosecution of the work;
4. All expenses incurred in consequence of the suspension or discontinuance of the work;
5. Completing the work according to the Contract Documents.

The Contract unit prices for the various bid items of the Contract shall, unless the Contract Documents provide otherwise, constitute full compensation for all labor, materials, supplies, equipment, tools and all things of whatsoever nature required for the complete incorporation of the item into the work, the same as the item were to read "In Place".

Separate payment shall be made based on Contractor's unit bid price and the quantity of construction completed at the time of acceptance by Division only for those items specifically listed in the Proposal and Schedule of Prices *(Document CC)*. No separate payment shall be made for the work required to complete this project except for those bid items set forth in the Proposal and Schedule of Prices *(Document CC)* or such other bid items as may be approved by Change Order or Amendment to the Contract. This compensation shall constitute full payment for Contractor's providing of all labor, materials, equipment, and supervision, necessary to complete the construction as specified in the Contract Documents. All other work is incidental to the project. Payment for materials shall be made only for materials actually incorporated in the work or stored on site. Payment for extra work shall be made in accordance with Paragraph 7-03 of this Section. As specified in the Notice-to-Bidders, payment shall be made on the basis of monthly estimates in amounts equal to ninety-five percent (95%) of the value of the work completed.

Neither the payment of any estimate nor the payment of any retained percentage shall relieve Contractor of any obligation to make good any defective work or material.

**7-03 PAYMENT FOR EXTRA WORK:** Adjustments, if any, in the amounts to be paid Contractor by reason of any change, or addition, shall be determined by one or more of the following methods:

1. By an acceptable lump-sum proposal from Contractor;
2. By Contract unit prices as contained in the Proposal and Schedule of Prices *(Document CC)*, or by unit prices mutually agreed upon by Contractor and Division;

3. By payroll cost of labor plus fifteen percent (15%) for profit, overhead and small tools, plus the amount of social security tax imposed by law upon Contractor, plus the cost of workmen's compensation, public liability insurance and employment security contributions;

4. By actual cost of materials delivered to the work, including freight and hauling charges as shown by original receipted bills, plus fifteen percent (15%); or

5. By equipment rental rates for machinery, tools and equipment, except small hand tools, as determined from current publications of recognized equipment dealers.

It shall be Contractor's responsibility to obtain proper authorization from Division before proceeding with any extra work. No charge for extra work or any other change in the Contract shall be allowed unless: (1) the extra work or change has been authorized by a written Change Order or Contract Amendment, signed by Division, and if applicable by the Surety, and (2) the compensation or method thereof is stated in such signed Change Order or Contract Amendment.

See also Paragraphs 4-02, 4-03 and 4-04.

**7-04 PROGRESS PAYMENTS/RETAINED PERCENTAGE:** Contractor shall be entitled to monthly progress payments corresponding to the stage of the work. The initial progress estimate shall be initiated by Contractor not later than thirty (30) days after commencing work. Subsequent progress estimates shall be prepared at approximately thirty (30) day intervals when work is being performed on the project. Under no conditions shall Contractor wait more than thirty (30) days after performing any work item to submit a request for a progress payment. Amounts shall be based upon an approximate estimate of quantities of work completed, multiplied by the unit prices established in the Contract, or shall be based upon estimated completed percentages of work listed in Contractor's approved price breakdown for lump sum items.

Cost of materials, properly stored, protected and insured at the site of work shall be paid for as requested by Contractor, and as provided for in the Contract Documents. In preparing monthly estimates, advancements shall be made for ninety-five percent (95%) of the cost of such materials, as evidenced by invoices accompanying each payment request submitted by Contractor, and, if required by Division, after providing proof of insurance for the specified products, materials, or equipment. All materials must conform to the requirements of the Contract Documents; however, advancement for materials shall not constitute acceptance, and any faulty material shall be condemned although advancement may have been made for same in the estimates.

Quantities used for progress estimates shall be considered only as approximate and provisional, and shall be subject to recalculation, adjustment and correction by Division in subsequent progress estimates and in final estimates. Inclusion of any quantities in progress estimates, or failure to disapprove the work at the time of progress estimate, shall not be construed as acceptance of the corresponding work or materials.

Processing for payment of the retained percentage shall be withheld for a period of thirty (30) days following final acceptance by Division, and shall be processed for payment thereafter, in the event no claims, as provided by law, have been filed against such funds. In the event such claims are filed, Contractor shall be paid, after said funds are released from liens, such retained percentages, less an amount sufficient to pay any such claims, as authorized under Iowa law.

Progress payments shall be applied for and shall be processed in accordance with applicable provisions of the Contract Documents.

A. **PAYMENT APPLICATION FORMS:** Appropriate Application and Request for Payment *(Document SS)* forms shall be provided by Division.

B. **INITIAL PAYMENT APPLICATION:** The principal administrative actions and submittals which must precede submittal of first payment application request shall include but not necessarily be limited to the following:

1. Listing of subcontractors and principal suppliers and fabricators.

2. Initial Construction Progress schedule.

3. Schedule of principal products.

4. Schedule of unit prices and estimated project quantities. (The Application and Request for Payment form *(Document SS)* can be used.)

5. Schedule of submittals.

6. Copies of acquired permits and similar authorizations and licenses from governing authorities for performance of the work.

7. Performance and/or payment bonds.

8. Evidence satisfactory to Division that Contractor's insurance coverages have been secured.

9. Refer to the Contract Documents and comply with any requirements not herein listed.

C. **SUBMITTAL OF APPLICATION AND REQUEST FOR PAYMENT** *(DOCUMENT SS)*: The following procedure shall be used to submit all progress pay requests using the Application and Request For Payment *(Document SS)* form:

1. Engineer shall prepare and sign one original for each pay application.

2. Contractor shall have the opportunity to review and comment regarding quantities.

3. Contractor shall sign all required payment applications specified by the Division.

4. Contractor shall submit the required executed copies of each payment application, with any necessary lien waivers and similar attachments to the Division.

D. **RETAINED PERCENTAGE:**

1. Division may withhold from payments to Contractor, in addition to the retained percentage pursuant to Paragraphs 7-02 and 7-04 of this Section, amounts necessary to cover:

   a. Payments that may be earned or due for just claims for labor or materials furnished in and about the work, in excess of, or not subject to, the amount retained pursuant to this Section.

   b. Payments for defective work not remedied.

   c. Amounts deemed reasonably necessary for completion of the work remaining in an individual bid item, or for the completion of the total work covered by the Contact Documents.

   d. Payments for extra administrative, design, and inspection costs if Contractor has not completed the work within the time specified.

2. Division shall disburse and shall have the right to act as agent for Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom. Division shall render to Contractor a proper accounting of all such funds disbursed on Contractor's behalf.

3. In the event claims are filed in a timely manner, Division shall withhold from payment to Contractor an amount equal to at least double the amount of such claims. Division shall release such funds to Contractor upon compliance with Iowa Code Section 573.16.

4. In preparing monthly estimates, advancement shall be made for ninety-five percent (95%) of the cost of materials described in the second paragraph of this Section as evidenced by invoices accompanying each payment request submitted by Contractor.

E. **RELEASE OF RETAINAGE AT NINETY-FIVE PERCENT (95%) PROJECT COMPLETION**

Iowa Code Section 573.27 permits full payment for completed work when at least ninety-five percent (95%) of the construction contract has been completed to the satisfaction of the public contracting authority, and owing to conditions beyond the control of Contractor, the remaining work covered by the Contract Documents cannot proceed for a period of more than sixty (60) days. In that event, Contractor may request payment of the retainage on work completed and accepted and, if approved, a Contract Amendment *(Document II)* shall be prepared. Processing for the release of the retainage shall be subject to the thirty (30) day waiting period as discussed in the Notice-to-Bidders. In any event, the performance bond must remain in effect through the entire period of the Contract (see Paragraph 5-11 above).

This Section is intended to implement Iowa Code Chapter 573, and shall not be considered a waiver of any provisions of said Chapter. In the event any portion of this Section is held by a court of competent jurisdiction to be inconsistent with Chapter 573, the provisions of Chapter 573 shall control.

**7-05 DIVISION'S ACTION ON AN APPROVED REQUEST FOR PAYMENT:** Within thirty (30) days from the date Division receives a Engineer completed Application and Request for Payment sixty (60) days in the case of initial requests for payment), Division shall:

1. Pay their portion of Application and Request for Payment as approved; or

2. Pay such other amount as Division deems due and owing Contractor, informing Contractor in writing of the reasons for paying the amended amount; or

3. Withhold payment informing Contractor of the reasons for withholding payment.

**7-06 INTEREST ON UNPAID REQUESTS FOR PAYMENT:** In the event Division fails to pay their portion of a completed Application and Request for Payment within thirty (30) days from the date Division receives the approved request (initial requests for payment will be paid within sixty (60) days), and further fails to inform Contractor in writing of the reasons for withholding payment, Division shall pay Contractor interest at the rate of five percent (5%) per annum on the unpaid balance from the date such payment was due until payment is made.

**7-07 PAYMENT FOR UNCORRECTED WORK:** In the event Division or Engineer directs Contractor not to correct work that has been damaged, or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract amount shall be made to compensate Division for the uncorrected work.

**7-08 PAYMENT FOR REJECTED WORK AND MATERIALS:** The removal of work and materials rejected under Paragraph 5-06, and the re-execution of acceptable work by Contractor, shall be at Contractor's expense, and Contractor shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement of acceptable work.

Removal of rejected work or materials, and storage of materials by Division in accordance with Paragraph 5-06, shall be paid by Contractor within thirty (30) days of written notice by Division. If Contractor does not pay the expense of such removal within ten (10) days' written notice by Division of the intent to sell the materials, Division may sell the materials at auction or private sale, and shall pay Contractor the net proceeds therefrom after deducting all cost and expense that should have been borne by Contractor.

**7-09 PAYMENT FOR WORK SUSPENDED BY DIVISION:** If the work or any part thereof shall be suspended by Division and abandoned by Contractor as provided in Paragraph 3-03, Contractor shall be entitled to payment for all work performed on the portions so abandoned, plus fifteen percent (15%) of the value of the uncompleted portion of the abandoned work to compensate for overhead, plant expense, and anticipated profit.

**7-10 PAYMENT FOR WORK BY THE DIVISION:** The cost of work performed by Division in removing construction equipment, tools and supplies in accordance with Paragraph 3-12, and correcting deficiencies in accordance with Paragraphs 3-13 and 4-06, shall be paid by Contractor.

**7-11 PAYMENT FOR WORK BY DIVISION FOLLOWING DIVISION'S TERMINATION OF CONTRACT:** Upon termination of the Contract by Division in accordance with Paragraph 3-14, no further payments shall be due Contractor until the work is completed. If the unpaid balance of the Contract amount shall exceed the cost of completing the work, including all overhead costs, the excess shall be paid to Contractor. If the cost of completing the work shall exceed the unpaid balance, Contractor shall pay the difference to Division. The costs and damages incurred by Division through Contractor's default, shall be certified and approved by Division.

**7-12 PAYMENT FOR WORK TERMINATED BY CONTRACTOR:** Upon termination of the Contract by Contractor in accordance with Paragraph 3-15, Contractor shall be entitled to payment for the work performed, plus loss of vegetative and other materials stored on site, plus established profit and damages, as approved by Division.

**7-13 RELEASE OF LIENS:** Contractor shall deliver to Division a complete release of all liens arising out of this Contract before the final pay request for the retainage is processed. If any lien remains unsatisfied after all payments are made, Contractor shall refund to Division such amounts as Division may have been compelled to pay in discharging such liens including all costs and reasonable attorneys' fees authorized by Iowa law.

**7-14 FINAL ACCEPTANCE AND FINAL PAYMENT:** Contractor shall notify Division in writing when the work is considered completed and ready for final inspection and tests. Prior to such notice, Contractor shall complete any final punch list items and clean up the site. Site cleanup shall include removal of all construction debris, equipment, excess and waste materials. Final inspection and tests shall be conducted by representatives of Division, Engineer, and Contractor. The inspections and tests shall be conducted at a time convenient to all parties required to be present. Inspections and tests will be subject to the availability of facilities necessary to the conducting of such inspections and tests, if required. Failure of the completed work or any component thereof to pass inspections or tests shall be cause for initial rejection of the work or component. Final acceptance of the entire project shall not be made until any rejected portions are corrected, and re-inspected or retested, and approved by Division. Subsequent failures of the project or component to pass inspection and tests may, at Division's option, result in final rejection, or in acceptance with assessment of damages for such failure.

Following final tests and inspections, Engineer shall notify Division and Contractor if the project is acceptable, in total or in part, and whether it appears to be in compliance with Contract Document requirements. Division shall not agree to Final Acceptance or make Final Payment until receipt of written certification from Engineer declaring the work of Contractor to be complete and in substantial conformance with the Contract Documents.

The administrative actions and submittals which must precede or coincide with submittal of final payment application shall be as follows:

A. **FINAL ACCEPTANCE REQUIREMENTS:** Prior to requesting certification of final acceptance and final payment, as required above, Contractor shall submit:

1. Final payment request;

2. Lien waivers from all subcontractors and major material suppliers;

4. Record documents (See Paragraphs 2-05 & 7-04)

5. Iowa Department of Revenue and Finance Contractors State Sales Tax Statement *(Document Q in Appendix)*.

6. Updated final work quantities accounting for additional (final) changes to Contract sum;

7. Notify surety of project completion date and acceptance;

8. Final liquidated damages settlements statement acceptable to Division, if applicable;

Final acceptance shall not relieve Contractor of the responsibility to restrict operations so as not to result in damage to accepted work. Any damage to said work caused by subsequent operations of Contractor, Contractor's personnel, or equipment shall be satisfactorily repaired at Contractor's expense.

Final acceptance of completed work shall be evidenced by Division's certification of final acceptance, and payment of Contractor's final estimate. Contractor's acceptance of payment of final estimate, or payment offered as final payment, shall constitute a release to Division and every officer and agent thereof from all claims and liabilities of Contractor for anything done or furnished, or relating to the work, or for any act or neglect of Division or of any person relating to or affecting the Contract.

**7-15 TERMINATION OF CONTRACTOR'S RESPONSIBILITY:** The work covered by the Contract Documents shall be considered complete when all work has been finished, the final inspection has been made by the Division, and the requirements for final acceptance set forth above have been met as evidenced by Division's certification of final acceptance. Contractor's responsibility shall then cease, except as set forth in the guarantee periods contained in Contractor's Performance Bond *(Document NN)*

**7-16 CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT:** Neither the approval of the Final Application and Request for Payment by Division, nor the certification of final acceptance by Division, or the making of the final payment by Division to Contractor, shall relieve Contractor of responsibility for faulty materials or workmanship. Division shall promptly give notice of faulty materials or workmanship to Contractor and Contractor shall promptly replace any such defects. Division shall decide all questions arising under this Paragraph; provided, however, that all such decisions shall be subject to arbitration. See also Paragraphs 5-09 & 5-11.

**7-17 LIQUIDATED DAMAGES:** In the event Contractor fails to complete the work provided for herein within the times specified, Division shall be entitled to liquidated damages to cover all extra administration, designing, and inspection costs necessitated by the continuance of the work beyond the times herein specified for completion. Such extra costs charged to Contractor in no way constitute a penalty but represent additional expense to Division caused by delayed completion of the work by Contractor.

Liquidated Damages shall be assessed as provided for in the Special Conditions, taking into account any extensions of time granted by properly executed Contract Amendments. Such sums shall be deducted from the final pay request prior to payment.

END OF DOCUMENT FF

# SPECIAL CONDITIONS

SECTIONS

SECTION 1 - DEFINITIONS

SECTION 2 - PLANS, SPECIFICATIONS AND RELATED DATA

SECTION 3 - SCOPE OF WORK

SECTION 4 - DIVISION – CONTRACTOR RELATIONS

SECTION 5 - MATERIALS AND WORKMANSHIP

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

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## GENERAL:

A. The purpose of this Section of the Specifications is to provide supplementary information which is required to clarify the General Conditions, and to set forth supplementary requirements, modifications and/or deletions from the General Conditions which are required to adapt said General Conditions to this particular project.

B. References to Section, Paragraph and Sub-paragraph numbers used in these Special Conditions are intended to coincide with reference numbers for corresponding Sections, Paragraphs and Sub-paragraphs in the General Conditions.

C. Where there is any variance between the General Conditions and these Special Conditions, the Special Conditions shall take precedence.

D. Where any section of the General Conditions is modified or any Paragraph, Sub-paragraph or Clause thereof is changed or deleted by these Special Conditions, the unaltered provisions of that Section, Paragraph, Sub-paragraph or Clause in the General Conditions shall remain in effect. Unless these Special Conditions make specific reference to the modification or deletion of a Paragraph, Sub-paragraph or Clause in the General Conditions, no changes are intended and paragraphs contained in these Special Conditions are intended only to supplement, amplify, or clarify said General Conditions.

## SECTION 1 – DEFINITIONS

1-04 ENGINEER
The Engineer for this project is defined below.

Robert Larget, P.E.
SEH Yaggy
215 North Adams Avenue
Mason City, Iowa 50401
Telephone: 641-424-6344

A representative with SEH Yaggy will perform the field inspection and construction staking for this project.

1-05 WORK OR PROJECT
Work to be completed and equipment, supplies, and materials to be furnished under the Contract, General Conditions, Special Conditions, Construction Specifications, Drawings, Addenda, and Modifications to these Contract Documents issued subsequent to their initial printing, unless some other meaning is indicated by the context. The Project is the Mit981810C CREP Wetland in Section 10, Township 98 North, Range 18 West, in Mitchell County, Iowa.

1-24 TIME OF COMPLETION
The overall project is to be completed no later than December 15, 2015.

## SECTION 2 - PLANS, SPECIFICATIONS AND RELATED DATA

2-01 INTENT OF PLANS AND SPECIFICATIONS
Reference to standard specifications of any technical society, organization or association, or to codes of local or state authorities shall mean the latest standard, code, specification or tentative specification adopted and published at the date of taking bids, unless specifically stated otherwise. Applicable codes and standards referred to in the Specifications shall establish minimum requirements for equipment, materials, and construction, and shall be superceded by more stringent requirements of Plans and Construction Specifications when and where they occur. Any conflicts between the Plans or Construction Specifications and applicable codes and standards shall be referred to the Engineer for a decision thereon.

The Plans upon which the bids and the Contract are based include the following list:

| Sheet Title | Sheet Number | Revision | Date of Drawing |
|---|---|---|---|
| Title Sheet | C.01 | 12/22/14 | 5/15/14 |
| General Information Sheet | C.02 | 12/22/14 | 5/15/14 |
| Site Plan | C.03 | 12/22/14 | 5/20/14 |
| Structure Plan | C.04 | 12/22/14 | 5/22/14 |
| Sheet Pile Structure | C.05 | 12/22/14 | 5/15/14 |
| Details | C.06 | 12/22/14 | 5/22/14 |
| Details | C.07 | 12/22/14 | 5/15/14 |

The Construction Specifications which govern the materials furnished and the work performed under this Contract are divided, classified, designated, and arranged as follows:

IA-1 SITE PREPARATION
IA-5 POLLUTION CONTROL
IA-6 SEEDING AND MULCHING FOR PROTECTIVE COVER
IA-8 MOBILIZATON AND DEMOBILIZATION
IA-11 REMOVAL OF WATER
IA-13 SHEET PILING
IA-21 EXCAVATION
IA-23 EARTHFILL
IA-26 TOPSOILING
IA-51 CORRUGATED METAL PIPE CONDUITS
IA-61 LOOSE ROCK RIPRAP
IA-62 CONCRETE GROUT FOR RIPRAP
IA-81 METAL FABRICATION AND INSTALLATION
IA-95 GEOTEXTILE

No attempt has been made to segregate the work to be performed by any trade, subcontract, or proposal item, on any one Drawing of the Plans or any one Section of the Construction Specifications. Any segregation between trade of craft jurisdictional limits, and the establishment of subcontract limits, shall be solely a matter of agreement between the Contractor and his employees and subcontractors. The Plans and Construction Specifications shall govern the construction of the entire work, and the provisions thereof govern each items and unit of work to which such provisions shall apply.

## SECTION 3 – DIVISION – CONTRACTOR RELATIONS

None

## SECTION 4 - SCOPE OF WORK

None

## SECTION 5 - MATERIALS AND WORKMANSHIP

5-04 TESTING SERVICES
Certifications of materials delivered to the site shall be provided as required in the Construction Specifications.

## SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

None

## SECTION 7 - MEASUREMENT AND PAYMENT

7-02 SCOPE OF PAYMENT

The payment for Bid Item #4 - Buffer Seeding, has a maximum pay out unit price of $665.26 per acre. If the bid schedule included with the entered contract agreement has a unit price that exceeds the maximum pay out amount, the payment for this item will be based on the maximum pay out rate, not the submitted bid price. If the bid schedule included with the entered contract agreement has a unit price that is less than the maximum pay out amount, the payment for this item will be based on the submitted bid price.

7-17 LIQUIDATED DAMAGES

Liquidated damages are established as stated in Document CC – Proposal and Schedule of Prices. These damages are based upon the completion date of December 15, 2015, and has been estimated based upon additional moneys that would have to be paid by the Division due to federal fiscal year payment limitations.

END OF DOCUMENT GG

*State of Iowa*
***DIVISION OF SOIL CONSERVATION***
*Iowa Department Of Agriculture And Land Stewardship*

***KNOW ALL MEN BY THESE PRESENTS:***

That we,

_____
(Name of Company)

_____
(Address)

_____
(City, State, Zip)

as ***PRINCIPAL***, and

_____
(Name of Surety)

_____
(Address)

_____
(City, State, Zip)

as ***SURETY(S)***,

are hereby held and firmly bound unto the State of Iowa in the penal sum of _____ ___/100 Dollars ($_____) for the payment, whereof, the said ***PRINCIPAL*** and ***SURETY(S)*** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the ***PRINCIPAL*** entered a certain contract, hereto attached, and made a part, hereof, with the State of Iowa, acting by and through the Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, hereinafter called the ***DIVISION***,
dated _____ for the:

MIT981810C CREP Wetland Project
Construction Contract
Section 10, Township 98 North, Range 18 West, Mitchell County, Iowa
Project ID # MIT981810C

***NOW THEREFORE,***

the conditions of this obligation are such that if the ***PRINCIPAL*** shall faithfully perform the contract in accordance with the plans, specifications and contract documents, and shall fully indemnify and save harmless the State of Iowa from all cost and damage which the State of Iowa may suffer by reason of the ***PRINCIPAL'S*** default or failure to do so and shall fully reimburse and repay the State of Iowa all outlay and expense which the State of Iowa may incur in making good any such default, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

In the event the ***PRINCIPAL*** is in default under the contract as defined herein, the ***DIVISION*** shall by written notice inform the ***PRINCIPAL*** that his contract is in default. And may, at its option, without process or action at law:

1. Take over all or any portion of the work and complete it either by day labor or reletting the work. The ***DIVISION*** may retain all material, equipment and tools on the work, at a rental which it considers reasonable, until the work has been completed.

2. Allow the ***SURETY*** to take over the work within fifteen (15) days and assume completion of said contract and become entitled to the balance of the contract price.

3. Allow the ***PRINCIPAL*** to complete the work included in the contract.

As required by Chapter 573 Iowa Code (1991), or as subsequently amended:

1. The ***PRINCIPAL SURETY(S)*** on this bond hereby agree to pay all persons, firms or corporations having contracts directly with the ***PRINCIPAL*** or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the ***PRINCIPAL*** and ***SURETIES*** shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law.

2. Every ***SURETY*** on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

    a. To any extension of time to the contractor in which to perform the contract.

    b. To any change in the plans, specifications, or Contract Documents, when such change does not involve an increase of more than twenty percent of the total contract price, and then only as to such excess increase.

    c. That no provision of this bond or of any other Contract Documents shall be valid which limits to less than one year from the time of the acceptance of the work, the right to sue on this bond for defects in workmanship or material not discovered or known to the ***DIVISION*** at the time such work was accepted.

No provision of this bond or of any other Contract Documents shall be valid which limits to less than five years after the acceptance of the work, the right to sue on this bond for defects in workmanship or material in connection with paving or concrete work.

***IN WITNESS WHEREOF,***

the above bounden parties have executed this instrument under their several seals this _____ day of _____, 20__, the name and corporate seal of each party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

***PRINCIPAL***

By:

_____

_____

_____

_____

***SURETY***

By:

_____

Countersigned by Resident Commission Agent as required by Chapter 515 of the Code of Iowa. (Required only if Attorney-in-Fact is not also an Iowa Resident Commission Agent)

By:

_____

If a partnership all partners must sign.

This bond approved by the Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship this _____ day of _____, 20___.

By:

_____

(Director)

END OF DOCUMENT NN