

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM A  
FOR MEETING OF MAY 14, 2024**

<b>SUBJECT:</b> Roll Call / Conformance to Open Meeting Law.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

Announcement of actions taken to conform to the Open Meeting Law will be reported at the meeting.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM B  
FOR MEETING OF MAY 14, 2024**

<b>SUBJECT:</b> Comments from the public. Members of the public are invited to comment on items on the meeting agenda. No action may be taken on a matter raised during public comment until the matter itself has been specifically included on an agenda as an item for possible action.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM C  
FOR MEETING OF MAY 14, 2024**

<b>SUBJECT:</b> <i>For Possible Action:</i> Approval of minutes of the April 9, 2024, meeting.
<b>RELATED TO AGENDA ITEM:</b> None.
<b>RECOMMENDATION OR RECOMMENDED MOTION:</b> None.
<b>FISCAL IMPACT:</b> None.

**STAFF COMMENTS AND BACKGROUND:**

The minutes of the April 9, 2024, meeting is enclosed for your review.

The Colorado River Commission of Nevada (Commission) meeting was held at 1:30 p.m. on Tuesday, April 9, 2024, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, NV 89155.

### **COMMISSIONERS IN ATTENDANCE**

Chairwoman	Puoy K. Premsrirut
Commissioner	Justin Jones
Commissioner	Marilyn Kirkpatrick
Commissioner	Allen J. Puliz
Commissioner	Dan H. Stewart
Commissioner	Cody Winterton

### **COMMISSIONERS PRESENT VIA TELECONFERENCE**

Vice Chairwoman	Kara J. Kelley
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### **DEPUTY ATTORNEY(S) GENERAL**

Special Counsel, Attorney General	Michelle D. Briggs
Special Counsel, Attorney General	David W. Newton

### **COMMISSION STAFF IN ATTENDANCE**

Executive Director	Eric Witkoski
Senior Assistant Director	Sara Price
Assistant Director, Finance and Administration	Douglas N. Beatty
Assistant Director, Engineering and Operations	Bob Reese
Assistant Director, Energy Information Systems	Kaleb Hall
Assistant Director, Hydropower	Gail Bates
Assistant Director, Natural Resources	Warren Turkett, Ph.D.
Chief Accountant	Gail L. Benton
Hydropower Program Manager	Craig Pyper
Natural Resource Specialist	Rebecca Suafoa
Power Facilities Communications Technician	Walter Shupe
Power Facilities Manager	Shae Pelkowski
Senior Energy Accountant	Stephanie Salleroli
System Coordinator	Chris Smith
Executive Assistant Manager	Gina L. Goodman
Office Manager	Noah Fischel

**OTHERS PRESENT: REPRESENTING**

City of Henderson  
Las Vegas Valley Water District  
Legislative Counsel Bureau  
Nevada Department of Administration  
Overton Power District No. 5  
Overton Power District No. 5  
Overton Power District No. 5  
Southern Nevada Water Authority

Christopher Boyd  
Brittany Cermak  
Justin Luna  
Arnold Etchemendy  
Jon Dunninghoff  
MeLisa Garcia  
Mendis Cooper  
Annalise Porter

DRAFT

**COLORADO RIVER COMMISSION OF NEVADA**

**MEETING OF**

**APRIL 9, 2024**

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The Colorado River Commission of Nevada (Commission) meeting was called to order by Chairwoman Premsrirut at 1:30 p.m., followed by the pledge of allegiance.

**A. Conformance to Open Meeting Law.**

This meeting was posted in compliance with the Open Meeting Law.

**B. Comments from the public. Members of the public are invited to comment on items on the meeting agenda or on items not contained therein. No action may be taken on a matter raised during public comment until the matter itself has been specifically included on an agenda as an item for possible action.**

Chairwoman Premsrirut asked if there were any comments from the public. There were none.

**C. *For Possible Action:* Approval of minutes of the December 12, 2023, and March 12, 2024, meeting.**

Commissioner Puliz moved for approval the minutes of the December 12, 2023, and March 12, 2024, meeting. The motion was seconded by Commissioner Winterton and approved unanimously by those present.

**D. *For Possible Action:* Consideration of and possible action regarding an update on the Warm Springs Office location and alternative locations for the office, including space owned by the Southern Nevada Water Authority in the Molasky Office building.**

Commission Jones was present for agenda item D.

Mr. Witkoski, Executive Director, introduced Item D and gave a summary of the status of the Warm Springs location and the reasons that the location at the Southern Nevada Water Authority's Molasky building may be a better fit for the Commission's operations.

Chairwoman Puoy Premsrirut initiated the discussion by confirming the day's action item to authorize further exploration of an alternative to the office site at the Warm Springs location. Chairwoman Premsrirut highlighted concerns regarding the reduction in square footage compared to the current office and the previously proposed remodel at the Grant Square building. Concerns about the office layout at Warm Springs were also noted, including the inadequacy of the configuration and a lack of sufficient conference room availability, which is critical given the collaborative nature of the Commission's work.

Further, Chairwoman Premsrirut addressed the potential benefits of proximity to the Southern Nevada Water Authority (SNWA) due to overlapping responsibilities and the efficiency it would bring. The Chairwoman emphasized the importance of accessibility to ensure quorum requirements are met, particularly for members commuting from downtown areas. The exploration of the new site was not finalized but was encouraged to ensure the best possible office environment for staff productivity.

Commissioner Allen J. Puliz inquired about potential charges for the new location, comparing them to current expenses. Mr. Eric Witkoski responded, indicating that despite a reduction in square footage from 10,000 to 5,000 at Warm Springs, it was not clear there would be any immediate financial relief in rental costs, as rates are dictated annually without a fixed lease agreement.

Commissioner Marilyn Kirkpatrick, acknowledging her role on the board of the Southern Nevada Water Authority, emphasized the need for board approval and expressed a desire for continued partnership and collaboration to find a mutually beneficial solution.

**Commissioner Stewart moved for approval regarding the move to Warm Springs location to include alternative locations, including space owned by the Southern Nevada Water Authority in the Molasky Office building. The motion was seconded by Commissioner Kirkpatrick and approved unanimously.**

**E. *For Possible Action:* Consideration of and possible action to approve expenditures for architect services of up to \$10,000, if needed, for space and design planning for future office location.**

Mr. Witkoski introduced Item E and gave a summary of the possible need for some architectural services for office planning if the Commission moved to the SNWA location.

Chairwoman Puoy Premsrirut described the item as self-explanatory, highlighting its purpose to enable staff to further explore and plan the office space effectively. She opened the floor for comments or questions from the Commission members. Receiving no responses, she proceeded to call for a motion.

**Commissioner Puliz moved for approval of expenditures for architect services of up to \$10,000, if needed, for space and design planning for future office location. The motion was seconded by Commissioner Kirkpatrick and approved unanimously.**

**F. *For Information Only:* Update on Budget planning for Fiscal Years 2026-2027.**

Mr. Witkoski introduced Item F.

Doug Beatty, Assistant Director, Finance and Administration, gave an overview of the upcoming budget process for 2026-2027.

David Newton, Special Counsel provided some comments on Assembly Bill 346 that allows for agencies to retain the authorized amount in a base budget, even if the amount authorized was not spent in the respective fiscal year.

Commissioner Marilyn Kirkpatrick expressed intent to discuss these changes with her assembly contact, who chairs the Ways and Means Committee, to better understand the legislative intent and potential impacts. She highlighted the importance of the change from a fiscal planning perspective, noting that it might lead to earlier spending within the budget year to ensure funds are utilized according to plan.

In response to the updates, Chairwoman Puoy Premssirut acknowledged the insights provided into the budgeting process changes and the strategic planning required under the new system. She thanked both Mr. Beatty and Mr. Newton for their explanations and opened the floor for further questions or comments, concluding the discussion on this agenda item without additional queries from the Commission members.

**G. *For Information Only:* Update on federal legislation called “Help Hoover Dam Act.”**

Mr. Witkoski introduced Item G and gave a summary of the efforts of staff working on the issue in research and interacting with the Nevada Congressional Representatives for federal legislation to free up \$45 million of stranded funds at Hoover Dam.

Chairwoman Puoy Premssirut inquired about any feedback received since a letter regarding this matter was authored in July of the previous year.

Mr. Witkoski explained that there had been no direct feedback initially. However, through collaboration with Arizona counterparts and meetings on Capitol Hill, significant support was garnered from Nevada Congressional members. Representatives Amodei and Susie Lee even sponsored a draft bill amendment, though it had to be postponed to 2024 as a standalone bill.

Mr. Witkoski detailed historical and bureaucratic challenges that led to these funds being stranded. The issue stemmed from discrepancies in federal policies on retirement benefits and budget allocations, particularly between the Western Area Power Administration (WAPA) and the Bureau of Reclamation. He noted that this disagreement had persisted over the years, with funds collected but not transferred as initially intended.

Commissioner Marilyn Kirkpatrick expressed concerns about potential delays similar to those experienced with other legislative efforts. She suggested increasing engagement with Nevada’s congressional delegation to ensure the bill does not get overlooked. The discussion highlighted ongoing efforts and the need for strategic advocacy to navigate the legislative process and secure the release of these funds.

The dialogue concluded with affirmations of the importance of continued monitoring and advocacy to ensure the passage of the bill, which aims to resolve the long-standing issue of stranded funds at Hoover Dam.

**H. *For Information Only:* Status update from Staff on the hydrological conditions, drought, and climate of the Colorado River Basin, Nevada’s consumptive use of Colorado River water, the drought contingency plan, impacts on hydropower generation, electrical construction activities and other developments on the Colorado River.**

Mr. Witkoski introduced Item J. Warren Turkett, Assistant Director of Natural Resources gave a presentation on the latest hydrology and river updates. (Attachment A).

**I. Comments from the public. Members of the public are invited to comment on items on the meeting agenda or on items not contained therein. No action may be taken on a matter raised during public comment until the matter itself has been specifically included on the agenda as an item for possible action.**

Chairwoman asked if there were any comments from the Commission members. There were none.

**J. Comments and questions from the Commission members.**

Chairwoman asked is there were any comments from the Commission members. There were none.

**K. Selection of the next possible meeting date .**

The next meeting is tentatively scheduled for time p.m. on date, May 14, 2024, at the Clark County Government Center, Commission Chambers, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

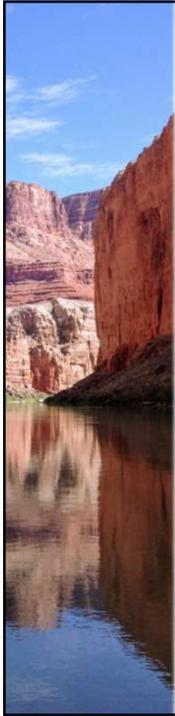
**L. Adjournment .**

**The meeting was adjourned at 2:10 p.m.**

\_\_\_\_\_  
Eric Witkoski, Executive Director

APPROVED:

\_\_\_\_\_  
Puoy K. Premsrirut, Chairwoman



# Colorado River Commission of Nevada

## Hydrology and River Updates

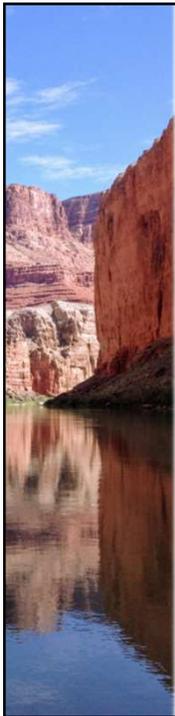
Warren Turkett

April 9, 2024

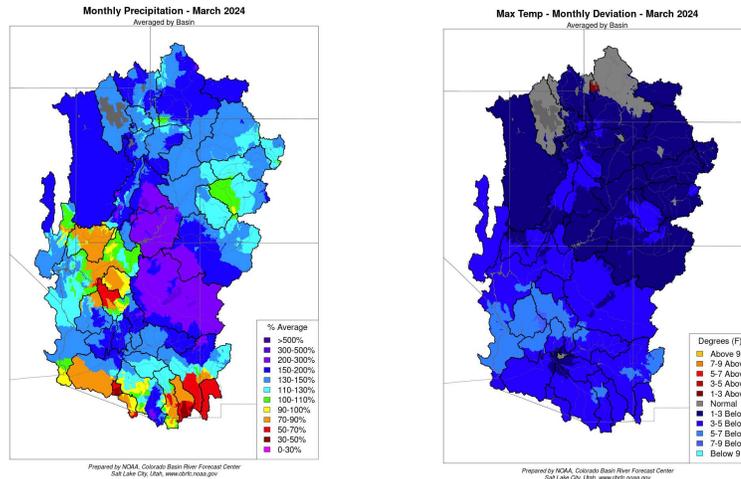


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## Precipitation and Temperature

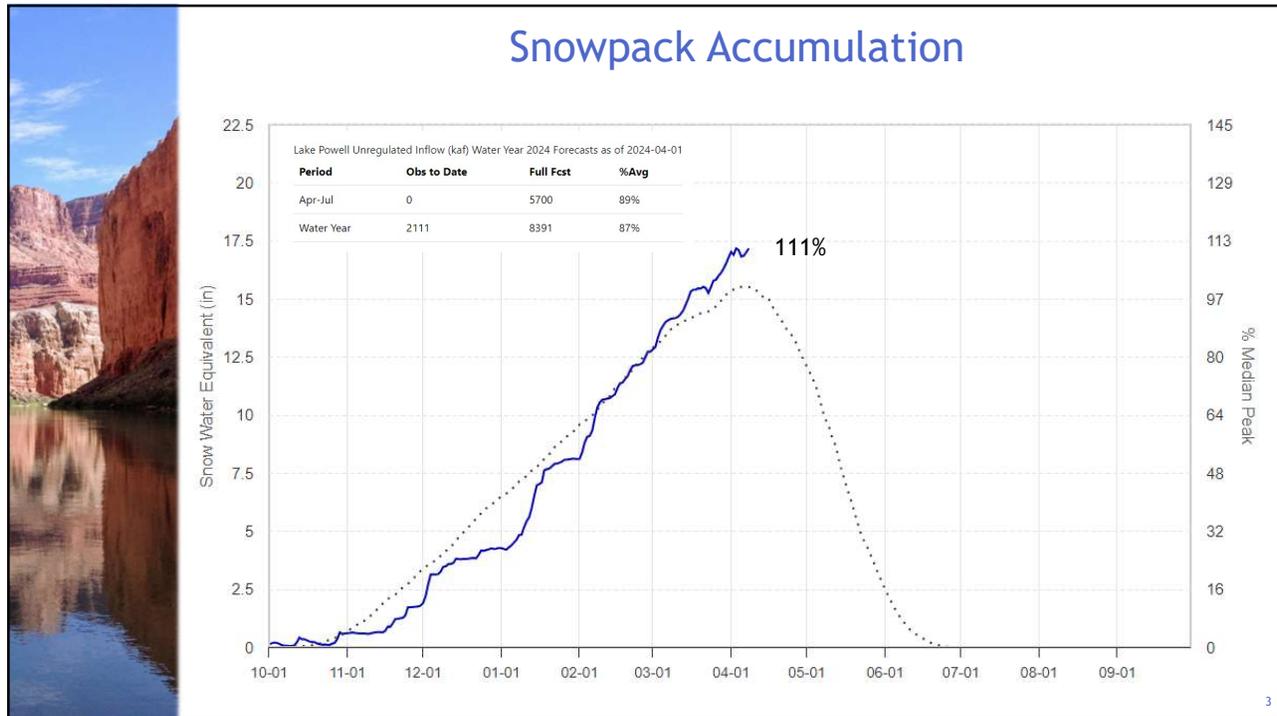


Lake Powell %Average Precipitation Water Year 2024

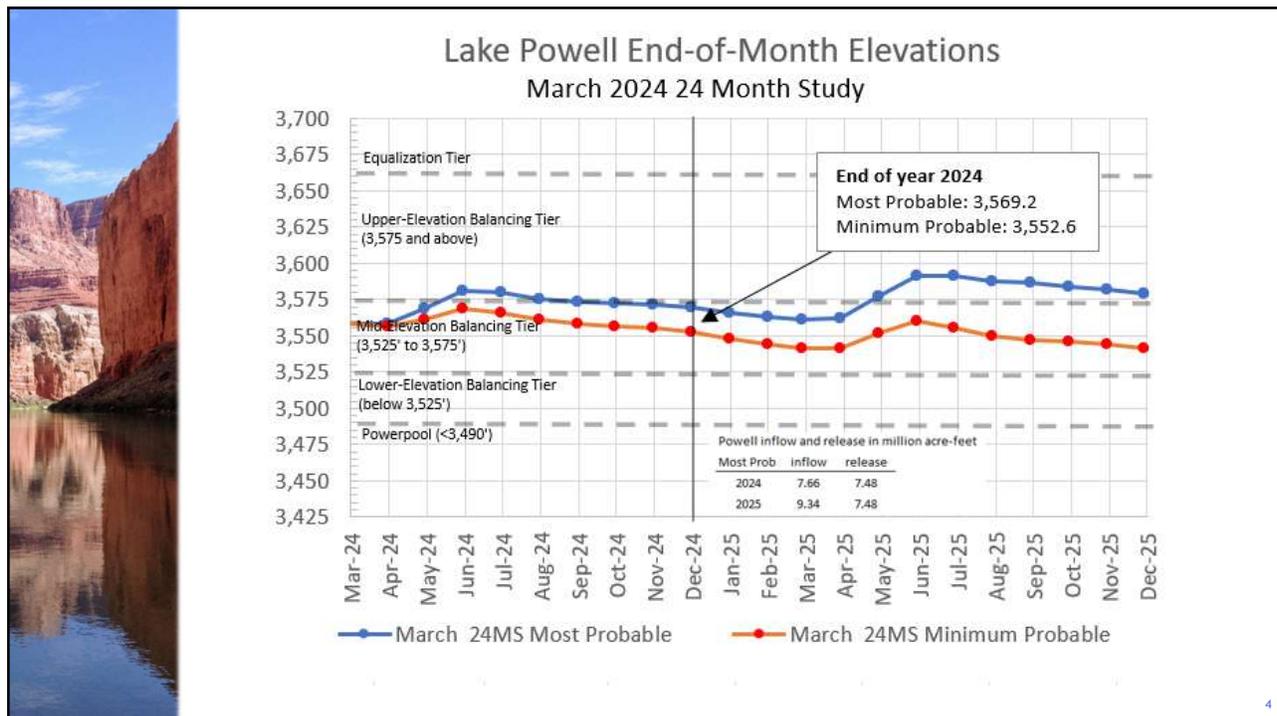
Area	Oct	Nov	Dec	Jan	Feb	Mar	Water Year
UC-Powell	92	56	76	120	137	130	102

2

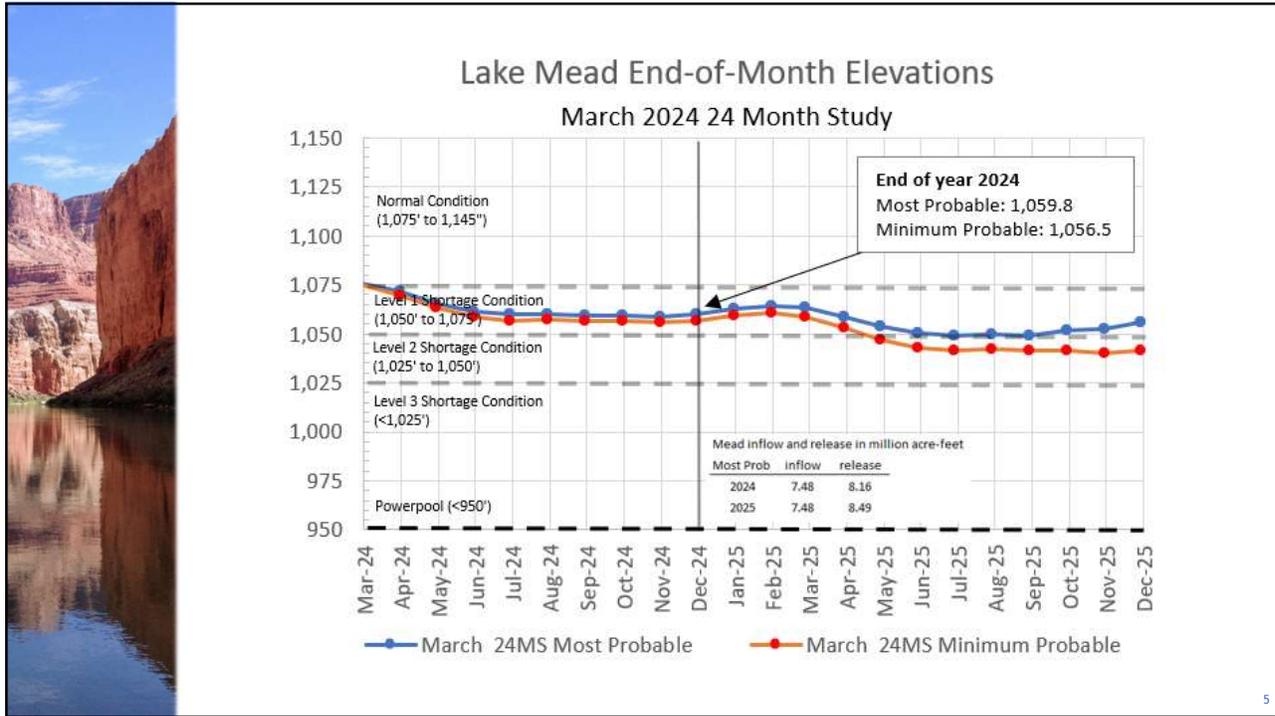
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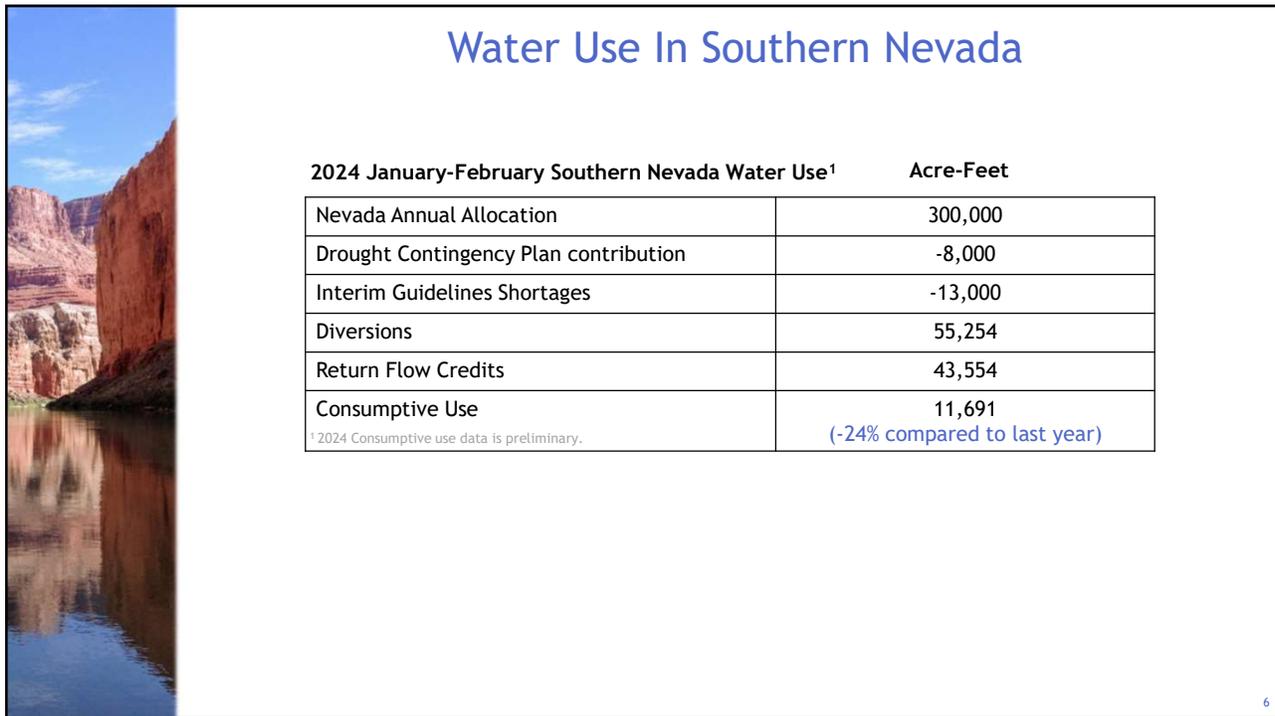
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**COLORADO RIVER COMMISSION OF NEVADA  
AGENDA ITEM D  
FOR MEETING OF MAY 14, 2024**

**SUBJECT:** *For Possible Action:* Consideration of and possible action to approve contract CRCBF-14 between successful bidder, Summit Line Construction, Inc., and the Colorado River Commission of Nevada, based on bid solicitation 69CRC-S2658 for construction of a switchyard and ten-mile transmission line for Southern Nevada Water Authority's Boulder Flats Solar Project.

**RELATED TO AGENDA ITEM:**

None.

**RECOMMENDATION OR RECOMMENDED MOTION:** Staff recommends the Commission approve the contract CRCBF-14 with Summit Line Construction, Inc., and authorize the Executive Director to sign the contract on behalf of the Commission.

**FISCAL IMPACT:**

The cost is paid by SNWA.

**STAFF COMMENTS AND BACKGROUND:**

**A. Background on Operations**

Pursuant to NRS 538.161, the Colorado River Commission of Nevada (Commission) may execute contracts for the planning and development of any facilities for the generation or transmission of electricity for the greatest possible benefit to the state. Additionally, the Commission has a Facilities Development Agreement with the Southern Nevada Water Authority (SNWA) for the purpose of "creating a cooperative relationship to jointly develop, operate, maintain, use and replace a Power System" for SNWA and its members. SNWA has requested the Commission assist in the design, procurement and construction of a switch yard and transmission line necessary for SNWA's Boulder Flats Solar Project. The Boulder Flats Solar Project is being built to assist SNWA in meeting Nevada's renewable portfolio standard requirement that will require 50 percent of SNWA's energy used to be from a renewable energy source by 2030.

**B. Nature of the Project**

The Transmission Line and Switchyard have been designed with the assistance of the engineering firm Burns and McDonnell. The project involves the construction of a new 10-mile 230kV transmission line with a new three breaker ring bus switchyard.

**C. Background of Bid/Procurement**

On January 9, 2024, bid solicitation 69CRC-S2658 was posted in Nevada-EPro. Bid solicitations were sent to registered vendors with Nevada-EPro, and additional independent vendors directly via email. The deadline for bid proposals closed at 2:00 p.m. on March 19, 2024. Three bids were received through Nevada-EPro. The evaluation team recommended approval of the bid from Summit Line Construction, Inc.

**D. Proposed Contract**

Under the proposed contract, Summit Line Construction will build the transmission line and associated bus switch yard. The equipment has or will be purchased by the Commission pursuant to NRS 538.161 (2) and the Commission's established Procedures for Purchasing Electrical Materials for the Power Delivery Project and State Administrative Manual (SAM) 0326.



**Colorado River Commission of Nevada  
555 East Washington Avenue, Suite 3100  
Las Vegas, Nevada 89101-1065**

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# **Boulder Flats Solar Interconnection Project**

**Contract No. CRCBF-14  
Transmission Line & Switchyard Construction**

**Volume II – Contract Forms and Conditions**

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**PWP-CL-2006-241**

For Award:  
May 14, 2024

**Boulder Flats Solar Interconnection Project**

**Contract No. CRCBF-14  
Transmission Line & Switchyard Construction  
Contract Documents**

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**Boulder Flats Solar Interconnection Project**

**Contract No. CRCBF-14  
Transmission Line & Switchyard Construction  
Contract Documents**

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**SECTION 700**  
**Contract NO. CRCBF-14**  
**Transmission Line & Switchyard Construction**

**THIS CONTRACT** is made and entered into by and between the Colorado River Commission of Nevada, hereinafter referred to as the “Owner,” and Summit Line Construction, Inc., hereinafter referred to as the “Contractor.” The Owner and the CONTRACTOR are sometimes individually referred to as “Party” and collectively referred to as the “Parties.”

**IN CONSIDERATION** of the mutual covenants contained herein, the Parties hereto agree as follows:

1. The Contractor shall perform and complete in a good and workmanlike manner all of the Work as defined in the Contract Documents, shall furnish all equipment and materials and all the tools and labor necessary to properly perform and complete the Work such that it shall be ready for use in accordance with the Contract Documents and the attached bonds, which are hereby declared and accepted as essential parts of this Contract and to accept the Contract Price as defined in the Contract Document as full compensation therefore.
2. The Owner shall pay Contractor the Contract Price in full compensation for Contractor’s full performance in the manner and upon the conditions set forth in the Contract Documents.
3. The Contract Documents, which comprise the entire Contract between the Owner and the Contractor for the performance of the Work, consist of everything included in Volumes I, II, III, IV, V and VI, which by this reference are incorporated and made a part hereof. The Contractor hereby certifies that the Contractor has read and understands every provision contained in the Contract Documents. The Contractor shall be bound and shall comply with each and every term, condition and covenant set forth in the Contract Documents.
4. Each individual signing this Contract represents and warrants that the Party represented has duly authorized such individual to execute this Contract with the intent that the Party be bound and obligated hereby.

**IN WITNESS WHEREOF**, the Contractor and the Owner have executed five duplicate originals of this Contract this \_\_\_\_\_ day of \_\_\_\_\_, 2024. The Owner will retain four counterparts and one counterpart will be delivered to the Contractor.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST

\_\_\_\_\_

\_\_\_\_\_

**COLORADO RIVER COMMISSION OF NEVADA**

By: \_\_\_\_\_

Puoy K. Premsrirut  
Chairman

ATTEST

\_\_\_\_\_  
Eric Witkoski  
Executive Director

Approved as to Form:

\_\_\_\_\_  
Michelle Briggs  
Special Counsel for Attorney General

**SECTION 750  
PERFORMANCE BOND**

**CONTRACTOR** (Name and Address):

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

**OWNER** (Name and Address):

Colorado River Commission of Nevada  
555 E. Washington Avenue  
Suite 3100  
Las Vegas, Nevada 89101-1065

**CONTRACT**

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

Amount: \$ \_\_\_\_\_

Description: Contract No. CRCBF-14  
Boulder Flats Interconnection Project  
Transmission Line &  
Switchyard Construction

Location: Clark County, Nevada

**BOND**

Date (Not earlier than Contract Date): \_\_\_\_\_

Modifications to this Bond Form:

**CONTRACTOR AS PRINCIPAL** (Seal below)

**SURETY** (Seal below)

Company: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Name and Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Name and Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner **for the performance of the Contract**, which is incorporated herein by reference.
2. If the Contractor performs the Contract, the Surety and the Contractor have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond arises after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in subsection 9 below, that the Owner is considering declaring the Contractor in default and has requested and attempted to arrange a conference with the Contractor and Surety, to be held not later than fifteen (15) days after receipt of such notice, to discuss methods of performing the Contract. If the Owner, the Contractor and the Surety agree, the Contractor must be allowed a reasonable time to perform the Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract. Such Contractor Default must not be declared earlier than twenty (20) days after the Contractor and the Surety have received notice as provided in paragraph 3.1; and
  - 3.3 The Owner has agreed to pay the balance of the Contract Price to the Surety in accordance with the terms of the Contract or to a contractor selected to perform the Contract in accordance with the terms of the Contract with the Owner.
4. When the Owner has satisfied the conditions of subsection 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Contract; or
  - 4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with a performance bond executed by a qualified Surety equivalent to the bond issued on the Contract, and paid to the Owner the amount of damages as described in subsection 6 of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's Default; or

- 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
  - 4.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefore to the Owner; or
  - 4.4.2 Deny liability in whole or in part and notify the Owner citing the reasons therefore. If the Surety does not proceed as provided in subsection 4, with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner is entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in paragraph 4.4, and the Owner returns the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner is entitled to bring an action to enforce any remedy available to the Owner.
5. After the Owner has terminated the Contractor's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2 or 4.3 above, then the responsibilities of the Surety to the Owner must not be greater than those of the Contractor under the Contract and the responsibilities of the Owner to the Surety must not be greater than those of the Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to the mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:
  - 5.1 The responsibilities of the Contractor for correction of defective work and completion of the Contract;
  - 5.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the action or failure to act of the Surety under subsection 4; and
  - 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of the Contractor.
6. The Surety is not liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Price must not be reduced or set off on account of any such unrelated obligations. No right of action accrues on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.
7. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work is performed under the Contract and must be initiated within two years after the Contractor's Default, or within two years after the Contractor ceased working, or within two years after the Surety refuses or fails to perform its obligation under this Bond, whichever occurs first. If the provisions of this subsection are void or prohibited by law, the minimum of limitation available to sureties as a defense in the jurisdiction of the court is applicable.
9. Notice to the Surety, the Owner or the Contractor must be mailed or delivered to the address shown on the signature page of this performance bond.
10. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the work is performed any provision of this bond conflicting with such statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
11. Definitions.
  - 11.1 "Balance of the Contract Price" means the total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, including allowances to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
  - 11.2 "Contract" means the agreement between the Owner and the Contractor identified on the signature page, including all the Contract documents and changes thereto.
  - 11.3 "Contractor Default" means a failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
  - 11.4 "Owner Default" means a failure of the Owner, which has neither been remedied nor waived, to pay the Contractor or to perform in complete or comply with the other terms of this Contract.

**SECTION 800  
PAYMENT BOND**

**CONTRACTOR** (Name and Address):

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

**OWNER** (Name and Address):

Colorado River Commission of Nevada  
555 E. Washington Avenue  
Suite 3100  
Las Vegas, Nevada 89101-1065

**CONTRACT**

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

Amount: \$ \_\_\_\_\_

Description: Contract No. CRCBF-14  
Boulder Flats Interconnection Project  
Transmission Line &  
Switchyard Construction

Location: Clark County, Nevada

**BOND**

Date (Not earlier than Contract Date): \_\_\_\_\_

Modifications to this Bond Form: \_\_\_\_\_

**CONTRACTOR AS PRINCIPAL** (Seal below)

**SURETY** (Seal below)

Company: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Name and Title: \_\_\_\_\_

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner solely **for the protection from claimants supplying labor or materials** to the Contractor or to any of its subcontractors, for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials, or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have direct contract with the Contractor:
    - 4.2.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    - 4.2.2 Have either received a rejection in whole or in part from the Contractor, or not received within thirty (30) days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
    - 4.2.3 Not having been paid within the above thirty (30) days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within forty-five (45) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes in time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave notice required by Subparagraph 5.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the work is performed, any provision of this Bond conflicting with such statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions.
  - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include, without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
  - 15.2 Contract or Construction Contract: The Contract between the Owner and the Contractor identified on the signature page including all the Contract documents and changes thereto.
  - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor or to perform in complete or comply with the other terms thereof.

**SECTION 850  
GUARANTY BOND**

GUARANTEE of:

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(Name and Address of Prime Contractor)

We hereby guarantee that all work performed under the Contract Documents entitled, Contract CRCBF-14, Transmission Line & Switchyard Construction, which we have constructed, has been done in accordance with the Contract Documents. We agree to repair or replace any or all of our Work, together with any other adjacent work which may be damaged in so doing, that may prove to be defective in workmanship or material within a period of one year after the Substantial Completion of the Work without any expense whatsoever to the Colorado River Commission of Nevada, ordinary wear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing by the Colorado River Commission of Nevada, we collectively or separately, do hereby authorize the Colorado River Commission of Nevada to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges therefore upon demand. When correction Work is started, it shall be carried through to completion.

Date: \_\_\_\_\_  
Date of Substantial Completion

Amount: \_\_\_\_\_  
(5% Final Contract Price)

\_\_\_\_\_  
(Contractor)

By: \_\_\_\_\_  
(Signature)

(continued next page)

Countersigned Resident Agent in Nevada:

\_\_\_\_\_  
(Agent)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_

Phone No. \_\_\_\_\_

(SEAL AND NOTARIZE ACKNOWLEDGMENT OF SURETY)

**SECTION 900**  
**CERTIFICATES OF INSURANCE**

Colorado River Commission of Nevada  
Boulder Flats Solar Interconnection Project  
Contract No. CRCBF-14

(Insert Certificates after this page)

**SECTION 1000  
GENERAL CONDITIONS**

**1. Definitions**

- 1.1 “Acceptance” or “Final Acceptance” - The formal action by the Owner accepting the Work, or any portion thereof, as complete and satisfactory, subject to Contractor’s warranties.
- 1.2 “Acceptance Testing” - Any testing required by the Owner prior to, and as a prerequisite of, Owner’s Acceptance.
- 1.3 “Addenda” - Written or graphic instruments issued by the Owner prior to the opening of Bids that clarify, correct or change the Contract Documents.
- 1.4 “Application for Payment” - The form acceptable to Owner’s Representative which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.5 “Asbestos” - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.6 “As indicated” - Refers to references in the Drawings.
- 1.7 “As specified” - Refers to references in the Contract Documents.
- 1.8 “Bid” - The formal offer or proposal of the Bidder submitted on the prescribed Bid Form and Bid Schedule together with the required Bid security and all information submitted with the Bid that pertains to performance of the Work.
- 1.9 “Bid Security” - A certified or cashier’s check or Bid Bond accompanying the Bid in the amount of 5% of the Total Bid Price payable to the Owner as a guarantee that the Bidder, if its Bid is accepted, will promptly execute the Contract, and provide the necessary bonds, insurance certificates, and other required documentation.
- 1.10 “Bidder” - The person, firm, or corporation submitting a Bid for the Work to be performed.
- 1.11 “Bonds” - Performance and Payment Bonds and other instruments of security.

- 1.12 “Change Order” - A document signed by Owner and Contractor authorizing an addition, deletion or revision in the Work and, if warranted, an adjustment in the Contract Price or the Contract Times issued on or after the Effective Date of the Contract.
- 1.13 “Construction Site, Project Site, Site” - The Boulder Flats Switchyard and the land upon which it is located which shall be utilized by the Contractor in the performance of the construction, storage and access.
- 1.14 “Contract Documents” - All of the documents contained in Volumes I, II, III and IV, V, VI and any addenda thereto, of the Colorado River Commission of Nevada, Boulder Flats Solar Interconnection Project, Contract No. CRCBF-14. The term includes the Contractor’s Bonds, any Notice of Award or Notice to Proceed issued by the Owner, Contractor’s Bid and any documentation submitted by the Contractor and accepted by the Owner prior to the execution of this Contract, and all Change Orders amending, modifying, or supplementing this Contract which may be delivered or issued after the effective date of this Contract and are not attached hereto. Submittals are not Contract Documents. Shop Drawings and the reports and drawings referred to in Volume II, Section 1000, subsection 4.2.1 are not Contract Documents.
- 1.15 “Contract Price” - The monies payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents and subject to all adjustments made in accordance with the Contract Documents, including but not limited to any amendments hereto, and subject to the provisions of Volume II, Section 1000, subsection 10.9 in the case of Unit Price Work, and subject to the assessment of liquidated damages.
- 1.16 “Contract Times” - The number of days or the dates stated in the General Requirements, and subject to all adjustments made in accordance with the Contract Documents, to: (I) achieve Substantial Completion; (ii) to achieve final completion, and (iii) achieve any interim milestones.
- 1.17 “Contractor” - The person, firm or corporation with whom Owner has entered into the Contract.
- 1.18 “Day” - A calendar day of twenty-four hours measured from midnight to the next midnight.
- 1.19 “Defective” - An adjective which when modifying the word Work refers to Work that is faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirement of any required inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner’s Representative recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at

Substantial Completion or such damage arises from the fault or negligence of Owner or its other contractors).

- 1.20 “Drawings” - The drawings which show the scope, extent and character of the Work to be furnished and performed by Contractor and which have been prepared by the Owner and are provided in Volume IV of the Contract Documents. Shop Drawings are not Drawings as so defined.
- 1.21 “Effective Date of the Contract” - The date the Contract is executed by the Owner.
- 1.22 “Equipment” - Products with operational or non-operational parts, regardless of whether motorized or manually operated, and particularly including products with service connections (wiring, piping, and other like items), excluding machinery and equipment used for preparation, fabrication, conveying and erection of the Work.
- 1.23 “Executive Director” - The executive director of the Colorado River Commission of Nevada.
- 1.24 “Field Order” - A written order issued by Owner which orders minor changes in the Work in accordance with Volume II, Section 1000, subsection 9.1 but which does not involve a change in the Contract Price or the Contract Times.
- 1.25 “Furnish, Install or Provide” - To pay for, deliver to site, unload and uncrate, assemble, place in position, install, adjust, clean and otherwise make Materials and Equipment fit for their intended use.
- 1.26 “Hazardous Waste” - The term "hazardous waste" shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903), as amended from time to time.
- 1.27 “Indemnitees and Insureds” - The Colorado River Commission of Nevada, the Southern Nevada Water Authority, their affiliated governmental agencies, their respective members, directors, officers and employees, the water users of the Southern Nevada Water Authority: Las Vegas Valley Water District, Boulder City, City of North Las Vegas, City of Henderson, and each of their directors, officers, employees, and subcontractors.
- 1.28 “Labor Commissioner” - The person appointed and functioning pursuant to NRS Chapter 607 who is charged with enforcing the labor laws of the State of Nevada.
- 1.29 “Laws and Regulations; Laws or Regulations” - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction over the Contract.

- 1.30 “Liens” - Liens, charges, security interests or encumbrances on Project funds, real property or personal property.
- 1.31 “Materials” - Products which must be substantially cut, shaped, worked, mixed, finished, refined, or otherwise fabricated, processed, installed, or applied to form a part of the Work, excluding machinery and equipment used for preparation, fabrication, conveying and erection of the Work.
- 1.32 “Milestone” - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.33 “Notice of Award” -The written notice by the Owner to the apparent successful Bidder stating that upon compliance by the apparent successful Bidder with the conditions.
- 1.34 “Notice to Proceed” - The written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform Contractor’s obligations under the Contract Documents which is mutually executed by Owner and Contractor.
- 1.35 “Owner” – For purposes of the Contract Documents means the Colorado River Commission of Nevada. In this regard the Colorado River Commission is serving as an agent of the Southern Nevada Water Authority whom shall retain ownership of the facilities and equipment comprising the Boulder Flats Switchyard.
- 1.36 “Partial Utilization” - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.37 “PCBs” - Polychlorinated biphenyls.
- 1.38 “Petroleum” - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous wastes and crude oils.
- 1.39 “Procurement Contractor” - The corporation, company, partnership, firm or individual who has entered into an agreement with the Owner to furnish equipment for this Project.
- 1.40 “Products” - Purchased items for incorporation into the Work, regardless of whether specifically purchased for the project or taken from Contractor’s stock of previously purchased products, excluding machinery and equipment used for preparation, fabrication, conveying and erection of the Work.

- 1.41 “Project”- The Owner’s Boulder Flats Switchyard Upgrade Project.
- 1.42 “Radioactive Material” - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 1.43 “Reference Drawings” - Drawings not specifically prepared for this Contract, but which contain information pertinent to the Work.
- 1.44 “Samples” - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.45 “Shop Drawings”- All diagrams, detail design calculations, fabrication, installation, and erection drawings, lists, graphs, catalog sheets, data sheets, and similar items, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- 1.46 “Specifications” - Those portions of the Contract Documents consisting of written technical descriptions of the Work, and materials, equipment, construction systems, standards, workmanship, and certain administrative details applicable thereto.
- 1.47 “Subcontractor” - An individual, firm or corporation having a direct contract with the Contractor or with another Subcontractor for the performance of a part of the Work at the Site.
- 1.48 “Submittals” - All Shop Drawings, product data, Samples, reports, and records which are prepared by the Contractor, a Subcontractor, manufacturer, or Supplier, and submitted by the Contractor to the Owner as a basis for approval of the use of Equipment and Materials proposed for incorporation in the Work or needed to describe proper installation, operation and maintenance, or technical properties.
- 1.49 “Substantial Completion” - The status of the Work (or a specified part thereof) when it has progressed to the point where, in the opinion of the Owner’s Representative as evidenced by his definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be used for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by the Owner’s Representative written recommendation for final payment. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof. To be considered substantially complete, all electrical power, controls, and instrumentation facilities must be operational and ready for the Owner’s continuous use as intended.

- 1.50 “Substitutions” - Changes in products, Materials, Equipment, and methods of construction required by the Contract Documents proposed by the Contractor after award of the Contract are considered to be requests for substitutions. The following are not considered to be requests for substitutions (i) substitutions requested during the bidding period, and accepted by Addendum prior to award of the Contract, are included in the Contract Documents and are not subject to requirements specified in Volume III, section 1600 for substitutions, (ii) revisions to the Contract Documents requested by Owner, and (iii) specified options of Products and construction methods included in the Contract Documents.
- 1.51 “Successful Bidder” - The best bid as evaluated by the Owner pursuant to the Owner’s Procedure for Award of Construction Contracts for the Power Delivery Project as provided in Volume I, Section 300 of the Contract Documents and to whom the Owner makes an award on the basis thereof.
- 1.52 “Superintendent” - The Contractor’s representative at the Site with authority to act on behalf of the Contractor.
- 1.53 “Supplier” - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with the Contractor or with a Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or a Subcontractor.
- 1.54 “Underground Facilities” - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and encasements containing such facilities, which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquids, petroleum products, telephone or other communications, cable television, sewage, drainage removal, control systems, or water.
- 1.55 “Unit Price Work” - Work to be paid for on the basis of unit prices.
- 1.56 “Work” - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.
- 1.57 “Work Day” - Any day the Contractor is performing Work under the Contract.
- 1.58 “Written Amendment” - A written amendment of the Contract Documents, signed by the Owner and the Contractor on or after the Effective Date of the Contract.

## 2. Preliminary Matters, Contract Times.

- 2.1 **Copies of Documents.** The Owner shall furnish to the Contractor copies of the Contract Documents as stated in Volume II, Section 700.
- 2.2 **Commencement of Contract Times, Notice to Proceed.** After receipt of all executable agreements, bonds, and certificates of insurance required hereunder, the Owner will issue a Notice to Proceed. The Contract Times will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of the Contract.
- 2.3 **Commencement of Work.** The Contractor shall begin to perform the Work on the day indicated in the Notice to Proceed, but no Work shall be done at the Site prior to the date on which the Contract Times commence to run.
- 2.4 **Completion of Work.** The Contractor shall complete all required Work within the times specified in Volume II, Section 1000, subsection 13.9.
- 2.5 **Contractor's Preconstruction Responsibilities.** Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall promptly report in writing to the Owner any conflict, error, ambiguity or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Owner before proceeding with any Work affected thereby.
- 2.6 **Certificates of Insurance.** Before any Work at the Site is started, the Contractor shall deliver to the Owner, with copies to each additional insured identified in Volume II, Section 1000, subsection 5, certificates of insurance (and other evidence of insurance which the Owner may reasonably request) which the Contractor is required to purchase and maintain in accordance with the Contract Documents.
- 2.7 **Preconstruction Conference.** Within ten (10) days after the Effective Date of the Contract, but prior to the commencement of Work at the Site, a preconstruction conference shall be held. The purpose of the preconstruction conference shall be to designate responsible personnel, discuss contract requirements and procedures, and establish a working relationship. Matters requiring coordination shall be discussed and procedures for handling such matters established. The conference attendees, location and agenda are set forth in Volume III, Section 1200. The Contractor shall bring to the conference:
- 2.7.1 An estimated construction progress schedule indicating the starting and completion dates of the various stages of the Work.

- 2.7.2 A preliminary procurement schedule.
- 2.7.3 A preliminary schedule of Submittal submissions.
- 2.7.4 A list of all permits and licenses the Contractor shall obtain indicating the agency granting the permit, the expected date of submittal for the permit, and the date by which the permit must be received.

### 3. **Contract Documents.**

- 3.1 **Integration.** The Contract Documents comprise the entire agreement between the Owner and the Contractor concerning the Work. The Contract Documents shall be construed in accordance with the laws of the State of Nevada.
  - 3.1.1 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. All Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage, as being required to produce the intended result, will be furnished and performed by the Contractor at the Contractor's sole expense whether or not specifically called for.
  - 3.1.2 When words or phrases which have a well-known technical, construction industry, or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning.
  - 3.1.3 Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the generally accepted standard specification or manual, or the applicable code or Laws or Regulations in effect at the time of opening of Bids except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the Owner, or the Contractor, or any of their consultants, agents, or employees from those set forth in the Contract Documents.
  - 3.1.4 In case of any conflict between manufacturers' data and the Contract Documents, the Contract Documents will take precedence unless the manufacturer's data conforms to data submitted with the Bid with a statement that the Bid is conditioned upon furnishing the Equipment and Materials defined in the manufacturers' data submitted therewith.

- 3.1.5 Applicable codes and standards referenced in these Contract Documents establish minimum requirements for Equipment, Materials, and Work and are superseded by more stringent requirements of Contract Documents when and where they occur.
- 3.1.6 The Specifications are separated into Sections for convenience in defining the Work. Drawings are separated according to engineering disciplines and other classifications. This sectionalizing and the arrangement of the Specifications and Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 3.1.7 If, during the performance of the Work, the Contractor finds a conflict, error, or discrepancy in the Contract Documents, the Contractor shall so report to the Owner's Representative in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification; however, the Contractor shall not be liable to the Owner for failure to report any conflict, error, or discrepancy in the Contract Documents unless the Contractor had actual knowledge thereof or should reasonably have known thereof.
- 3.2 **Amending Contract Documents.** The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof only by formal Written Amendment or Change Order.
- 3.3 **Supplementing Contract Documents.** The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, only by Field Order or the Owner's written interpretation or clarification.
- 3.4 **Ownership of Contract Documents, Drawings and Specifications.** The Contractor and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by the Owner, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of the Owner.

#### **4. Availability Of Lands, Subsurface And Physical Conditions, Reference Points.**

- 4.1 **Availability of Lands.** The lands and rights-of-way that are available for the Contractor's use to prosecute the Work is the area within the Boulder Flats Switchyard fence as identified in the Drawings. Areas outside of the perimeter of the Boulder Flats Switchyard as shown on the Drawings may only be used by the

Contractor if first approved by the Owner's Representative. The Contractor shall make his own arrangements and pay all expenses for additional Work area required by him outside the limits of land and right-of-way provided by the Owner. The Contractor shall confine his operations to the construction limits identified. Any Work performed in public rights-of-way, in addition to conforming to the Contract Documents, shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located.

#### 4.2 **Subsurface and Physical Conditions.**

4.2.1 **Reports and Drawings.** Those reports of explorations and tests of subsurface conditions at or contiguous to the Site and those drawings of physical conditions in or relating to existing surface or subsurface conditions at or contiguous to the Site have been utilized by the Owner solely for design purposes in preparing the Contract Documents and may not be relied upon by the Contractor in its performance of the Contract. The information contained in those documents may not be indicative of actual subsurface conditions that may be encountered and the Owner does not warrant and hereby disclaims responsibility for the accuracy of that information. The Contractor must conduct, and has conducted, its own pre-bid visual inspection in order to thoroughly familiarize itself with conditions at the Site. The determination of the actual character of subsurface material is the Contractor's sole responsibility. Anything to the contrary notwithstanding, should concealed or unknown physical conditions be encountered in the performance of the Work, below the surface of the ground or in an existing structure, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, the Contract Price and time for performance shall be equitably adjusted by Change Order. Additionally, Contractor shall have no liability for an Underground Facility or utilities not shown or indicated on the Drawings and/or for which Contractor has complied with applicable state and local utility damage prevention laws and regulations.

4.2.2 **Limited Reliance by Contractor on Technical Data.** The reports, tests and drawings referred to in Volume II, Section 1000, subsection 4.2.1, if any, were generated to aid the Owner in assessing the suitability of facility locations, to compare the relative advantages of alternative design approaches, to develop structural requirements, and for other related design purposes. Such documents contain two types of information: Type A) factual technical data derived from direct observation, examination or testing of physical samples or specimens with descriptions or measurements of such samples and specimens derived from direct examination or testing by persons acting on behalf of the Owner; and Type B) interpretations, interpolations, extrapolations, conclusions, or opinions made or derived

from available evidence, including Type A data. The Owner accepts responsibility only for the accuracy of Type A data but hereby warns the Contractor that such data does not purport to represent and may not be indicative of all subsurface conditions that may be encountered by the Contractor. The Owner does not warrant and hereby disclaims all responsibility for Type B data and all other information other than the accuracy of Type A data, and all such information is to be used by the Contractor at the Contractor's sole risk. The obligation is upon the Contractor, before making its Bid, to make its own visual investigation as to all subsurface conditions and make its own interpretation of the character and condition of the materials which will be encountered. To this end the Contractor may excavate test holes as it deems necessary. Except as otherwise provided herein, the Contractor may not rely upon or make any claim against Owner, or any of their consultants with respect to:

- 4.2.2.1 the completeness of geotechnical information;
- 4.2.2.2 the completeness of such reports and drawings for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by the Contractor and safety precautions and programs incident thereto;
- 4.2.2.3 any interpretations, interpolations, extrapolations, conclusions, or opinions made or derived from any evidence by any person; and
- 4.2.2.4 any Type B information.

#### 4.3 **Physical Conditions - Underground Facilities.**

- 4.3.1 **Shown or Indicated.** The information and data shown or indicated in the Contract Documents with respect to existing underground facilities at or contiguous to the site is based on information and data furnished to the Owner by the owners of the underground facilities or by others.
  - 4.3.1.1 The Owner shall not be responsible for the accuracy or completeness of any Underground Facilities Information;
  - 4.3.1.2 The cost of all of the following will be included in the Contract Price and the Contractor shall have full responsibility for (i) reviewing and checking all Underground Facilities Information, (ii) locating all underground facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of underground facilities during construction, and (iv) the safety and protection of all underground facilities and repairing any damage thereto resulting from the Work.

4.3.2 **Not Shown or Indicated.** If an underground facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the Contract Documents, the Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Volume II, Section 1000, subsection 6.23), identify the owner of the underground facility and give written notice to the Owner. The Owner's Representative shall promptly review the underground facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the underground facility. If the Owner concludes that a change in the Work is required, a Change Order shall be issued. The Contractor shall be responsible for the safety and protection of the underground facility. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that any delay or increase in cost to the Contractor is attributable to the existence of any underground facility that was not shown or indicated in the Contract Documents and that the Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the Owner and the Contractor are unable to agree on entitlement to or the amount or length of any adjustment in Contract Price or Contract Times, the Contractor may make a claim therefore. However, the Owner shall not be liable to the Contractor for any claims, costs, losses or damages incurred or sustained by the Contractor on or in connection with any other project or anticipated project.

4.3.2.1 Generally, service connections are not indicated on the Drawings. Prior to commencing any Work at the Project Site, the Contractor shall be responsible for locating existing underground installations at or contiguous to the Project Site, in advance of excavating or trenching, by contacting all local utilities or Underground Service Alert (USA), and by prospecting.

4.3.2.2 All information relative to underground facilities shall be recorded and incorporated into the record documents required by Volume II, Section 1000, subsection 6.19.

4.3.2.3 The Contractor shall be responsible for any unauthorized interruption in the operation of underground facilities as a result of the Contractor's negligent operations. Unless the owner of the damaged facility elects to perform the repair and restoration work, the Contractor shall repair and fully restore any damaged underground facility to a condition at least equal to that which existed prior to the time of damage. All repair and restoration

work shall be performed to the satisfaction of the facility's owner and the Owner's Representative.

4.3.2.4 The Contractor shall arrange for any inspection of repaired or reconditioned utility facilities required by authorities having jurisdiction. All inspection fees shall be paid by the Contractor to the extent the damage is caused by Contractor's fault or negligence. If the facility's owner elects to perform the repair and restoration work, the Contractor shall render all assistance required. The Contractor shall be responsible for all just and reasonable expenses incurred by the facility's owner for such work to the extent the damage is caused by Contractor's fault or negligence.

4.4 **Reference Points.** The Contractor shall provide engineering surveys to establish reference points for construction which in the Owner's Representative's judgment are satisfactory to enable the Contractor to proceed with the Work. The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior approval of the Owner's Representative. The Contractor shall endeavor to protect all reference points and shall report to the Owner's Representative whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for all costs associated with the accurate replacement or relocation of such reference points by professionally qualified personnel to the extent caused by Contractor's fault or negligence.

4.5 **Hazardous Material and Waste.** The Contractor shall perform and complete all requirements included in the Contract Documents, regardless if shown or not, for compliance with all Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, Federal Energy Regulatory Commission and any other Federal, State, or local statutes, laws and regulations governing the handling, use, storage, conveyance, spill, release, clean-up or disposal of hazardous materials, petroleum products, solid or hazardous wastes. Where no specific regulations exist, all chemical, hazardous, and petroleum product piping and storage in underground locations shall be installed with double containment piping and tanks, or in separate concrete trenches and vaults, or with an approved lining which cannot be penetrated by the chemicals, unless waived in writing by the Owner.

4.5.1 the Owner shall not be responsible for any asbestos, PCBs, petroleum, hazardous waste or radioactive material brought to the Site by the Contractor, Subcontractor, Suppliers or anyone else for whom the Contractor is responsible.

- 4.5.2 If the Contractor encounters any asbestos, PCB's, petroleum, hazardous waste or radioactive materials, the Contractor shall immediately: (i) stop all Work in connection with the hazardous condition and in any area affected thereby (except in an emergency as required by Volume II, Section 1000, subsection 6.23), and (ii) notify the Owner (and thereafter confirm such notice in writing). The Contractor shall not be required to resume Work in connection with a hazardous condition or in any area affected by a hazardous condition until after the Owner has obtained any required permits related thereto and delivered to the Contractor special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which Work may be resumed safely. If the Owner and the Contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of a Work stoppage or special conditions under which Work is agreed by the Contractor to be resumed, either party may make a claim therefore.
- 4.5.3 If after receipt of special written notice referred to in Volume II, Section 1000, subsection 4.5.2, the Contractor does not agree to resume Work based on a reasonable belief that it is unsafe to do so, or does not agree to resume Work under such special conditions, then the Owner may order such portion of the Work that is in connection with the hazardous condition or in the affected area to be deleted from the Work. If the Owner and the Contractor cannot agree as to the entitlement to, amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting a portion of the Work, then either party may make a claim therefore. The Owner may perform the deleted Work.
- 4.5.4 Anything to the contrary notwithstanding, Contractor shall have no liability for any hazardous material not introduced to the Work location by it, and Owner shall indemnify, defend and hold harmless Contractor for any claims or liabilities arising from preexisting or latent hazardous material, except to the extent Contractor negligently or willfully exacerbates same and fails to take action to mitigate any resultant damage.
- 4.6 **Preservation of Cultural Resources.** The Contractor shall conform to the applicable requirements of the National Historic Preservation Act of 1966 and NRS 383.121 as they relate to the preservation of cultural resources. In the event potential cultural resources are discovered during subsurface excavations at the Site of construction, the following procedures shall be instituted:
- 4.6.1 The Owner's Representative shall issue a Field Order directing the Contractor to cease all construction operations at the location of such potential cultural resources. The area shall be marked by the Contractor in

an appropriate manner to ensure that all construction equipment, activities, and personnel remain clear of the area until further notice.

4.6.2 The Owner may retain a qualified archaeologist to evaluate the discovery, and in consultation with the State Historic Preservation Office, shall determine if any additional mitigation is required. The Owner shall implement any required study or removal. The Owner's Representative shall notify the Contractor when the mitigation is complete and construction in the affected area may resume.

4.7 **Burial Sites.** The Contractor shall comply with provisions of NRS 383.170 regarding procedures to be followed in the event a burial site is discovered during construction and shall be subject to the penalties provided for in NRS 383.180 regarding such sites. In the event a burial site is discovered, the Contractor shall notify the Owner's Representative immediately.

## 5. Insurance, Bonds and Indemnification.

5.1 **General.** The Contractor shall not commence any Work under this Contract until it obtains, at its own expense, all insurance and surety bonds as required in this section. The types of surety bonds and insurance to be obtained are Bid, Performance, Payment and Guaranty Bonds, and Workers' Compensation, Employers' Liability, Automobile Liability, Commercial General Liability, and Property Insurance, as outlined in the following portions of this subsection. The Workers' Compensation, Employers' Liability and Automobile Liability shall be maintained in force for the full period of this Contract or until the Owner has finally accepted the Work, whichever occurs later. The Commercial General Liability policy shall be maintained in force for the full period of the Contract and for three years following final acceptance of the Work performance under this Contract by the Owner.

5.2 **Generally Accepted Professional Practices.** The Services provided and/or procured, and/or Work performed by the Contractor shall be in accordance with generally accepted applicable professional practices and principles, except where a higher standard is called for by this Contract. Except as otherwise set forth in this Contract, these insurance, bond and indemnification provisions are in addition to and cumulative to any other right of indemnification or contribution, which the Owner may have in law, in equity, or otherwise and shall survive the completion of the Project.

5.3 **Indemnification.** The Contractor indemnifies and saves harmless and defends Indemnitees against any and all third party claims, liability, loss, damage, cost, expense, award, fine or judgment (including reasonable attorneys' fees and costs) to the extent caused by Contractor's negligence in its conduct or performance of the Work including (without limitation) such claims, liability, loss, damage, cost, expense, award, fine or judgments which are attributable to or arising by reason of

death or bodily injury of persons, injury or damage to property, caused by the Contractor's negligent acts or omissions, except to the extent those losses are caused by the Indemnitees. In claims against any person or entity indemnified under this section by an employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation under this section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor's workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. It is the Contractor's sole responsibility to ascertain that the insurance requirements of this Contract are fulfilled. In the event that they are not, the Contractor shall not be relieved of his duty to perform, indemnify, defend and hold harmless the Indemnitees nor shall the Owner or the Indemnitees be liable to the Contractor or any others in the event the Contractor's insurance, as accepted by the Owner, fails to meet the full requirements herein.

5.4 **Performance, Payment and Guaranty Bonds.** The Contractor shall furnish with the executed Contract, a Performance and Payment Bond, each in an amount at least equal to the Contract Price, as security for faithful performance and payment of all the Contractor's obligations under the Contract Documents, pursuant to NRS 339. The Contractor shall also furnish a Guaranty Bond in the amount of 5 percent (5%) of the final Contract Price at Contract close-out which shall remain in effect for one year after Substantial Completion of the Work. The Contractor shall use the Performance and Payment Bond forms contained in the Contract Documents. All bonds shall be executed by sureties included in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 by the Audit Staff Bureau of Government Financial Operations, U.S. Treasury Department". All Bonds signed by an agent must be accompanied by a certified copy of agent's authority to act. Only surety companies authorized to do business in, and having an agent for service of process in the State of Nevada will be acceptable. If the Surety on any Bonds furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of the preceding paragraph, the Contractor shall within ten (10) days thereafter substitute another Bond and Surety, both of which must be acceptable to the Owner.

5.5 **Intentionally Omitted.**

5.6 **Property Insurance.**

5.6.1 **Builders Risk Insurance.**

5.6.1.1 The Contractor shall purchase and maintain proper insurance upon the Work at the site, and the value of the Owner-furnished equipment and materials received and installed by the

Contractor, to the full insurable value thereof (subject to such deductible amounts as follows or required by Laws and Regulations). This insurance shall be on the completed value form, shall include the interests of the Owner, the Contractor, Subcontractors, and the Owner's consultants in the Work, all of whom shall be listed as insureds or additional insured parties, (shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as flood) and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance, the Contractor shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment. Deductible Amount: \$5,000.

5.6.1.2 All policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by the Contractor in accordance with Volume II, Section 1000, subsection 5.6 will contain a provision or endorsement that the coverage afforded will not be canceled or coverage reduced or renewal refused until at least thirty days' prior written notice has been given to the Contractor by certified mail and will contain waiver provisions in accordance with Volume II, Section 1000, Paragraph 5.6.3 below.

5.6.1.3 Intentionally Omitted.

5.6.1.4 Total value of the Owner-furnished equipment received and installed by this contract:

**\$800,000.00**

5.6.1.5 All Builder's Risk Claims will be reported immediately to the Owner at (702) 856-3611 or fax (702) 856-3617.

**5.6.2 Transit Insurance.**

5.6.2.1 Transit Insurance shall be furnished by the Contractor to insure and protect the Contractor and the Owner from all risks of physical loss or damage to equipment and materials, not

otherwise covered under other policies, during transit from point of origin to the site of installation or erection.

5.6.2.2 This insurance shall be written on an All Risk basis with additional coverages applicable to the circumstances which may occur in the particular Work included in this Contract.

5.6.2.3 This insurance shall be in an amount equal to 100 percent of the manufactured or fabricated value of the items exposed to risk in transit at any one time.

5.6.3 **No Right of Recovery.** The Owner and the Contractor intend that any policies provided in response to Volume II, Section 1000, subsection 5.6 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds.

5.6.4 **Receipt and Application of Proceeds.**

5.6.4.1 Any insured loss under the policies of insurance required by Volume II, Section 1000, subsection 5.6 will be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Volume II, Section 1000, subsection 5.6.4.2. The Owner shall deposit in a separate account any money below so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.6.4.2 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing in fifteen (15) days after the occurrence of loss to the Owner's exercise of this power. If such objection be made, the Owner as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by an party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for proper performance of such duties.

- 5.6.5 **Acceptance of Insurance.** If the Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the Contractor in accordance with Volume II, Section 1000, subsection 5.6 on the basis of its not complying with the Contract Documents, the Owner shall notify the Contractor in writing thereof within ten days of the date of delivery of such certificates to the Owner.
- 5.6.6 **Partial Utilization – Property Insurance.** If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with Volume II, Section 1000, subsection 13.4, provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy; provided Contractor shall not be responsible for any damage or loss arising from Owner's fault or negligence.
- 5.7 **Industrial Insurance.** The Contractor shall procure, and maintain such insurance and see that its subcontractors (if any) purchase and maintain such insurance as required under Nevada Industrial Insurance Act, Nevada Revised Statutes, Chapters 616 and 617 for all of its employees working on the Project as described in this Contract.
- 5.8 **Employee Protection in Lieu of Industrial Insurance.** In the event any class of employees engaged in any work on the Project relative to this Contract is not protected under the Nevada Industrial Insurance Act, then the Contractor shall provide to the Owner adequate insurance coverage in a form and by an insurance carrier satisfactory to the Owner for the protection of such employees.
- 5.9 **Employer's Liability Insurance.** The Contractor shall procure and obtain Employers' Liability Insurance with limits as set forth in Volume II, Section 1000, subsection 5.12.
- 5.10 **Automobile Liability Insurance.** The Contractor shall procure and maintain automobile liability insurance limits as set forth in Volume II, Section 1000, subsection 5.12, written on a combined single limit basis for bodily injury and property damage including all owned, leased, hired or non-owned motorized vehicles and apparatus and shall specifically indicate "any auto" on the Certificate.
- 5.11 **Commercial General Liability Insurance.** The Contractor shall procure and maintain commercial general liability insurance coverage. The coverage under

this policy shall include, but not be limited to, commercial general liability, completed operations liability, protective liability, blanket contractual liability, products liability and broad form property damage. The Commercial General Liability Insurance policy shall be written for limits as set forth in Volume II, Section 1000, subsection 5.12. The amount of coverage, as a combined single limit, shall apply to bodily injury, sickness, disease or death, personal injury, damage to or destruction of the property of persons which may occur directly or indirectly out of or arise out of or in connection with the activities under this Contract and for the defense of claims arising there from.

5.12 The amount of insurance required to be carried by the Contractor and each Subcontractor is as follows:

Value of Contract	Coverage	Limits of Liability
\$25,000 to \$1,000,000	General Liability Automobile Liability Workers' Compensation Employers Liability	\$1,000,000 per occurrence \$2,000,000 aggregate \$1,000,000 per occurrence Statutory \$100,000 each person
\$1,000,000 to \$5,000,000	General Liability Automobile Liability Workers' Compensation Employers Liability	\$2,000,000 per occurrence \$4,000,000 aggregate \$2,000,000 per occurrence Statutory \$100,000 each person
\$5,000,000 to \$10,000,000	General Liability Automobile Liability Workers' Compensation Employers Liability	\$3,000,000 per occurrence \$5,000,000 aggregate \$3,000,000 per occurrence Statutory \$100,000 each person
\$10,000,000 to \$20,000,000	General Liability Automobile Liability Workers' Compensation Employers Liability	\$5,000,000 per occurrence \$10,000,000 aggregate \$5,000,000 per occurrence Statutory \$100,000 each person
\$20,000,000 and Over	General Liability Automobile Liability Workers' Compensation Employers Liability	\$10,000,000 per occurrence \$10,000,000 aggregate \$5,000,000 per occurrence Statutory \$100,000 each person

- 5.13 Additional Insured. By endorsement (I.S.O. Form "CG2010" or its equivalent), the Owner, the Southern Nevada Water Authority, their member agencies and their officers and employees, and owner(s) of the property where the Work will be performed shall be included as an additional insured under the Automobile Liability and Commercial General Liability insurance policies as to bodily injury, sickness, disease or death, personal injury, damage to or destruction of the property of persons pursuant and subject to ISO Endorsement Form CG 20 10 12 19 and/or CG 20 37 12 19 or equivalent forms for policies other than Commercial General Liability; and only to the extent of Contractor's negligence in and during the performance of Work, to no greater extent than is necessary to provide insurance coverage for the covered indemnity obligations expressly assumed by Contractor under this Contract. To the extent of the indemnification obligations expressly assumed by Contractor hereunder, the Contractor's insurance shall be primary with respect to the additional insureds; and insurance coverage maintained by the Owner shall be in excess of the Contractor's insurance and be non-contributing,
- 5.14 Endorsements. The additional insured, as included by the endorsements, shall read as follows: "The Colorado River Commission of Nevada, the Southern Nevada Water Authority and its members and affiliated governmental entities, the Las Vegas Valley Water District, and their successors or assigns, including their directors, officers and employees, individually and collectively; and the owner(s) of property where the Work will be performed."
- 5.15 Waiver of Subrogation. By endorsement (I.S.O. Form #CG 24 04 12 19 or its equivalent), the Contractor's insurance carriers (except from Nevada Workers' Compensation) shall waive their rights of recovery against the Colorado River Commission, the Southern Nevada Water Authority and its members and affiliated governmental entities and other additional insured as defined in Volume II, Section 1000, subsection 5.14, and their successors or assigns including their directors, officers and employees individually and collectively to the extent permitted by law, and except to the extent any loss, claim, damage, etc. is caused by the negligence, recklessness or willful misconduct of any party indemnified hereunder by Contractor.
- 5.16 Primary Insurance. In the event of any claim by a third party for loss, the insurance policies of the Contractor shall be primary insurance to the extent of the indemnity obligations expressly assumed by Contractor hereunder. To such extent, any of the Owner's insurance shall stand in an unbroken chain of coverage in excess of the Contractor's scheduled underlying primary coverage.
- 5.17 Evidence of Insurance Required. At the time of executing this Contract and before commencement of the Work, the Contractor and Subcontractors shall have delivered to the Owner Certificates of Insurance that attest to the fact that the Contractor and Subcontractors have obtained the insurance as required in the insurance section of this Contract.

- 5.18 Owner's Satisfaction with Form and Content. The Certificate of Insurance and related endorsements must be satisfactory to the Owner as to form and content and must comply with all insurance requirements as set forth herein or the certificate and endorsement may be rejected; and thereby, at the option of the Owner, rendering this Contract cancelable.
- 5.19 Endorsements. All endorsements are to be dated, reflect the name of the insurance company, the type of insurance and policy number, be executed by a duly authorized representative of the insurance company and be attached to the certificate.
- 5.20 Contractor's Name. The full legal operating names of the Contractor and insurance carrier shall be properly shown where applicable.
- 5.21 Separate or Cumulative Coverage. By endorsement (I.S.O Form #CG 25 01 12 19 or its equivalent), the limits of Commercial General Liability Insurance as required in this Contract shall apply separately to this Project and shall not be reduced by other claims unless the insurance carrier has provided an endorsement agreeing, during the term of the Contract, to immediately notify the Owner each time the Commercial General Liability limits have been impaired by more than ten percent (10%), either cumulatively or severally, of the limits indicated on the certificate.
- 5.22 Owner's Right to Obtain Insurance. If the Contractor fails to procure and/or maintain insurance set forth herein, in addition to other rights or remedies, the Owner shall have the right, if the Owner so chooses, to procure and/or maintain the said insurance for and in the name of the Contractor with the Owner as co-insured and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and/or maintain such insurance. In the event the Contractor fails to pay cost, the Owner hereby has the right to set off any sums from the compensation set forth in this Contract and directly pay for such coverage.
- 5.23 Nevada-Based Insurance Providers. The insurance and bonds specified in this section of the Contract will be written with property and casualty insurance companies admitted to do business in Nevada and rated A- or better and Class VIII or higher of financial size category in the current issue of Best's Key Rating Guide.
- 5.24 Nevada Agent. The evidence of insurance coverage and all endorsements, if written by an agent outside the State of Nevada, shall be countersigned by a Nevada Resident Agent.

- 5.25 Cost of Claims. The cost of any claims under any policy(ies) with deductibles and/or self-insured retentions (except the Builders' Risk Insurance) shall be the sole responsibility of the Contractor.
- 5.26 Deductibles. With respect to any and all insurance required under this subsection of the Contract shall be borne by Contractor.
- 5.27 Intentionally Omitted.
- 5.28 Notice of Cancellation. The Certificate of Insurance will provide for 30 day written notice of cancellation, or nonrenewal or any reduction in the coverage for all insurance policies required in this contract other than Nevada State Workers' Compensation insurance.
- 5.29 Renewal Certificates. Renewal certificates and related endorsements will be provided to the Owner not later than fifteen (15) calendar days prior to the expiration date of the then current coverage.

## **6. Contractor's Responsibilities.**

- 6.1 **Supervision and Superintendence.** The Contractor shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in a safe manner and in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor shall not be responsible for the negligence or error of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction indicated in and required by the Contract Documents. The Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 6.2 **Contractor's Superintendent.** The Contractor shall keep on the Work at all times during its progress a competent resident Superintendent. All communications given to the Superintendent shall be as binding on the Contractor. Whenever the Superintendent is not present at any particular Work Site he shall designate a person in charge (Acting Superintendent). Any information given by the Owner's Representative to the Acting Superintendent shall be as binding as if given to the Superintendent.
- 6.3 **Labor and Working Hours.** The Contractor shall provide competent, suitably qualified personnel to survey, lay out, provide and construct the Work as required by the Contract Documents. The Contractor shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the Site shall be performed during standard work hours, Monday through Friday, and the

Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without the Owner's written consent given after prior written notice to OWNER'S Representative. Written notice of the Contractor's request to work overtime, on Saturdays, Sundays or any legal holiday must be received by the Owner forty-eight (48) hours in advance.

6.4 **Materials, Equipment, Etc.** Unless otherwise specified in Volume III, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5 **Quality of Work.**

6.5.1 All materials and equipment furnished by the Contractor shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Owner's Representative, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents. When the quality of a material, process, or article is not specifically set forth in the Contract Documents, commercial quality of the materials, process, or article shall be provided.

6.5.2 The Contractor shall check and verify all dimensions and conditions in the field as reasonably required during construction. The Contractor shall be solely responsible for any inaccuracies built into the Work due to the Contractor's (including Subcontractor's) failure to comply with this requirement. The Contractor shall visually inspect related and appurtenant Work and report in writing to the Owner's Representative any apparent conditions which will prevent proper completion of the Work. Failure to report any such conditions shall constitute acceptance of all Site conditions, except for concealed or latent conditions, and any required removal, repair, or replacement caused by unsuitable visible conditions shall be performed by the Contractor solely and entirely at the Contractor's expense.

6.5.3 All work performed by the Contractor and Subcontractors shall be inspected by the Contractor and nonconforming Work and any safety hazards in the work area shall be noted and promptly corrected. The Work shall be conducted under the general observation of the Owner's Representative and is subject to inspection by the Owner's Representatives to ensure strict compliance with the requirements of the

Contract Documents. Such inspection may include mill, plant, shop, or field inspection, as required. The Owner's Representative shall be permitted access to all parts of the Work, including plants where materials or equipment are manufactured or fabricated. The presence of the Owner's Representative or any inspector(s), however, shall not relieve the Contractor of the responsibility for the proper execution of the Work in accordance with all requirements of the Contract Documents. Compliance is the responsibility of the Contractor. No act or omission on the part of the Owner's Representative or any inspector(s) shall be construed as relieving the Contractor of this responsibility. Inspection of Work later determined to be nonconforming shall not be cause or excuse for acceptance of the nonconforming Work. The Owner may accept nonconforming Work if the Contractor offers compensation acceptable to the Owner and it is in the Owner's best interest as determined by the Owner.

- 6.5.4 All materials and articles furnished by the Contractor or Subcontractors shall be subject to rigid documented inspection, by qualified personnel, and no materials or articles shall be used in the Work until they have been inspected and accepted by the Contractor and the Owner's Representative or other designated representative. The Contractor shall receive, maintain and catalog any material safety data sheet (MSDS) provided in connection with any materials or articles used in the Work. No Work shall be backfilled, buried, cast in concrete, covered, or otherwise hidden until it has been inspected. Any Work covered in the absence of inspection shall be subject to being uncovered. Where un-inspected Work cannot be easily uncovered, such as in concrete cast over reinforcing steel, all such Work shall be subject to demolition, removal, and reconstruction under proper inspection.
- 6.5.5 All materials and articles furnished to the Contractor by the Owner shall be subject to rigid visual inspection by the Contractor before being used or placed by the Contractor. The Contractor shall inform the Owner's Representative, in writing, of the results of said inspections within one working day after completion of inspection. In the event the Contractor believes any material or articles provided by the Owner to be of insufficient quality for use in the Work, the Contractor shall immediately notify Owner's Representative.
- 6.5.6 The Owner's Representative or designated representative, acting for the Owner, shall have the right at all times and places to reject any articles, materials, equipment or Work to be furnished hereunder which, in any respect, fail to meet the requirements of the Contract Documents, regardless of whether the defects in such articles materials are detected at the point of manufacture or after completion of the Work at the Site through the warranty period.

6.5.6.1 If the Owner's Representative, through an oversight or otherwise, has accepted materials or Work which are defective or in any way contrary to the Contract Documents, such materials, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected through the warranty period. The Contractor shall promptly remove or replace rejected articles or materials from the Site of the Work after notification of rejection. All costs of removal and replacement of rejected articles or materials, as specified therein, shall be borne by the Contractor. Failure to promptly commence and diligently pursue action to remove and replace rejected Work shall be considered a breach of this contract and the Owner may, after 7 days notice, terminate the Contractor's right to proceed with the affected Work and remove and replace the Work and issue a back charge to cover the cost of the Work.

6.5.7 During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to Work which will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the Work in a proper and satisfactory manner.

6.6 **Adjusting Progress Schedule.** The Contractor shall submit to the Owner's Representative for acceptance proposed adjustments in the progress schedule that will not change the Contract Times, or Milestones. Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto. Proposed adjustments in the progress schedule that would change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Volume II, Section 1000, subsection 11.1. Such adjustments may only be made by a Change Order.

6.6.1 If the Contractor fails to meet the Milestone on the approved Project Schedule, the Owner may deduct from the Contractor's progress payment a sum equal to the liquidated damages of such Milestone as shown in Volume II, Section 1000, subsection 13, for the number of days the Contractor is behind schedule.

6.6.2 In the event that the Contractor works overtime, weekends or holidays to regain the schedule for delays for which Contractor is responsible, all of the Owner's additional or premium costs resulting from inspection, or construction management resulting from such overtime, weekend or holiday work shall be identified to the Contractor and the Contract Price reduced by a like amount via Change Order.

6.6.3 The Contractor's employee responsible for scheduling and coordinating Work at the Site shall attend all meetings convened by the Owner or the Owner's Representative for the purpose of scheduling the Work at the Construction Site.

6.7 **Substitutes or "Or-Equal" Items.** Whenever Equipment or Materials are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, Equipment or Materials of other Suppliers may be accepted by the Owner if sufficient information is submitted by the Contractor to allow the Owner to determine that the Equipment or Material proposed is equivalent or equal to that named.

6.7.1 If the Contractor wishes to furnish or use a substitute item of Equipment or Material, the Contractor shall make written application to the Owner for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited to the same use as that specified. The application shall state i) that the evaluation and acceptance of the proposed substitute will not prejudice the Contractor's achievement of Substantial Completion on time; ii) whether acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Owner for work on the Project); and iii) whether incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair, and replacement service for the substitute shall be indicated. The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Owner in evaluating the proposed substitute. The Owner may require the Contractor to furnish at the Contractor's expense additional data about the proposed substitute.

6.7.2 If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or use a substitute means, method, sequence, technique, or procedure of construction acceptable to the Owner, if the Contractor submits sufficient information to allow the Owner to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Owner will be similar to that provided for substitute Equipment and Material.

- 6.7.3 The Owner shall be allowed a reasonable time within which to evaluate each proposed substitute. The Owner shall be the sole judge of acceptability, and no substitute will be ordered, installed, or used without the Owner's prior written acceptance which shall be evidenced by either a Change Order or an approved Submittal. The Owner may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- 6.7.4 The Owner shall record the time required by the Owner and the Owner's Consultants in evaluating substitute(s) proposed or submitted by the Contractor pursuant to Volume II, Section 1000, subsection 6.7.1 and 6.7.2, and in making changes in the Contract Documents occasioned thereby. Whether or not the Owner approves a substitute item so proposed or submitted by the Contractor, the Contractor shall reimburse the Owner for the charges of the Owner and the Owner's Consultants for evaluating each such proposed substitute.
- 6.8 **Subcontractors, Suppliers and Others.** The Contractor shall perform with his own organization work amounting to not less than fifty-one (51) percent of the combined value of all items of the Work covered by the Contract.
- 6.8.1 Report to Labor Commissioner. In compliance with NRS 338.013(2), the Contractor shall report to the Labor Commissioner the name and address of each Subcontractor whom he engages for Work on the Project within ten (10) days after the Subcontractor commences Work on the Contract.
- 6.8.2 The Contractor shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom the Owner may have reasonable objection.
- 6.8.3 Particular consideration shall be given to the qualifications of each Subcontractor proposed on the Subcontractors Information list contained in Volume I, Section 600. The use of Subcontractors listed by Bidder and accepted by the Owner prior to the Notice of Award will be required in the performance of the Work.
- 6.8.4 No acceptance by the Owner of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the Owner to reject defective Work.
- 6.9 **Contractor's Responsibilities Regarding Subcontractors and Supplies.** The Contractor shall be fully responsible to the Owner for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor just as the Contractor is responsible for the Contractor's own acts and omissions.

- 6.9.1 Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between the Owner and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- 6.9.2 The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor. The Contractor shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the Owner's Representative through the Contractor.
- 6.10 **Specifications and Drawings.** The sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 6.11 **Written Agreements with Subcontractors.** All Work performed for the Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of the Owner, and contains or incorporates provisions whereby the Subcontractor or Supplier waives all rights against the Owner, the Contractor, their Consultants and all other additional insured for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, the Contractor shall obtain the same.
- 6.12 **Patent Fees and Royalties.** The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and, if to the actual knowledge of the Owner, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents. To the fullest extent permitted by Laws and Regulations, the Contractor shall defend, indemnify and hold harmless Indemnitees, and anyone directly or indirectly employed by Indemnitees, from and against all claims, costs, losses and damages arising out of

or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents. The Contractor does further agree to indemnify indemnitees against any suit or claim brought or instituted, whether or not such suit or claim be rightfully or wrongfully brought or instituted, and in any case, Indemnitees shall be at liberty to employ attorneys of their own selection to appear and defend the suit(s) on Indemnitees' behalf at the sole expense of the Indemnitees. Anything to the contrary notwithstanding, to the extent that the Contractor is required by the specifications, or by the written direction of Owner to provide the offending design, apparatus or article, then Contractor makes no warranties, and shall have none of the aforementioned liabilities nor responsibilities, including any responsibility to indemnify and/or hold harmless and/or defend Owner or any other person from any infringement or intellectual property claims; additionally, to said extent, Owner shall indemnify, hold harmless, and defend Contractor from any such claims.

6.13 **Permits.** The Contractor shall at the Contractor's sole cost and expense obtain and pay for all construction permits and licenses specified in Volume III, Section 1150, and ensure that the list of all permits known to be required in performance of the Work has been listed there. The Contractor shall be responsible to assure this list is complete and to obtain other permits which are required to be obtained in the name of Contractor but not listed. The Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the execution of the Work which are applicable at the time of opening of Bids. The Contractor shall pay all charges of utility owners for connections to the Work, and the Owner shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

6.14 **Laws and Regulations.**

6.14.1 The Contractor and its officers, employees, agents, contractors, licensees or invitees shall comply, at the Contractor's sole cost and expense and at all times, with all applicable laws, ordinances, statutes, rules, acts or regulations in effect or that become in effect during the time work is performed under this Contract.

6.14.2 The Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performing the Work and shall cause all his agents, employees, Subcontractors, and Suppliers to observe and comply with all existing and future laws, ordinances, and regulations. Except where otherwise expressly required by applicable Laws and Regulations, the Owner shall not be responsible for monitoring the Contractor's compliance with any Laws or Regulations.

- 6.14.3 If the Contractor knows or has reason to know that the Contractor's performance of the Work is contrary to Laws or Regulations, the Contractor shall bear all claims costs, losses and damages arising there from.
- 6.14.4 **Fair Employment Practices Pursuant to NRS 338.125.** It is unlawful for the Contractor in connection with the performance of work under the Contract to refuse to employ or discharge from employment any person because of his race, color, creed, national origin, sex, or age, or to discriminate against a person with respect to hire, tenure, advancement, compensation or other terms, conditions, or privileges of employment because of his race, creed, color, national origin, sex, or age.
- 6.14.5 **Preferential Employment.** In accordance with NRS 338.130, where persons are employed in the construction of public works, preference shall be given, the qualifications of applicants being equal, first to honorably discharged soldiers, sailors, and marines of the United States who are citizens of the State of Nevada and second to other citizens of the State of Nevada. Nothing in NRS 338.130 shall be construed to prevent the working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work. If the provisions of NRS 338.130 are not complied with by the Contractor, the Contract shall be void, and any failure or refusal to comply with any of the provisions of NRS 338.130 shall render any Contract void.
- 6.14.6 **Hourly Minimum Wage Rates for Clark County, Nevada.** In accordance with NRS Chapter 338, the Clark County Prevailing Wage Rates for Public Works, State of Nevada, are established by the State of Nevada, Office of the Labor Commissioner. Every workman employed by the Contractor or any of its Subcontractors shall be entitled to the wage rate applicable to the particular class of that workman contained in the prevailing wage rates at the time of Bid closing.
- 6.14.6.1 Because Prevailing Wage Rates are subject to change, it is the Contractor's responsibility to ensure that they are aware and use the most current published Prevailing Wage Rates for Public Works at the time of Bid Closing. In accordance with NRS 338.020, the Contractor shall post the hourly and daily rates of wages to be paid each of the classes of mechanics and workmen on the Site of Work of this Contract, in a place generally visible to the workmen.
- 6.14.6.2 In accordance with NRS 338.060, the Contractor shall forfeit, as a penalty to the Owner, not less than \$10.00 nor more than \$25.00 for each workman employed for each calendar day or portion thereof that such workman is paid less than the

designated rate for any Work done under the Contract, by him or any Subcontractor under him. If a penalty is imposed, the cost of the preceding, including investigative costs and attorneys' fees, may be recovered by the labor commission.

6.14.6.3 The Owner shall take cognizance of complaints of violations of the provisions of NRS 338.010 to 339.090, inclusive, committed in the course of the execution of the Contract, and when making payments to the Contractor of money becoming due under the Contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive. No sum may be withheld, retained, or forfeited, except from the final payment, without a full investigation being made by the awarding body or its agents.

6.14.6.4 The Contractor and each Subcontractor shall keep or cause to be kept an accurate record showing the name, the occupation, and the actual per diem, wages, and benefits paid to or on behalf of each workman employed in connection with the Work. The record must be open at all reasonable hours to the inspection of the Owner, and its officers and agents. A copy of the record for each calendar month must be sent to the labor commissioner and the public body awarding the contract not later than 1 week after the end of the month. The copy must be open to public inspection as provided in NRS 239.010. The Contractor or any Subcontractor, or agent or representative thereof, doing work on the Project who neglects to comply with the provisions of this section is guilty of a misdemeanor.

6.14.6.5 **Contractual Relationship.** In accordance with NRS 338.040 and 338.050, workmen employed by the Contractor or a Subcontractor at the Site of the Work and necessary in the execution of the Contract are deemed to be employees on public works and every workman employed by the Contractor or a Subcontractor shall be subject to all of the requirements of NRS 338.010 to 338.090, inclusive, regardless of any contractual relationship alleged to exist between the Contractor and Subcontractor and such workman.

6.14.6.6 In accordance with NRS 338.135, where a truck or truck and trailer combination is rented by the Contractor or Subcontractor, the hourly rate for the rental or lease of such truck or truck and trailer combination shall, when added to the prevailing rate of wages required by NRS 338.020 for the driver, not be less than the hourly rate for similar vehicles with a driver as such hourly rate appears in freight tariffs approved by the Public Service

Commission of Nevada for the area in which the public work is located.

- 6.14.7 **Nevada Industrial Insurance Act.** The Contractor shall comply with all applicable sections of NRS 616.280, "Nevada Industrial Insurance Act".
- 6.14.8 **Unemployment Compensation Act.** The Contractor shall comply with all applicable sections of NRS Chapter 612, "Unemployment Compensation Law".
- 6.14.9 **Overhead Electrical Lines.** The Contractor shall comply with all legal requirements in NRS 455.200 through NRS 455.250 pertaining to activities to be performed near overhead electrical lines. Any liability or penalty incurred for violating the above referenced laws shall be borne strictly by the Contractor and the Contractor shall indemnify, defend and hold the Owner harmless from any such liability or penalty to the extent caused by the negligence of Contractor in performance of the Work.
- 6.14.10 **Occupational Diseases.** In accordance with NRS 617.210, the Contractor shall carry adequate coverage for Occupational Diseases.
- 6.14.11 **Occupational Safety and Health.** The Contractor shall comply with all applicable provisions of NRS 618.375 pertaining to Occupational Safety and Health.
- 6.14.12 **Historic Preservation.** In accordance with NRS 383.121, in the event that historic, prehistoric, or paleoenvironmental evidence is discovered during subsurface excavation at the site of construction, the Contractor shall immediately notify the Owner's Representative and cooperate to the fullest extent practicable, within the financial resources available to the Owner for that purpose, to preserve or permit study of such evidence before its destruction, displacement, or removal. In the event of delay of the completion of the Work because of the discovery of such evidence, equitable adjustment of the construction contract shall be made by Change Order in the following manner:
  - 6.14.12.1 **Time Extension.** If the work temporarily suspended is on the "critical path," the total number of days which the suspension is in effect shall be added to the number of allowable contract days. If a portion of work at the time of such suspension is not on the "critical path," but subsequently becomes work on the critical path, the allowable Contract Time will be computed from the date such work is classified as on the critical path.

6.14.12.2 **Additional Compensation.** If, as a result of a suspension of the Work, the Contractor sustains a loss which could not otherwise have been avoided by his reassignment of employees, equipment or materials to other Work within the Project which has not been suspended without additional cost to Contractor, the Owner shall pay the Contractor an amount as determined by the Owner to be fair and reasonable compensation for the Contractor's actual loss in accordance with the following:

Idle Time of Equipment. Compensation for equipment idle time will be determined on a force account (time and materials) basis and shall include the cost of extra moving of equipment and rental loss. The Contractor shall make a concerted effort to minimize idle time and equipment moves. Idle time of equipment will only include payment of the equipment without operator except during the time an operator is required to move the equipment.

Idle Time of Labor. Compensation for idle time of workers will be determined by OWNER based on actual idle or show-up time pursuant to the applicable labor agreement.

Increased Costs of Labor and Materials. Increased costs of labor and materials will be compensated only to the extent such increase was in fact caused by the suspension or the reassignment of the employees, equipment or materials.

Compensation for actual loss due to idle time of either equipment or labor shall not include markup for profit.

The days for which compensation will be paid shall be full or partial calendar days, excluding Saturdays, Sundays, and legal holidays, during the existence of such delay.

6.15 **Taxes.** The Contractor shall include in the Bid prices and pay all sales, consumer, use and other similar taxes required to be paid or withheld by the Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.16 **Interference with Adjacent Work, Use of Premises.** The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably

encumber the premises with construction equipment or other materials or equipment.

- 6.16.1 The Contractor shall assume full responsibility for any damage to any land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by the owner or occupant of any adjacent land because of the performance of the Work, the Contractor shall promptly settle with the other party by negotiation or otherwise resolve the claim by negotiation or other dispute resolution proceeding or at law. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend and hold Indemnitees harmless from and against all third party claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any owner or occupant of adjacent land against Indemnitees to the extent caused by or based upon the Contractor's negligent performance of the Work.
- 6.16.2 The Contractor shall cooperate fully with all utility work forces, other contractors of the Owner, and work forces of other public or private agencies engaged in any type of work that may interfere with the progress of the Contractor's Work. The Contractor shall schedule the Work so as to minimize any interference with these work forces and entities, including those discussed in Volume III, Section 1100, of these specifications.
- 6.16.3 Nothing in the Contract shall be interpreted as granting to the Contractor exclusive occupancy of the Site of the project. The Contractor must ascertain to his own satisfaction the scope of the project and the nature of any other contracts that have been or may be awarded by the Owner in the construction of this and adjoining projects to the end that the Contractor may perform this Contract in the light of such other contracts, if any.
- 6.16.4 The Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If the performance of any contract for the project is likely to be interfered with by the simultaneous performance of some other contract or contracts, the Owner or the Owner's Representative shall decide which contractor shall cease Work temporarily and which contractor shall continue or whether the Work under the contracts can be coordinated so that the contractors may proceed simultaneously. On all questions concerning conflicting interest of contractors performing related Work, the decision of the Owner or the Owner's Representative shall be binding upon all contractors concerned. Anything to the contrary notwithstanding, in the event any schedule change generated by Owner, or any impact by any party other than Contractor (or its subcontractors and/or suppliers), including re-sequencing, causes Contractor to incur additional costs, Contractor shall be equitably compensated for same, and shall be allowed reasonable and

sufficient time, in accordance with the industry standards, in which to complete the phases of its Work as they occur.

6.16.5 If through negligence on the part of the Contractor, any other contractor or subcontractor shall suffer loss or damage on the Work, the Contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration, if possible. If such other contractor or subcontractor shall assert any claim against the Owner, on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall hold harmless, indemnify and defend the Owner, and each of their officers, employees, and agents against any such third party claim, including reasonable attorneys' fees and any other costs incurred by the indemnified parties relative to any such claim, to the extent caused by Contractor's negligence in the performance of the Work.

6.17 **Waste Materials and Rubbish Control.** During the progress of the Work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. Disposal of all rubbish and surplus materials shall be off the Site of construction in accordance with local codes and ordinances governing locations and methods of disposal, and in conformance with all applicable safety laws, and to the particular requirements of Part 1926 of the OSHA Safety and Health Standards for Construction. The Contractor shall leave the Site clean from waste or rubbish caused by Contractor and ready for occupancy by the Owner upon Substantial Completion of the Work.

6.18 **Excessive Loads.** The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.19 **Record Documents.** The Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Test Records, Field Orders, Requests for Information, and all other written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all final samples and a counterpart of all approved Submittals will be available to the Owner's Representative for reference. Records shall be protected from deterioration, damage or destruction and maintained in a manner that provides for immediate retrieval. Upon completion of the Work, all record documents, samples and Shop Drawings shall be delivered to the Owner. Receipt and acceptance of record documents will be a prerequisite for final payment to the Contractor.

6.20 **Safety and Protection.** The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall give notices, erect and maintain all

safeguards and comply with all laws, ordinances, regulations, codes and lawful orders of any public agency.

6.20.1 The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection and training to prevent damage, injury or loss to:

6.20.1.1 all persons on the Work Site or anyone who may be affected by the Work;

6.20.1.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site;

6.20.1.3 other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction; and

6.20.1.4 other property and people at the Site or in proximity thereto which or who foreseeably may be injured by activities on Site.

6.20.2 All damage, injury or loss to any property referred to in this subsection 6.20 caused by the fault or negligence of Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the Owner or its Consultants or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the extent of fault or negligence of the Contractor or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them).

6.20.3 The Contractor's duties and responsibilities for safety and protection of the Work shall continue until substantial completion of the Work.

6.20.4 The Contractor shall make reasonable efforts to detect and abate any violations of safety standards of which it is aware and to which its employees are exposed, despite the fact that the Contractor did not commit the violation.

6.20.5 The Contractor shall designate a qualified and experienced safety representative, meeting the definition of OSHA competent person, at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

The Safety Representative shall have the ability to recognize hazards and the authority to take corrective action.

6.21 **Safety Program.** Within thirty (30) days of the Owner's Notice to Proceed, the Contractor shall demonstrate compliance action with the requirements of Nevada Occupational Safety and Health Administration requirements and all other applicable local, state and federal requirements by submitting a copy of all safety plans, programs and permits to the OWNER'S Representative. Such plans and permits shall include but is not limited to:

6.21.1 Safe Work Plan (job task analysis)

6.21.2 Emergency Plan.

6.21.3 Rigging and Hoisting Plans.

6.21.4 Excavation and Trenching Plans.

6.21.5 Respiratory Protection Program.

6.21.6 Fire Protection Plan.

6.21.7 Hazard Communication Program.

6.21.7.1 **Hazard Communication Programs.** The Contractor shall be responsible for coordinating any exchange or provision of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.21.7.2 The Contractor shall, upon completion of the Project, forward all material safety data sheets to the Owner. A material safety data sheet shall be provided for any materials to which the Laws and Regulations may apply.

6.22 **Site Security.** The Contractor shall provide Site security as specified in Volume III, Section 1300.

6.23 **Emergencies.** In emergencies or imminent danger situations affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner or the Owner's Representative, shall act to reasonably prevent threatened damage, injury or loss. The Contractor shall give the Owner's Representative prompt written notice if the Contractor experiences any accident or injury or believes that any significant changes in the Work or variations from the Contract Documents have

been caused thereby. If the Owner determines that a change in the Contract Documents is required because the action taken by the Contractor was required by an emergency not caused by the Contractor or its subcontractors, the Owner shall issue a Change Order.

6.24 **Submittals.** Procedures for processing submittals are provided in Volume III, Section 1250.

6.24.1 After checking and verifying all field measurements and after complying with applicable procedures, the Contractor shall submit to the Owner for review and acceptance in accordance with the accepted schedule of submissions, copies of Submittals which will bear the required information that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submissions shall be identified as the Owner may require. The data shown on Submittals shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to enable the Owner to review the information as required.

6.24.2 Before submission of each Submittal, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each Submittal with other Submittals and with the requirements of the Work and the Contract Documents.

6.24.3 At the time of each submission, the Contractor shall give the Owner specific written notice of each variation that the Submittal may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Submittal submitted to the Owner for review and approval of each such variation.

6.24.4 The Owner shall review Submittals with reasonable promptness, but OWNER'S review and acceptance will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such shall not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required by OWNER, and shall return the required number of corrected copies of Submittals and resubmit as required for review and acceptance. The

Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Owner on previous Submittals.

6.24.5 The Owner's review and acceptance of Submittals shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called the Owner's attention to each such variation at the time of submission and the Owner has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Submittal. Nor shall any acceptance by the Owner relieve the Contractor from responsibility for errors or omissions in the Submittals.

6.24.6 Where a Submittal is required by the Specifications, any related Work performed prior to the Owner's review and acceptance of the pertinent submission shall be the sole expense and responsibility of the Contractor.

6.25 **Continuing the Work.** The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Owner, provided Owner otherwise remains in compliance with its payment obligations. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Owner and the Contractor may otherwise agree in writing.

6.26 **Contractor's Liability; Indemnification.** To the full extent permitted by law, the Contractor shall at all times indemnify and keep indemnified Indemnitees and hold and save Indemnitees harmless from and against any and all liability for damages, claims, judgments, losses, fines, penalties, charges and expenses of whatever kind or nature, including but not limited to all professional and reasonable attorneys' fees and costs, for third party claims which Indemnitees shall or may at any time sustain or incur by reason of or in consequence of the negligent acts or omissions in the performance of the Work under this Contract by the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, except to the extent those claims, losses, fines, penalties or expenses are caused by the negligence of Indemnitees. The Contractor shall pay over, reimburse and make good Indemnitees, all monies which Indemnitees shall pay or cause to be paid, or become liable to pay, by reason of the foregoing circumstance. The Contractor does further agree to indemnify Indemnitees against any third party suit or claim brought or instituted against Indemnitees by any person or entity and concerning any damages or injuries sustained or incurred as a result of the Contractor's negligent acts or omissions in performance of its Work under this Contract, and in any such case Indemnitees shall be at liberty to employ attorneys of their own selection to appear and defend the suit or suits in Indemnitees' behalf at the expense of the such Indemnitee. This provision applies whether or not it is caused in part by an act or omission (active, passive, or comparative negligence

included), or any party indemnified hereunder, but to the extent of the negligence of a party indemnified there under.

- 6.27 **No Limits on Indemnification.** In any and all claims brought against Indemnitees by any employee (or the survivor or personal representative of such employee) of the Contractor, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.26 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 6.28 **Exception to Indemnification.** The obligations of the Contractor under Volume II, Section 1000, subsection 6.26 shall not extend to the liability of Indemnitees caused by the preparation of maps, drawings, surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of the Owner or the Owner's Consultant's, officers, directors, partners, employees or agents.
- 6.29 **Waiver of Certain Damages:** Notwithstanding any other provisions of this Contract to the contrary, neither Owner nor Contractor shall be liable under this Contract or under any cause of action related to the subject matter of this Contract, whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for punitive, special, indirect, incidental or consequential losses or damages, including loss of profits, use, opportunity, revenues, financing, bonding capacity, or business interruptions; provided that the limitation of liability set forth in this Section shall not apply to Contractor's : (i) indemnity obligations with respect to third-party claims, (ii) gross negligence or willful misconduct, and/or (iii) breach of confidentiality provisions.
- 6.30 **Overall Liability Cap:** Notwithstanding anything in this Contract, any Change Order, or otherwise to the contrary, and in addition to, cumulative of and not in limitation of any other limits on liability herein, Contractor's maximum aggregate liability under or with respect to this Contract, any Change Order or the subject matter thereof, regardless of cause (whether in contract, tort, strict liability, or otherwise), other than third-party claims indemnified by Contractor hereunder, shall not exceed in the aggregate an amount equal to the lesser of (A) the Contract Price and the total amount of any Change Order; and (B) (with respect to losses covered by policies of insurance Contractor is required to obtain and maintain under this Contract) actual proceeds from the coverage amounts required under this Contract for the policy covering such loss.

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

## **7. The Work.**

7.1 The Work to be performed under this Contract shall consist of furnishing all plant, tools, equipment, materials, supplies, and manufactured articles and furnishing all labor, transportation, and services, including fuel, power, water, and essential communications, and performing all Work, or other operations required for the fulfillment of the Contract in accordance with the Contract Documents. The Work shall be complete, and all Work, materials, and services not expressly indicated or called for in the Contract Documents which may be necessary for the complete, safe and proper construction of the Work in good faith shall be provided by the Contractor as though originally so indicated.

7.2 The Contractor shall schedule and perform the Work in such a manner as to result in the least possible disruption to the public's use of roadways, driveways, and utilities. Utilities shall include but not be limited to water, sewerage, drainage structures, ditches and canals, gas, electric, cable television, and telephone. The approximate location of utilities shall be provided by the Owner's Representative on plan and profile sheets therefore. Such approximate locations are guaranteed for neither accuracy nor completeness. The Contractor shall incorporate as-built locations on the reproducible record plans, in red ink, showing proper location on each sheet where these utilities are located.

7.3 **Related Work at Site.** The Owner may perform other work related to the Project at the Site by the Owner's own forces, or let other direct contracts therefore which shall contain General Conditions similar to these, or have other work performed by utility owners. In addition to the Work under this Contract, the Owner has awarded, or will award, separate contracts for other work related to the Project to be performed at the Site.

7.4 **Safe Access.** The Contractor shall afford each other contractor who is a party to another direct contract with the Owner or the Southern Nevada Water Authority and each utility owner proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with other contractors as appropriate. Unless otherwise provided in the Contract Documents, the Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating or otherwise altering the other contractor's work and will only cut or alter the other contractor's work with the written consent of the

Owner's Representative and the others whose work will be affected. The duties and responsibilities of the Contractor under this paragraph are for the benefit of utility owners and other contractors to the extent that there are comparable provisions for the benefit of the Contractor in direct contracts between the Owner and such utility owners and other contractors.

- 7.5 **Notice of Delays by Others.** If the proper execution or results of any part of the Contractor's Work depends upon work performed by others under Volume II, Section 1000, subsection 7, the Contractor shall visually inspect such other work and promptly report to the Owner's Representative in writing any delays, defects or deficiencies in such other work that render part of the Contractor's Work unavailable or unsuitable for the proper execution and results of the Contractor's Work. The Contractor's failure so to report shall constitute an acceptance of such other work as fit and proper for integration with the Contractor's Work except for latent or non-apparent defects and deficiencies in such other work.
- 7.6 **Coordination.** In addition to overseeing the execution of this Contract, the Owner's Representative shall also be responsible for overseeing related Work at the Site under other Owner contracts. The Contractor shall coordinate directly with other contractors that have been issued Notice to Proceed by the Owner when developing the Contractor's initial schedule submittal. The Contractor's schedule shall reflect this coordination to eliminate conflicts with all other contractors. The Contractor shall coordinate directly with the Owner's Representative and any other contractors to schedule day-to-day access to the site as necessary. The Owner's Representative shall make final determination regarding schedule adjustments if necessary to avoid schedule conflicts between contractors.
- 7.7 **Interference with Work on Utilities.** The Contractor shall cooperate and coordinate fully with all utility forces of the Owner or forces of other public or private agencies engaged in the relocation, altering, or otherwise rearranging of any facilities which interfere with the progress of the Work, and shall schedule the Work so as to minimize interference with said relocation, altering, or other rearranging of facilities. The Contractor shall review with the various utility companies the construction methods, safety procedures and Work to be done in the vicinity of utilities. When temporary relocation of utilities is necessary, sufficient advance notice shall be given by the Contractor to the utility involved. Utilities and other concerned agencies shall be contacted at least seven (7) days prior to cutting or closing streets or other traffic areas or excavating near underground utilities or pole lines. The Contractor shall submit the findings of a utility investigation to the Owner's Representative.
- 7.8 **Notices to Owners of Adjacent Properties.** The Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. When it is necessary to temporarily deny access by owners or tenants to their property, or when any utility service connection must be interrupted, the

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 on how to limit any resulting inconvenience.

- 7.9 **Time Limitations.** Time limitations required by the Owner shall be for the benefit of the Owner and contractors under other contracts who have entered into such contracts with the Owner in reliance on the time limitations set forth in these Contract Documents. Any claim by a contractor for damages due to delay or damage to the Work or the property of a contractor by another contractor shall be asserted against that contractor.
- 7.10 **Lines and Grades; Survey Data.** All Work shall be done to the lines, grades, and elevations shown on the Drawings. The Contractor shall establish basic horizontal and vertical control points and the Contractor shall use these points as datum for the Work. Any additional survey, layout, or measurement Work needed for proper construction of the Work shall be performed by the Contractor as a part of the Work at no additional cost to the Owner. The Contractor shall employ experienced instrument personnel, competent assistants, and such instruments, tools, stakes, and other materials required to complete the survey, layout, and measurement Work. The Contractor shall remove and reconstruct Work which is improperly located. The Contractor shall make available for examination throughout the construction period all field books, notes, and other data developed by the Contractor in performing the surveys required by the Work and shall submit all such data to the Owner's Representative with documentation required for final acceptance of the Work.

## 8. Owner's Representative.

- 8.1 **Owner's Representative.** The Owner's Representative during the construction of the Project shall be the Assistant Director of Engineering and Operations.
- 8.2 **Project Representation.**
- 8.2.1 Communications pertaining to Submittals, written interpretations, and Change Orders shall be directed to the Owner's Representative.
- 8.2.2 Communications pertaining to day-to-day operations at the Site shall be directed to Owner's Representative.
- 8.2.3 The Owner's Representative and his assistants shall conduct observations of the Work in progress determine that the Work is proceeding in accordance with the Contract Documents.

- 8.2.4 The Owner's Representative shall not have authority to permit any deviation from the Contract Documents, except with concurrence of the Owner.
- 8.2.5 The Owner's Representative shall be authorized to disapprove or reject any defective workmanship, Equipment, or Material.
- 8.3 **Clarifications and Interpretations.** The Owner shall issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) as the Owner may determine necessary. Such clarifications shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Times and the parties are unable to agree on the amount or extent thereof, the Contractor may make a claim therefore.
- 8.4 **Authorized Variations in Work.** The Owner may authorize minor variations in the Work from the requirements of the Contract Documents that do not involve an adjustment in the Contract Price or the Contract Times and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and shall be binding on the Owner and the Contractor, who shall perform the Work involved promptly.
- 8.5 **Rejecting Defective Work.** The Owner's Representative will have authority to disapprove or reject Work which the Owner believes to be defective, and will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- 8.6 **Determination for Unit Prices.** The Owner's Representative shall determine the actual quantities and classifications of Unit Price Work performed by the Contractor. The Owner's Representative shall review with the Contractor, the Owner's Representative's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The Owner's Representative's written decisions thereon shall be final and binding upon the Owner and the Contractor, unless, within ten days after the date of any such decision, either the Owner or the Contractor delivers to the other party to the Contract and to the Owner's Representative written notice of intention to appeal from such a decision.
- 8.7 **Decisions on Claims and Disputes.**
- 8.7.1 The Owner's Representative shall be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes, and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the

Work and claims under Volume II, Section 1000, subsections 10 and 11 in respect of changes in the Contract Price or Contract Times shall be referred initially to the Owner's Representative in writing with a request for a written decision in accordance with this paragraph, which the Owner's Representative shall render within a reasonable time. Written notice of each such claim, dispute, and other matter shall be delivered by the claimant to the Owner's Representative and the other party to the Contract promptly, but in no event later than thirty (30) days, after the knowledge of the claim, and written supporting data shall be submitted to the Owner's Representative and the other party within sixty (60) days after unless the Owner's Representative allows an additional period of time to ascertain more accurate data in support of the claim.

8.7.2 The rendering of a decision by the Owner's Representative with respect to any such claim, dispute, or other matter shall be a condition precedent to any exercise by Owner or the Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute, or other matter, provided such decision is rendered within thirty (30) days of receipt of the supporting data.

## 9. **Changes in the Work.**

- 9.1 **Owner's Order to Change Work.** Without invalidating the Contract and without notice to any surety, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Work within the scope of this Contract. Such additions, deletions or revisions shall be authorized by a Written Amendment, Field Order, or Change Order. Upon receipt of any such document, the Contractor shall promptly proceed with the Work involved which do not affect the Contract Price or Contract Times and which shall be performed under the conditions of the Contract Documents, unless otherwise specifically provided.
- 9.2 **Claim Based on Change Order.** If the Owner and the Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times, that should be allowed as a result of a Change Order, a claim may be made therefore.
- 9.3 **Limitation on increase in Contract Price or Contract Times.** The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified or supplemented, or to perform the Work in a safe manner, except in the case of an emergency or in the case of uncovering Work.
- 9.4 **Execution of Change Orders.** The Owner and the Contractor shall execute appropriate Change Orders covering:

- 9.4.1 changes in the Work which are (i) ordered by the Owner, (ii) required because of acceptance of defective Work or correcting defective Work, (iii) premises for which Contractor has relief hereunder or (iv) are otherwise agreed to by the parties;
  - 9.4.2 changes in the Contract Price or Contract Times which are agreed to by the Owner and the Contractor; and
  - 9.4.3 changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by the Owner's Representative; provided that in lieu of executing any such Change Order an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations but during any such appeal the Contractor shall carry on the Work and adhere to the progress schedule.
- 9.5 In the event that the Owner and the Contractor are unable to agree as to the extent, if any, of an adjustment in the Contract Price or Contract Time without causing delay, in, or disruption of the Contractor's schedule for completion of the Project; or increase in the cost for rework; the Owner's Representative is authorized to issue a Change Order for the addition, deletion or change to proceed on an extra work basis, subject to the submittal of daily reports of all labor, equipment, materials and supplies utilized while performing extra Work.
- 9.6 **Notice of Change Orders to Surety.** If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents, including but not limited to Contract Price or Contract Times, is required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be the Contractor's responsibility and the amount of each applicable Bond will be adjusted accordingly.

## 10. Change of Contract Price.

- 10.1 **Total Compensation.** The Contract Price constitutes the total compensation, subject to adjustments hereunder, payable to the Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at his expense without change in Contract Price.
- 10.2 **Change of Contract Price.** The Contract Price may only be changed by a Written Amendment or a Change Order. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party promptly, but in no event later than thirty (30) days, after knowledge of the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the occurrence of the event, unless the Owner allows additional time for claimant

to submit additional or more accurate data in support of the claim, and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts including direct, indirect and consequential costs, to which the claimant is entitled as a result of the occurrence of said event. The Owner shall review and render a decision on all claims for adjustment in the Contract Price.

10.3 **Determination of Value of Work Covered by Change Order.** The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price shall be determined in one of the following ways:

10.3.1 where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved, subject to the provisions of Volume II, Section 1000, subsection 10.9.1 through 10.9.3 inclusive.

10.3.2 by mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Volume II, Section 1000, subsection 10.6.2.

10.3.3 on the basis of the Cost of the Work, determined as provided in Volume II, Section 1000, subsection 10.4 and 10.5; plus a Contractor's fee for overhead and profit, determined as provided in Volume II, Section 1000, subsection 10.6.

10.4 **Cost of the Work.** The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Work. Except as may otherwise be agreed in writing by the Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Volume II, Section 1000, subsection 10.5:

10.4.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications agreed upon by the Owner and the Contractor. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but shall not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the Owner.

10.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers'

field services required in connection therewith. All cash discounts shall accrue to the Contractor unless the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained.

10.4.3 Payments made by the Contractor to the Subcontractors for Work performed or furnished by Subcontractors. If required by the Owner, the Contractor shall obtain competitive bids from Subcontractors acceptable to the Owner and the Contractor and shall deliver such bids to the Owner who shall then determine which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as the Contractor's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

10.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

10.4.5 Supplemental costs including the following:

10.4.5.1 Necessary transportation, travel and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Work.

10.4.5.2 Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work; and the cost less market value of such items used but not consumed and which remain the property of the Contractor.

10.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with rental agreements approved by the Owner; and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof all in accordance with terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

10.4.5.4 Sales, consumer, use or similar taxes related to the Work, as imposed by Laws and Regulations and for which the Contractor is liable.

10.4.5.5 Deposits lost for causes other than negligence of the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

10.4.5.6 Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance, or otherwise, sustained by the Contractor in connection with the performance and furnishing of the Work, provided they have resulted from causes other than the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's fee. If, however, any such loss or damage requires reconstruction and the Contractor is placed in charge thereof, the Contractor shall be paid for services a fee proportionate to that stated in Volume II, Section 1000, subsection 10.6.2.

10.4.5.7 The cost of utilities, fuel and sanitary facilities at the Site.

10.4.5.8 Expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage and similar petty cash items in connection with the Work.

10.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work.

10.5 **Exclusions from Cost of the Work.** The term "Cost of the Work" shall not include any of the following:

10.5.1 Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Contractor whether at the Site or in the Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Volume II, Section 1000, subsection 10.4.1 or specifically covered by subsection 10.4.4 all of which are to be considered administrative costs covered by the Contractor's fee.

- 10.5.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the Site.
  - 10.5.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.
  - 10.5.4 Cost of premiums for all bonds and for all insurance whether or not the Contractor is required by the Contract Documents to purchase and maintain the same, except for the cost of premiums covered by Volume II, Section 1000, subsection 10.4.5.9.
  - 10.5.5 Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 10.6 **Contractor's Fee.** The Contractor's fee allowed to the Contractor for overhead and profit shall be determined as follows:
- 10.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,
  - 10.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:
    - 10.6.2.1 for costs incurred under Volume II, Section 1000, subsection 10.4.1 and 10.4.2, the Contractor's fee shall be fifteen (15) percent;
    - 10.6.2.2 for costs incurred under Volume II, Section 1000, subsection 10.4.3, the Contractor's fee shall be fifteen (15) percent;;
    - 10.6.2.3 no fee shall be payable on the basis of costs itemized under Volume II, Section 1000, subsections 10.5;
    - 10.6.2.4 the amount of credit to be allowed by the Contractor to the Owner for any change which results in a net decrease in cost shall be the amount of the actual net decrease in cost plus a deduction in the Contractor's fee in an amount equal to five percent of such net decrease; and
    - 10.6.2.5 when both additions and credits are involved in any one change, the adjustment in the Contractor's fee shall be computed on the

basis of the net change in accordance with Volume II, Section 1000, subsection 10.6.2.1 through 10.6.2.4, inclusive.

- 10.7 **Records Supporting Cost Items.** Whenever the cost of any Work is to be determined pursuant to Volume II, Section 1000, subsection 10.4, the Contractor shall establish and maintain records thereof in accordance with generally accepted accounting practices and shall submit an itemized cost breakdown together with supporting data to the Owner's Representative. The Owner may audit the Contractor's records related to such costs during customary business hours.
- 10.8 **Allowances.** It is understood that the Contractor has included in the Contract Price all allowances named in the Contract Documents, and shall cause the Work to be done by such suppliers or Subcontractors and for such sums within the limit of the allowances as may be acceptable to the Owner's Representative on behalf of the Owner. Prior to final payment, an appropriate Change Order shall be issued as recommended by the Owner's Representative to reflect actual amounts due the Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted. The Contractor agrees that the allowances include the cost to the Contractor (less any applicable trade discounts) of equipment and materials required by the allowances to be delivered to the Site, labor, installation costs, and all applicable taxes. The Contractor further agrees that all overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and that no demand for additional payment on account of any thereof will be valid.
- 10.9 **Unit Price Work.**
- 10.9.1 Where the Contract Documents provide that part of the Work is to be Unit Price Work, the Contract Price shall initially be deemed to include, for all Unit Price Work, an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the quantity of each item as indicated in the Contract Documents. The quantities of items of Unit Price Work are expected maximums and are provided for the purpose of determining the maximum, not to exceed, Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the Contractor shall be made by OWNER'S Representative.
- 10.9.2 Each unit price shall be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's overhead and profit for each separately identified item.
- 10.9.3 Where the quantity of any item of Unit Price Work performed by the Contractor differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents and there is no corresponding adjustment with respect to any other item of Work and if

the Contractor believes that the Contractor has incurred additional expense as a result thereof, but the parties are unable to agree as to the amount of any such increase, the Contractor may make a claim for an increase in the Contract Price.

## **11. Change Of Contract Times.**

**11.1 Contract Time.** The Contract Times, or Milestones, may only be changed by a Written Amendment, or Change Order. Any claim for an adjustment of the Contract Times, or Milestones, shall be based on Work that affects the Critical Path only and a written notice delivered by the party making the claim to the other party promptly, but in no event later than thirty (30) days, after the knowledge of the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty (60) days after, unless the Owner allows an additional period of time to ascertain more accurate data in support of the claim, and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. The Contractor shall demonstrate the requested Contract Time change through schedule submittals if so requested by the Owner's Representative. The Owner shall review and render a decision on all claims for adjustment in the Contract Times, or Milestones. Any change to the Contract Times agreed to by the Owner shall be incorporated in a Change Order or Written Amendment.

**11.2 Extension for Delays Beyond Contractor's Control.** Where the Contractor is prevented from completing any part of the Work within the Contract Times, or Milestones, due to delay beyond the reasonable control of the Contractor, the Contract Times, or Milestones, may be extended in an amount equal to the impact due to the time lost due to such delay if a claim is made therefore as provided in Volume II, Section 1000, subsection 11.1 and there shall be an equitable adjustment to the Contract Price. Delays beyond the reasonable control of the Contractor shall include, but not be limited to, acts or neglect by the Owner, acts or neglect of utility owners or other contractors performing other work, or to fires, floods, epidemics, pandemics, quarantine, severe weather conditions or acts of God. Delays attributable to and within the reasonable control of a Subcontractor or Supplier shall be deemed to be delays within the reasonable control of the Contractor.

## **12. Tests and Inspections; Correction, Removal or Acceptance of Defective Work.**

**12.1 Warranty and Guarantee.** The Contractor warrants and guarantees to the Owner that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects of which the Owner's Representative is aware shall be provided to the Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this subsection.

- 12.1.1 All Equipment and Materials furnished by the Contractor for the Work shall carry a written guarantee from the manufacturer or Supplier of such items when called for in the Specifications. Written guarantees shall be submitted to the Owner with other Submittals.
- 12.2 **Access to the Work.** The Owner, the Owner's Representative, other representatives of the Owner, testing agencies and governmental agencies with jurisdictional interests shall be permitted access to the Work for their observation, inspecting and testing. The Contractor shall provide proper and safe conditions for such access.
- 12.3 **Tests and Inspections.** The Contractor shall give the Owner & Owner's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals.
- 12.3.1 The Contractor shall be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the Owner's acceptance of a Supplier of Materials or Equipment proposed to be incorporated in the Work, or of Materials or Equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work.
- 12.3.2 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested, or approved, the Contractor shall assume full responsibility therefore, pay all costs in connection therewith, and furnish the Owner's Representative the required certificates of inspection, testing, or approval.
- 12.3.3 The cost of all inspections, tests, and approvals in addition to the above which are required by the Contract Documents shall be paid by the Owner, unless otherwise specified.
- 12.3.4 All inspections, tests, or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the Owner and the Contractor.
- 12.3.5 If any Work, including the work of others, which is to be inspected, tested, or approved is covered without written concurrence of the Owner's Representative, it must, if requested by the Owner's Representative, be uncovered for observation. Such uncovering shall be at the Contractor's expense unless the Contractor has given the Owner's Representative timely notice of the Contractor's intention to cover the same and the Owner's Representative has not acted with reasonable promptness in response to such notice.

- 12.3.6 Neither observations by the Owner's Representative nor inspections, tests, or approvals by others shall relieve the Contractor from the Contractor's obligations to perform the Work in accordance with the Contract Documents.
- 12.4 **Defective Work.** The term "defective" is used in these documents to describe Work that is faulty, not in conformance with the requirements of the Contract Documents, or not meeting the requirements of any inspection, test, approval, or acceptance required by Law or the Contract Documents.
- 12.4.1 Any defective Work may be disapproved or rejected by the Owner or Owner's Representative at any time before final acceptance even though it may have been overlooked and included in a previous Application for Payment.
- 12.4.2 The Owner or Owner's Representative shall provide the Contractor prompt notice of defects as they become evident.
- 12.5 **Owner May Stop the Work.** If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other party.
- 12.6 **Correction or Removal of Defective Work.** If required by the Owner or Owner's Representative, the Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Owner's Representative, remove it from the Site and replace it with nondefective Work. The Contractor shall bear all direct costs of such correction or removal (including but not limited to fees and charges of engineers, architects, reasonable attorneys, and other professionals) made necessary thereby.
- 12.7 **One-Year Correction Period.** Under the provisions of the Guaranty Bond furnished by CONTRACTOR at the completion of the Work, if within one year after the Date of Substantial Completion of the Project, any Work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work, or, if it has been rejected by the Owner, remove it from the Site and replace it with nondefective Work and in addition, with regard to defects and non-conformances corrected pursuant thereto, Contractor's warranty term shall extend one (1) year from the date of repair; however, in no event shall Contractor's

foregoing warranty, nor any warranty obligations of Contractor under this Contract, extend for more than two (2) years from Substantial Completion of its Work. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, reasonable attorneys fees, and other professionals) will be paid by the Contractor.

12.8 **Acceptance of Defective Work.** The Owner may, at its election, choose to accept defective Work instead of requiring correction or removal and replacement of defective Work. The Contractor shall bear all direct costs attributable to the Owner's evaluation of and determination whether to accept such defective Work (including but not be limited to fees and charges of engineers, architects, attorneys, and other professionals). If any such acceptance occurs prior to the Owner's Representative's recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. If the Owner's acceptance occurs after such recommendation, the Contractor shall pay the Owner for the Owner's costs of evaluation and determination whether to accept the defective Work.

12.9 **Owner May Correct Defective Work.** If the Contractor fails within a reasonable time after written notice of the Owner's Representative to proceed to correct defective Work or to remove and replace rejected Work as required by the Owner's Representative, the Owner may, after seven days' written notice to the Contractor, correct and remedy any such deficiency.

12.9.1 To the extent necessary to complete corrective and remedial action, the Owner may exclude the Contractor from all or part of the Site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, and incorporate in the Work all Equipment and Materials stored at the Site or for which the Owner has paid the Contractor but which are stored elsewhere.

12.9.2 All direct costs of the Owner in exercising such rights and remedies shall be charged against the Contractor and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. The Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, the Owner may make a claim therefore. Such direct costs shall include but not be limited to fees and charges of engineers, architects, reasonable attorneys fees and other professionals, all court and arbitration costs.

12.9.3 The Contractor shall not be allowed an extension of the Contract Times because of any delay in performance of the Work attributable to the exercise by the Owner of the Owner's rights and remedies hereunder.

12.10 THE EXPRESS WARRANTIES OF CONTRACTOR SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, (INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE), AND CONTRACTOR HEREBY DISCLAIMS, AND OWNER HEREBY WAIVES, ANY AND ALL SUCH OTHER WARRANTIES. THE WARRANTY COVERAGE SET FORTH HEREIN IS THE SOLE AND EXCLUSIVE REMEDY BY OWNER FOR CLAIMS RELATED TO AND ARISING FROM DEFECTIVE WORK.

CONTRACTOR IS NOT AND SHALL NOT BE HELD LIABLE FOR ANY ALLEGED BREACH OF THE WARRANTIES GIVEN IN THIS AGREEMENT TO THE EXTENT CAUSED BY OR ARISING OUT OF:

- (a) ORDINARY WEAR AND TEAR IN THE OPERATION OF THE PROJECT;
- (b) ALTERATIONS OR REPAIRS CARRIED OUT BY PERSONS NOT AUTHORIZED BY CONTRACTOR;
- (c) SERVICES PROVIDED BY, OR THE USE OF MATERIALS, EQUIPMENT, LAYOUTS OR DESIGNS SUPPLIED OR REQUIRED BY, ANY PARTY OTHER THAN CONTRACTOR, ITS SUBCONTRACTORS OR SUPPLIERS UNLESS APPROVED BY CONTRACTOR IN WRITING; OR
- (d) A FORCE MAJEURE EVENT.

### **13. Payments to Contractor, Project Completion.**

13.1 **Applications for Progress Payment.** Within fifteen (15) days following the last day of each month, the Owner's Representative and the Contractor shall meet to review and agree upon the value in the Application for Progress Payments. Once agreed the Application for Progress Payments shall be signed by both the Owner's Representative and the Contractor. Contractor shall submit an invoice based on the finalized Application for Progress Payment. The Application for Progress Payment shall be accompanied by such supporting documentation as required by the Contract Documents.

13.1.1 If payment is requested on the basis of Equipment and Materials not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Progress Payment shall also be accompanied by a bill of sale, invoice, or other

documentation warranting that the Owner has received the Equipment and Materials will be free and clear of all liens, charges, security interests, and encumbrances upon receipt of payment for the same, which are hereinafter referred to as "Liens", and evidence that the Equipment and Materials are covered by appropriate property or Builder's Risk insurance and other arrangements to protect the Owner's interest therein, all of which shall be satisfactory to the Owner.

- 13.1.2 Progress payments shall be in the amount of ninety percent (90%) of the amount of the Application for Progress Payment less the sum of all previous payments. When the amount retained by the Owner becomes equal to five percent (5%) of the Contract Price, the remaining progress payments shall be made in full, provided the Contractor's performance is satisfactory in the opinion of the Owner.
- 13.1.3 The Contractor warrants and guarantees that title to all Work, Materials, and Equipment covered by any Application for Progress Payment, whether incorporated in the Project or not, shall pass to the Owner free and clear of all Liens no later than the time of the Owner's payment and delivery to the Site.
- 13.1.4 The Owner's Representative shall refuse to recommend payment, either in whole or any part if:
  - 13.1.4.1 subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended;
  - 13.1.4.2 the Work is defective, or completed Work has been damaged requiring correction or replacement;
  - 13.1.4.3 written claims have been made against the Owner or Liens have been filed in connection with the Work provided Owner is in compliance with its payment obligations;
  - 13.1.4.4 the Contract Price has been reduced by Written Amendment or Change Order;
  - 13.1.4.5 the Owner has been required to correct defective Work or complete Work;
  - 13.1.4.6 the Contractor has failed to satisfactorily prosecute the Work in accordance with the Contract Documents; or

13.1.4.7 the Contractor has failed to make payment to Subcontractors, or for labor, Materials, or Equipment provided Owner is in compliance with its payment obligations; or

13.1.4.8 the Owner is entitled to terminate the Contract.

13.1.5 The Owner may refuse to make payment of the full amount recommended by the Owner's Representative because claims have been made against the Owner on account of the Contractor's performance the Work, because Liens have been filed in connection with the Work provided Owner is in compliance with its payment obligations, or because there are other items entitling the Owner to a set-off against the amount recommended. The Owner shall give the Contractor immediate written notice stating the reasons for such action.

13.1.6 In compliance with NRS 338.160, the Owner shall authorize progress payments of the amount due under the Contract at the end of each calendar month, or as soon thereafter as practical, to the Contractor if the Contractor is satisfactorily performing the Contract and the Owner has not been required to withhold payment to the Contractor in accordance with NRS 338.160(5).

13.1.7 Except as otherwise provided in NRS 338.170, the Contractor shall disburse money paid to him pursuant to NRS 338.170, including any interest which he receives, to his Subcontractors and suppliers within fifteen (15) days after he receives the money, in direct proportion to the subcontractor's and supplier's basis (including payments of interest on amounts withheld) in the total Contract between the Contractor and the Owner.

13.2 **Substantial Completion.** When the Contractor considers the entire Work substantially complete, the Contractor shall notify the Owner in writing that the entire Work is substantially complete (except for items specifically listed by the Contractor as incomplete) and request that the Owner's Representative issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Owner and the Contractor shall make an inspection of the Work to determine the status of completion. If the Owner does not consider the Work substantially complete, the Owner shall notify the Contractor in writing giving its reasons therefore. If the Owner considers the Work substantially complete, the Owner's Representative shall prepare and deliver a tentative certificate of Substantial Completion which shall fix the Date of Substantial Completion. The Owner's Representative shall attach thereto a tentative list of items to be completed or corrected before final payment.

13.2.1 At the time of delivery of the tentative certificate of Substantial Completion, Owner's Representative shall deliver to the Contractor a

written recommendation as to division of responsibilities pending final payment between the Owner and the Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance, and warranties.

- 13.3 **Partial Utilization.** Use by the Owner of any finished part of the Work, which has specifically been identified in the Contract Documents, or which the Owner and the Contractor agree constitutes a separately functioning and useable part of the Work that can be used by the Owner without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

13.3.1 The Owner at any time may request the Contractor in writing to permit the Owner to use any such part of the Work which the Owner believes to be ready for its intended use and substantially complete. If the Contractor agrees, the Contractor shall certify to the Owner that said part of the Work is substantially complete and request the Owner's Representative to issue a certificate of Substantial Completion for that part of the Work. The Contractor at any time may notify the Owner in writing that the Contractor considers any such part of the Work ready for its intended use and substantially complete and request the Owner's Representative to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the Contractor and the Owner's Representative shall make an inspection of that part of the Work to determine its status of completion.

13.3.2 The Owner may at any time request the Contractor in writing to permit the Owner to take over operation of any such part of the Work although it is not substantially complete. The Contractor and the Owner's Representative shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. The Owner's Representative shall list any additional work which shall be completed or corrected and deliver such list to the Contractor and shall recommend any division of responsibilities pending final payment between the Owner and the Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties, and guarantees for that part of the Work. Prior to Substantial Completion of such part of the Work, the Owner shall allow the Contractor reasonable access to complete or correct items on said list and to complete other related Work.

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

- 13.5 **Final Application for Payment.** After the Contractor has completed all Work to the reasonable satisfaction of the Owner and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents, and other documents - all as required by the Contract Documents, and after the Owner's Representative has indicated that the Work is acceptable, the Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, except to the extent they have been previously delivered, together with complete and legally effective releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work. In lieu thereof and as approved by the Owner, the Contractor may furnish receipts or releases in full; an affidavit of the Contractor that the releases and receipts include all labor, services, Material, and Equipment for which a lien could be filed, and that all payrolls, Equipment and Material bills, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, the Contractor may furnish a Bond or other collateral satisfactory to the Owner to indemnify the Owner against any lien.
- 13.6 **Contractor's Continuing Obligation.** Neither recommendation of any progress or final payment by the Owner, nor the issuance of a certificate of Substantial Completion, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the Owner, nor any act of acceptance by the Owner nor any failure to do so, nor any review and approval of a Submittal, nor the issuance of any notice of acceptability, nor any correction of defective Work by the Owner will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents.
- 13.7 **Waiver of Claims.** The Owner's making and the Contractor's acceptance of final payment shall constitute a waiver of all claims by the Owner against the Contractor, except claims arising from unsettled liens, from defective work appearing after final inspection, or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein. The Owner's making and the Contractor's acceptance of final payment shall not constitute a waiver by the Owner of any rights in respect of the Contractor's continuing obligations under the Contract Documents, nor a waiver of those claims previously made in writing and still unsettled.
- 13.8 **Contract Times and Liquidated Damages.**
- 13.8.1 The Owner and the Contractor recognize that time is of the essence for the performance of the Contractor's obligations pursuant to this Contract, that

Work under other contracts is dependent on timely and satisfactory completion of the Work, and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Contract Document, plus any extensions thereof. Nothing in this or any other ‘time is of the essence’ provision shall be construed as affecting any cure periods specifically set forth in the applicable Contract Documents and Owner must comply with the termination provisions of this Contract in order to terminate it. They also recognize that losses incurred by the Owner for delay would be extremely difficult or impossible to calculate or ascertain. The Owner and the Contractor recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay, but not as a penalty, the Contractor shall pay the Owner the amounts as indicated below for each day that expires after the time specified for each milestone.

- 13.8.1.1 In case of joint responsibility for delay in the completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one contractor shall be based upon the individual responsibility of that contractor for the delay as determined by, and in the reasonable judgment of Owner.
- 13.8.1.2 The Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to the Contractor hereunder, or to initiate applicable dispute resolution procedures and recover liquidated damages for nonperformance of this Contract within the time stipulated.
- 13.8.1.3 Contract Times and Liquidated Damages for each calendar day that each milestone is not met are as follows:

<b>Milestone</b>	<b>Date</b>	<b>Liquidated Damages (Per Day)</b>
Mobilization (Switchyard Pad and Fence)	September 13, 2024	\$5,000.00
Mobilization (Switchyard and Transmission Line Construction)	September 13, 2024	\$5,000.00
Substantial Completion (Switchyard and Transmission Line)	December 1, 2025	\$5,000.00
Switchyard Energization	December 8, 2025	\$5,000.00
Final Completion	December 22, 2025	\$5,000.00

Liquidated Damages shall be assessed on each milestone separately until that milestone is completed.

- 13.8.2 When the Contractor is in default for nonperformance within the stipulated Contract Times including any intermediate Milestone Dates, the Owner's Representative shall notify the Contractor in writing within 30 days after the Contract Times or intermediate Milestone Date, and deduct the liquidated damages in the amount stated from any monies due the Contractor. The deductions of liquidated damages shall be in addition to any retainage withheld and shall be non-reimbursable.
- 13.8.3 The Owner shall have no obligation to credit liquidated damages to the Contractor for any Work completed ahead of schedule. Liquidated damages are solely for deduction from money due or to become due for delays in the completion of the Work. Notwithstanding anything to the contrary, the parties agree that the aggregate liability for delay or liquidated damages shall not exceed, ten percent (10%) of the Contract Price. Notwithstanding anything to the contrary, the assessment of any such delay or liquidated damages shall be Owner's exclusive remedy and Contractor's sole liability for delay caused by Contractor.

#### **14. Suspension of Work, Termination.**

- 14.1 **Owner May Suspend Work.** The Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than one hundred and twenty (120) days by notice in writing to the Contractor which shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to any suspension if the Contractor makes an approved claim therefore.
- 14.2 **Owner May Terminate.** The Owner may terminate this Contract upon the occurrence of any one or more of the following events:
- 14.2.1 the Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state Law in effect at such time relating to the bankruptcy or insolvency;
- 14.2.2 a petition is filed against the Contractor under any chapter of the bankruptcy Code as now or hereafter in effect at the time of filing, or a petition is filed seeking any such equivalent or similar relief against the Contractor under any other federal or state Law in effect at the time relating to bankruptcy or insolvency and is not dismissed within sixty (60) days;

- 14.2.3 the Contractor makes a general assignment for the benefit of creditors;
  - 14.2.4 a trustee, receiver, custodian, or agent of the Contractor is appointed under applicable Law or under contract, whose appointment or authority to take charge of property of the Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors;
  - 14.2.5 the Contractor admits in writing an inability to pay its debts generally as they become due;
  - 14.2.6 the Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable Equipment or Materials or failure to adhere to the progress schedule);
  - 14.2.7 the Contractor disregards Laws or Regulations of any public body having jurisdiction over the Work; or
  - 14.2.8 the Contractor violates any provisions of the Contract Documents in any substantial way.
- 14.3 The Owner may, after giving the Contractor, and the surety, seven (7) days' written notice of the Owner's intention to terminate the services of the Contractor, exclude the Contractor from the Site and take possession of the Work and use the same to the full extent they could be used by the Contractor, without liability to the Contractor for trespass or conversion, incorporate in the Work all Equipment and Materials stored at the Site or for which the Owner has paid the Contractor but which are stored elsewhere, and finish the Work as the Owner may deem expedient. In such case, the 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 direct costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and court and arbitration costs), such excess will be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner shall be incorporated in a Change Order. When exercising any rights or remedies under this paragraph, the Owner shall not be required to obtain the lowest price for the Work performed.
- 14.4 Where the Contractor's services have been terminated by the Owner, the termination shall not affect any rights or remedies of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due to the Contractor by the Owner shall not release the Contractor from liability.

- 14.5 The Owner may, without cause and without prejudice to any other right or remedy, upon seven days' written notice to the Contractor, elect to abandon the Work and terminate the Contract. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which shall include, but not be limited to, direct, indirect, and consequential costs.
- 14.6 **Contractor May Stop Work or Terminate.** If, through no act or fault of the Contractor, the Work is suspended for a period of more than one hundred and twenty (120) days by the Owner or under an order of court or other public authority, or the Owner fails for sixty (60) days to pay the Contractor any sum due, then the Contractor may, upon seven (7) days' written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Contract, if the Owner has failed to make any payment when due, the Contractor may upon seven (7) days' written notice to the Owner stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve the Contractor of the obligations to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the Owner.

## 15. Resolution Of Disputes.

- 15.1 Controversies arising out of this Contract must be resolved pursuant to the jurisdiction and substantive law of the courts of competent jurisdiction of the State of Nevada, or upon the concurrence of the Parties, in accordance with and pursuant to the procedures of the Uniform Arbitration Act of 2000, NRS 38.206 through 38.248.
- 15.2 No demand for arbitration of any such claim, dispute, or other matter, that involves any report, submittal or referral required by the Contract Documents to be made to the Owner for review, approval or consideration, shall be made until the Owner has reported in writing to the Contractor regarding such review, approval or consideration or Owner fails to respond to such report, submittal or review within thirty (30) days of Contractor's submittal. Nor shall such a demand be made later than thirty (30) days after such written report is made.
- 15.3 The Contractor shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise agreed by the Contractor and the Owner in writing and provided Owner continues to comply with its payment obligations hereunder.

## 16. Miscellaneous.

- 16.1 **Giving Notice.** Whenever any provision of the Contract Documents requires the giving of written notice the notice shall be dated and signed by the party giving

such notice or his duly authorized representative. The notice shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if sent by fax (with oral verification of receipt followed by mailing of the original), or if delivered by overnight delivery, or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice. For the purposes of the various notice requirements contained in the Contract Documents, notice shall be deemed given on the date it is personally delivered, one day after it is sent by overnight mail, three days after the date it is mailed, as evidenced by the postmark or if such notice is given by facsimile transmission, as provided herein, it shall be deemed served immediately upon receipt of transmission if transmitted during normal business hours or, if not transmitted during normal business hours, on the next business day following facsimile transmission.

- 16.2 **Computation of Time.** When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the Law of the applicable jurisdiction, such day will be omitted from the computation.
- 16.3 **Notice of Claims.** Should the Owner or the Contractor suffer injury or damage to person or property because of any error, omission, or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.
- 16.4 **Cumulative Remedies.** Except as otherwise provided herein, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents shall survive final payment and termination or completion of the Contract.
- 16.5 **Governing Law and Venue.** The Contract Documents shall be governed and interpreted in accordance with the laws of the State of Nevada. The Contractor hereby agrees and consents to the exclusive jurisdiction of the courts of the State of Nevada, and that venue of any action brought hereunder shall be in Clark County, Nevada.

- 16.6 **Taxes.** The Contractor must promptly pay all taxes that are lawfully assessed against the Contractor in connection with the Work. The Owner is exempt from sales tax pursuant to a ruling and determination of the attorney general of the State of Nevada.
- 16.7 **Unemployment Compensation.** The Contractor must at all times comply with the requirements of Nevada Revised Statutes (“NRS”) chapter 612 (Unemployment Compensation).
- 16.8 **Discrimination.** The Contractor shall not, during its performance of the Contract, discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, or age, including, but not limited to, the following: employment, upgrading, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall insert or incorporate this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provision by the subcontractor constitutes a material breach of the Contract.
- 16.9 **Assignment of Contract.** The Contractor shall not assign or otherwise transfer its rights or obligations under the Contract without the prior written approval of the Owner. This Contract inures to the benefit of and is binding upon the respective successors and assigns of the Parties to the Contract but any assignment or other transfer of the Contract does not relieve the Parties of any obligation hereunder.
- 16.10 **Severability.** Should any provision of the Contract Documents for any reason be declared invalid or unenforceable by final and applicable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in effect as if the Contract Documents had been executed without the invalid portion. In the event any provision of the Contract Documents is declared invalid, the Parties shall promptly renegotiate to restore the Contract as near as possible to its original intent and effect.
- 16.11 **Survival.** Any provision of the Contract Documents that expressly or by implication comes into or remains in force following the termination or expiration of the Contract survives the termination or expiration of the Contract.
- 16.12 **Article Headings.** The article headings in the Contract Documents are included only for convenience and reference and the Parties intend that they be disregarded in interpreting the Contract Documents.
- 16.13 **Waiver.** Either of the Parties shall have the right to excuse or waive performance by the other Party of any obligation under the Contract by a written notice signed by the Party so excusing or waiving. No delay in exercising any right or remedy

shall constitute a waiver thereof, and no waiver by either Party of the breach of any covenant of the Contract shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of the Contract.