

CONTRACT DOCUMENTS AND SPECIFICATIONS

FOR

SABINE RIVER AUTHORITY



CONSTRUCTION OF THE  
LAKE TAWAKONI TOURNAMENT FACILITY  
RESTROOM, HARDSCAPE, AND LANDSCAPE  
SABINE RIVER AUTHORITY  
CITY OF WILLS POINT  
VAN ZANDT COUNTY, TEXAS

LJA JOB NO. B883-1015D

**BID SET**

AUGUST 2022

LJA ENGINEERING, INC.  
3600 W. SAM HOUSTON PARKWAY S.  
SUITE 600  
HOUSTON, TEXAS 77042  
713.953.5200

**SABINE RIVER AUTHORITY**

**BID DOCUMENTS AND  
TECHNICAL SPECIFICATIONS  
FOR CONSTRUCTION OF THE  
LAKE TAWAKONI TOURNAMENT FACILITY  
RESTROOM, HARDSCAPE, AND LANDSCAPE  
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## INVITATION TO BIDDERS

SEALED PROPOSALS addressed to Sabine River Authority for construction of the Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape, LJA Job No. B883-1015D, will be received at the office of Sabine River Authority, Lake Tawakoni Division Office, 169 Rcr 1480, Point, Texas 75472, until 00:00 a.m./p.m., WEEKDAY, DATE, 2022, and then publicly opened and read aloud.

Copies of the Plans and Specifications may be obtained from [www.civcastusa.com](http://www.civcastusa.com). There is no cost to view the plans and printing can be done through the website. Hard copies of Bidding Documents will not be sold. Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work, and do not confer a license or grant for any other purpose.

Sabine River Authority will hold a non-mandatory pre-bid conference at the office of the Sabine River Authority, Lake Tawakoni Division Office, 169 Rcr 1480, Point, Texas 75472, at 00:00 a.m./p.m., WEEKDAY, DATE, 2022. Sabine River Authority reserves the right to reject any and all bids. The Successful Bidder, if any, will be the responsible Bidder which in the Board's judgment will be most advantageous to the District and result in the best and most economical completion of the Project. (Texas Water Code 49.273)

Bid security in the form of bid bond, certified or cashier's check payable to Sabine River Authority in an amount not less than five percent (5%) of the Bid submitted, must accompany each Bid.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Bid and/or Contract and bidder/contractor agrees that the Contract can be terminated if the bidder/contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Bidder/Contractor declares that it has not received from a governmental body a notice of noncompliance with a provision of Subchapter J, Chapter 552, Texas Government Code, or, if such notice has been received, bidder/contractor has taken adequate steps to ensure future compliance with such subchapter and has provided or upon request will provide documentation of same.

Dates of Advertisement: 00/00/22; 00/00/22

**CONSTRUCTION OF THE  
LAKE TAWAKONI TOURNAMENT FACILITY  
RESTROOM, HARDSCAPE, AND LANDSCAPE  
SABINE RIVER AUTHORITY  
CITY OF WILLS POINT  
VAN ZANDT COUNTY, TEXAS**

**LJA JOB NO. B883-1015D**

**LIST OF DRAWINGS**

SHEET NO.    DESCRIPTION

## INSTRUCTIONS TO BIDDERS

**IMPORTANT NOTICE: Bidder must read ALL Instructions. Failure to do so may result in a non-responsive Bid. Failure to do so does not release Bidder from the obligation to comply.**

### 1. Submission of Bids

- 1.1 In accordance with the Plans and Specifications prepared by the ENGINEER, any Proposal received after the published time of the bid opening will be returned unopened.
- 1.2 The OWNER reserves the right to reject any or all Bids if the OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or other criteria established by OWNER.
- 1.3 Bids shall be submitted at the location and time indicated in the Invitation to Bidders and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Bids which are not received by the time and at the location specified in the Bidding Documents, will be returned unopened to the Bidder.
- 1.4 By submitting a Bid, each Bidder agrees to fully and forever waive and release any claim (known or unknown) it has or may have against the OWNER, DEVELOPER, ARCHITECT and ENGINEER, and their respective attorneys, employees, consultants, representatives, agents, successors, assigns, officers, directors, and members arising under the statutes of Texas, tort, contract or otherwise; or out of or in connection with the: (i) administration, evaluation, or recommendation (or lack thereof) of any Bid; (ii) waiver of any requirements under the Bid Documents or the CONTRACT DOCUMENTS; (iii) acceptance or rejection of any bids; (iv) award of the Contract; and, (v) provision of references (positive or negative) in connection with any work performed by Bidder, and Bidder's contractors and subcontractors in connection with the Project and the CONTRACT DOCUMENTS, to which Bidder hereby consents and authorizes.
- 1.5 All work must conform to Federal, State and local governmental rules and criteria.

### 2. Copies of the Bidding Documents

- 2.1 Copies of the Plans and Specifications may be obtained from [www.civcastusa.com](http://www.civcastusa.com).
- 2.2 Copies of Bidding Documents are made available only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.
- 2.3 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.4 The Bidding Documents may include reports on the geotechnical, subsurface, physical or environmental conditions which contain information used by the ENGINEER and OWNER. Neither the ENGINEER nor OWNER are responsible for accuracy or completeness of any such information or data. Bidder shall have full responsibility for interpretation of the reports and use of the information for bidding and construction purposes.

### **3. Bid Security**

- 3.1 Each Bid must be accompanied by Bid security made payable to OWNER in an amount of no less than five percent (5%) of the Bidder's maximum Bid price and in the form of certified or cashier's check or bid bond as specified in the Invitation to Bidders. The surety company providing the Bid Bond must conform to the same requirements for surety companies providing Performance and Payment Bonds as described in the Special Conditions. If a cashier's check is furnished, it is to be drawn on a bank in the county where the Project is located or counties bordering that county. The security is a guarantee that the successful Bidder will enter into the Contract and execute the required payment and performance and maintenance bonds.
- 3.2 The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within seven (7) days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited.
- 3.3 The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh (7<sup>th</sup>) day after the Effective Date of the Agreement or the ninetieth (90<sup>th</sup>) day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven (7) days after the Bid opening.

### **4. Contract Documents**

Contract Documents include the Agreement, Addenda, all Conditions (General, Supplementary and Special), specifications and plans, the Bid Proposal, and any written modifications.

### **5. Defined Terms**

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions have the meanings assigned to them in the Standard General Conditions unless modified by the Supplementary and Special Conditions.

### **6. Successful Bidder**

Successful Bidder if any, will be the responsible Bidder which in the Board's judgment will be most advantageous to the District and result in the best and most economical completion of the Project. (Texas Water Code 49.273)

### **7. Bid Proposal Form**

- 7.1 The Bid Proposal Form is included with the Bidding Documents; additional copies may be obtained from the ENGINEER.
- 7.2 All blanks on the Bid Proposal Form must be completed by printing in ink or by typewriter.
- 7.3 Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign), and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

- 7.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature. Bids by limited partnerships must be executed by an authorized representative of the general partner on behalf of the general partner.
- 7.5 All names must be typed or printed in ink below the signature. The address (including County), telephone number, e-mail address (if available), and facsimile number for communications regarding the Bid must be shown.
- 7.6 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Proposal Form).
- 7.7 Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed, shall be provided. State Contractor license number, if any, must also be shown.

## **8. Interpretations and Addenda**

- 8.1 All questions about the meaning or intent of the Bidding Documents are to be directed to ENGINEER. As necessary, interpretations or clarifications will be issued by Addenda mailed or delivered to all parties having received the Bidding Documents. Questions received less than three days prior to the date for opening of Bids may not be answered. Verbal discussions and answers are not binding.
- 8.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by OWNER or ENGINEER.

## **9. Self Performing**

As a condition of this Agreement, the CONTRACTOR is required to self perform at least 60 percent of the work (based on total contract price awarded, complete in place) with personnel directly employed by CONTRACTOR.

## **10. Subcontractors, Suppliers and Others**

- 10.1 If the Special Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to OWNER prior to the Effective Date of the Agreement, apparent Successful Bidder, and any other Bidder so requested, shall within five days after the Bid opening, submit to OWNER a list of all such Subcontractors, Suppliers and other persons and organizations.
- 10.2 OWNER reserves the right to reject a proposed subcontractor or supplier at its sole discretion. OWNER may request apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.  
  
If apparent Successful Bidder declines to make any such substitution, OWNER may award the contract to another Bidder meeting the Bid requirements that proposes to use acceptable subcontractors, suppliers, and other persons and organizations. By declining to make requested substitutes, the apparent Successful Bidder will not sacrifice their Bid security.
- 10.3 No CONTRACTOR shall be required to employ any subcontractor, supplier, organization against whom CONTRACTOR has reasonable objection.



## **11. Examination of Contract Documents and Site**

- 11.1 It is the responsibility of each Bidder before submitting a Bid:
- 11.1.1 To thoroughly examine the Contract Documents and other reports, tests, and drawings identified in the Bidding Documents and Special Conditions. Bidder is instructed to read all Bidding and Contract Documents before completing the bid form. Bidder is advised that failure to read Contract Documents, including without limitation, the General, Supplementary and Special Conditions, does not relieve Bidder from compliance with these documents.
    - 11.1.1.1 Copies of available reports, tests and drawings will be produced by OWNER for review by Bidder on request. OWNER and ENGINEER disclaim any responsibility for the accuracy, true location and extent of surface and subsurface investigations that have been prepared by others.
    - 11.1.1.2 Bidder is responsible for any interpretation or conclusion drawn from any reports, tests, and drawings, or any such data, interpretations, opinions or information, and OWNER and ENGINEER disclaim any responsibility for such interpretations by Bidders, e.g., without limitation, projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water or underground facilities.
    - 11.1.1.3 Bidder will be responsible for considering how said reports, tests and drawings may relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs performing the Work in accordance with the Contract Documents.
  - 11.1.2 To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;
  - 11.1.3 To consider Federal, State and local laws and regulations that may affect cost, progress, performance or furnishing of the Work;
  - 11.1.4 To correlate Bidder's knowledge and observations of the site with the Contract Documents and such other related reports, tests and drawings;
  - 11.1.5 To promptly notify ENGINEER of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.
- 11.2 On request, OWNER may provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.

## **12. Availability of Lands for Work, etc.**

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by CONTRACTOR in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the

Work are to be obtained and paid for by the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Contract Documents.

**13. Substitute and “Or-Equal” Items**

All Bids shall be based on work, materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or “or-equal” items. Although the Drawings or Specifications may state a substitute or “or-equal” item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, Bids shall not be based on any substitutions or as equal items. ENGINEER will not consider any application for substitute or as equal until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in the Standard General Conditions and may be supplemented in the Special Conditions.

**14. Contract Time**

The number of calendar days within which, or the dates by which, the Work is to be substantially completed and the Work is to achieve final completion are set forth in the Agreement.

**15. Economic Disincentive for Late Completion of Work**

The CONTRACTOR and the OWNER agree that time is of the essence of this Contract. The CONTRACTOR and the OWNER agree that the Agreement is based on completion of the Work by CONTRACTOR in the time specified in the Agreement. CONTRACTOR and the OWNER agree that for each and every calendar day the work or any portion thereof shall remain uncompleted after the expiration of the time limit set in the Contract, or as extended under the provisions for Extension of Time in this Contract, CONTRACTOR shall be liable to OWNER for an economic disincentive in an amount specified in the Special Conditions for such calendar day. The OWNER shall have the option to deduct and withhold said amount from any monies that the OWNER owes the CONTRACTOR or to recover such amount from the CONTRACTOR or the Sureties on the CONTRACTOR's bond.

**16. Modification and Withdrawal of Bids**

16.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

16.2 If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

**17. Opening of Bids**

Bids will be opened and read aloud publicly at the place where Bids are to be submitted. OWNER shall rank the Bidders within forty-five (45) days after opening the Bids. An abstract of the amounts of the base Bids and major alternatives (if any) will be made available to Bidders after the opening of Bids.

## **18. Bids to Remain Subject to Acceptance**

- 18.1 All Bids will remain subject to acceptance for ninety (90) days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

## **19. Award of Contract**

- 19.1 If the contract is to be awarded, it will be awarded to the Successful Bidder as evaluated by OWNER. The Bid price shall include such amounts as the Bidder deems proper for overhead and profit.
- 19.2 Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. In case of any ambiguity or lack of clarity in stating the prices in the Bid, OWNER reserves the right to consider the most advantageous construction thereof or reject the Bid.
- 19.3 OWNER reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids. OWNER also reserves the right to waive all irregularities and defects in the Bids and the bidding process, except time of submitting a Bid.
- 19.4 OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of bidders, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the CONTRACT DOCUMENTS to OWNER's satisfaction. OWNER may require Bidders to submit bank references and financial statements in connection with bid evaluation.
- 19.5 OWNER may also consider Bidder's (or Bidder's officers', partners', directors', affiliates') (i) prior dealings with OWNER or with any entity responsible for payment to Bidder under this Contract and (ii) the amount, size, number, cost and completion-status of any projects that Bidder currently has underway (including, without limitation, projects underway with OWNER or with any entity responsible for payment to Bidder under this Contract), and the amount, nature and quality of the manpower, materials and equipment available to bidder.
- 19.6 By submitting a Bid, each Bidder agrees to fully and forever waive and release any claim (known or unknown) it has or may have against the OWNER, DEVELOPER, ARCHITECT and ENGINEER, and their respective attorneys, employees, consultants, representatives, agents, successors, assigns, officers, directors, and members arising under the statutes of Texas, tort, contract or otherwise; or out of or in connection with the: (i) administration, evaluation, or recommendation (or lack thereof) or any BID; (ii) waiver of any requirements under the Bid Documents or the CONTRACT DOCUMENTS; (iii) acceptance or rejection of any bids; (iv) award of the Contract; and (v) provision of references (positive or negative) in connection with any work performed by Bidder, and Bidder's contractors and subcontractors in connection with the Project and the CONTRACT DOCUMENTS, to which Bidder hereby consents and authorizes.
- 19.7 If the contract is to be awarded, OWNER will give the Successful Bidder Notice of Award within ninety (90) days after the day of the Bid opening.

**20. Bonds**

Standard General Conditions and the Special Conditions set forth OWNER's requirements, if any, as to Bonds. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by the required payment and performance bonds.

**21. Signing of Agreement**

When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within seven days thereafter CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds.

**22. Retainage**

The amount of retainage is set forth in the Special Conditions.

**23. Sales Tax**

23.1 Applicable taxes, licenses, fees and other similar items are part of the cost of the work and it shall be CONTRACTOR's responsibility to familiarize itself with these costs and to observe and comply with the laws and regulations relating to the same. The prices, sums, rates and other charges set forth in the CONTRACTOR's bid shall cover and include all such costs.

23.2 The Supplementary Conditions will indicate if OWNER is exempt from sales tax.

**24. Insurance Requirements**

CONTRACTOR shall maintain such insurance as specified in the Standard General, Supplementary, and Special Conditions.

**25. Estimates of Quantities**

Unless otherwise noted in the Special Conditions, the quantities listed in the Bid Proposal shall be considered as approximate and will be used only for comparison of Bids. Payment to the CONTRACTOR will be made only for the actual quantities of work performed or materials furnished in accordance with the contract. The quantities may be increased or decreased as provided in the Standard General Conditions without in any way invalidating the unit Bid prices.

**26. Statement of Qualifications**

The Bidder may be required to submit a detailed Statement of Qualifications on the form provided by the Engineer within five (5) working days of the bid opening to be considered for award of the bid.

**27. Conflicts of Interest**

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code ("Chapter 176") mandates the disclosure of certain items by contractors doing business with or proposing to do business with local government entities, including municipal utility districts, road utility districts, road improvement districts, levee improvement districts, drainage districts, water control and improvement districts, bayou improvement districts, regional water authorities, fresh water supply districts, management districts, tax increment reinvestment zones, development authorities, etc.

**Bidders should review Chapter 176 with their attorney and, if required, return the attached completed FORM CIQ with their Bid.** The following is a list of the Board of Directors of Owner to facilitate Bidder's compliance with Chapter 176.

Board of Directors

Thomas "Tom" Beall  
Laurie Woloszyn  
Janie Walenta  
Jeffrey D. "Jeff" Jacobs  
Joshua A. "Josh" McAdams  
Kevin M. Williams  
Cliff Todd  
Jeanette Sterner  
Cary "Mac" Abney

**28. Prevailing Wage Rate**

"Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall ascertain the general prevailing wage rate received by the classes of workers employed on projects similar to this project and shall specify in the call for bids and in the Contract the minimum wage rates which shall be paid for each type of worker. This statute further provides that the Contractor or Subcontractors shall pay, as a penalty, to the Owner Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. The Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract.

The statute likewise requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of the Owner.

The Prevailing Wage Rate Scale that applies to this Contract is attached to this Section.

**29. Provision of Texas Ethics Commission Form 1295 ("TEC Form 1295") by Bidders**

Effective January 1, 2016, pursuant to Texas Government Code § 2252.908 (the "Interested Party Disclosure Act" or the "Act"), the District may not award a contract to an bidder unless the bidder has provided to the District a completed, signed and notarized TEC Form 1295 which has been assigned a certificate number by the Texas Ethics Commission (the "TEC"). Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the District. The TEC Form 1295 must be provided to the District prior to the time prescribed for award of the contract. The TEC Form 1295 may be provided to the District via facsimile or electronically; however, the original signed and notarized TEC Form 1295 complete with certificate number must be physically delivered to the District within two business days of the award. Following the award of the contract, the District will notify the TEC of the receipt of each completed TEC Form 1295, and the completed form will be on the TEC's website and will be accessible by the public. The District reserves the right to reject any bid that does not comply with the requirements prescribed herein or to waive any such requirements. For purposes of completing the TEC Form 1295, the entity's name is Sabine River Authority and the contract ID number is B883-1015D. Neither the District nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising any bidder with respect to the proper completion of the TEC Form 1295. Consequently, an entity intending to bid on a contract should consult its own advisors to the extent it deems necessary and be prepared to submit the completed form promptly upon notification from the District that its bid is the apparent winning bid.

"General Decision Number: TX20220084 02/25/2022

Superseded General Decision Number: TX20210084

State: Texas

Construction Type: Heavy

Counties: Cass, Cherokee, Erath, Fannin, Franklin, Hood, Hopkins, Marion, Montague, Morris, Nacogdoches, Navarro, Palo Pinto, Panola, Rains, Red River, Somervell, Titus, Van Zandt and Wood Counties in Texas.

HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

\* SUTX2009-129 04/21/2009

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 13.00 **	0.00
LABORER: Common or General.....	\$ 8.61 **	0.00
LABORER: Pipelayer.....	\$ 9.94 **	0.00
OPERATOR: Backhoe/Trackhoe.....	\$ 11.75 **	0.00
OPERATOR: Bulldozer.....	\$ 14.25 **	0.00
OPERATOR: Loader (Front End)....	\$ 11.52 **	0.00
TRUCK DRIVER.....	\$ 10.80 **	0.26

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical

order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.



## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

**CONFLICT OF INTEREST QUESTIONNAIRE**  
For vendor doing business with local governmental entity

**FORM CIQ**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2**  **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

**STANDARD FORM OF AGREEMENT BETWEEN  
OWNER AND CONTRACTOR**

THIS AGREEMENT is effective as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2022 by and between Sabine River Authority (hereinafter called "**OWNER**") and \_\_\_\_\_ (hereinafter called "**CONTRACTOR**").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. WORK.**

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**CONSTRUCTION OF THE  
LAKE TAWAKONI TOURNAMENT FACILITY  
RESTROOM, HARDSCAPE, AND LANDSCAPE  
SABINE RIVER AUTHORITY  
CITY OF WILLS POINT  
VAN ZANDT COUNTY, TEXAS  
LJA JOB NO. B883-1015D**

**ARTICLE 2. ENGINEER.**

The Project has been designed by: **LJA ENGINEERING, INC.** who is hereinafter called "**ENGINEER**" and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**ARTICLE 3. CONTRACT TIME.**

3.1 The Contract Time begins to run on the date indicated in the Notice to Proceed. Contractor shall mobilize and begin Work in earnest no later than ten (10) days after the date indicated on the Notice to Proceed. The Work will be substantially complete within 180 calendar days after the date the Contract Time commences. The Work will be finally completed in accordance with Contract Documents within 210 calendar days after the date when the Contract Time commences.

**ARTICLE 4. CONTRACT PRICE.**

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds as follows: \_\_\_\_\_ /100<sup>th</sup> Dollars (\$ \_\_\_\_\_).

**ARTICLE 5. PAYMENT PROCEDURES.**

CONTRACTOR shall submit, and ENGINEER shall process, Applications for Payment in accordance with the General, Supplementary, and Special Conditions.

5.1 **Progress Payments.** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. The CONTRACTOR must submit its pay estimate as prescribed in the Supplementary and Special Conditions of these Contract Documents. An amount not exceeding ten percent of the total of each progress payment shall be retained by OWNER as allowed by law.

- 5.2 **Final Payment.** Completion and acceptance of the Work by ENGINEER and OWNER is a condition precedent to final payment. Contingent upon completion and acceptance of the Work by ENGINEER and OWNER, the OWNER shall make final payment including payment of retainage as allowed by law.

## **ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.**

To induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined, carefully studied and understands the Contract Documents (including Addenda) and the other related data identified in the Bidding Documents.
- 6.2 CONTRACTOR visited the site and became familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the Work.
- 6.4 CONTRACTOR has carefully studied all reports, explorations and tests of subsurface conditions and physical conditions at or contiguous to the site. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of such and information and data.
- 6.5 CONTRACTOR is aware of the general nature of work performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 6.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 6.8 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and \_\_\_\_\_ (CONTRACTOR) agrees that the Contract can be terminated if CONTRACTOR knowingly fails to comply with a requirement of that subchapter. Accordingly, if the Contract Price is equal to or greater than \$1,000,000, CONTRACTOR shall: (1) preserve all Contracting Information (defined below) in CONTRACTOR'S possession related to this Contract as provided by the District's Records Control Schedule for the duration of the Contract; (2) promptly provide to the District on the District's request any Contracting Information in CONTRACTOR'S custody or possession; and (3) on completion of the Contract, either provide at no cost to the District all Contracting Information related to the Contract in CONTRACTOR'S possession, or preserve such Contracting Information as provided by the District's Records Control Schedule. For purposes of this Contract, Contracting Information means information related to the Contract in CONTRACTOR'S custody or possession including:
- (A) information in a voucher or the Contract relating to the receipt or expenditure of public funds by the District;
- (B) solicitation or bid documents relating to the Contract with the District;

- (C) communications sent between the District and Contractor during the solicitation, evaluation, or negotiation of the Contract;
- (D) documents, including bid tabulations, showing the criteria by which the District evaluated Contractor or potential contractors responding to a solicitation and, if applicable, an explanation of why Contractor was selected; and
- (E) communications and other information sent between the District and Contractor related to the performance of the Contract or work performed thereunder on behalf of the District
- 6.9 \_\_\_\_\_ declares that it has not received from a governmental body a notice of noncompliance with a provision of Subchapter J, Chapter 552, Texas Government Code, or, if such a notice has been received, \_\_\_\_\_ has taken adequate steps to ensure future compliance with such subchapter and has provided or upon request will provide documentation of same.
- 6.10 As required by Section 2271.002 of the Texas Government Code, \_\_\_\_\_ hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Contract. For purposes of this Contract, the phrase "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 6.11 Pursuant to Section 2252.152 of the Texas Government Code, \_\_\_\_\_ hereby verifies that it is not engaged in active business operations with Sudan, Iran, or a foreign terrorist organization. For purposes of this Contract, the phrase "foreign terrorist organization" means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.
- 6.12 As required by 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, \_\_\_\_\_ hereby verifies that \_\_\_\_\_, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott energy companies, and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code, as amended.
- 6.13 As required by Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), as amended, \_\_\_\_\_ hereby verifies that \_\_\_\_\_, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, (i) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (ii) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, "discriminate against a firearm entity or trade association" shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19), as amended.
- 6.14 Pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 2116, 87th Legislature, Regular Session), as amended, and to the extent this Agreement grants to \_\_\_\_\_ direct or remote access to the control of critical infrastructure, excluding access specifically allowed for product warranty and support, \_\_\_\_\_ verifies that neither \_\_\_\_\_, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, nor any of its sub-contractors are: (i) owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia or a designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated

country; or (ii) headquartered in China, Iran, North Korea, Russia or a designated country. The term "designated country" means a country designated by the Governor as a threat to critical infrastructure under Section 2274.0103, Texas Government Code. The term "critical infrastructure" shall have the meaning assigned to such term in Section 2274.0101, Texas Government Code.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed two (2) copies of this Agreement. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 2022 (which is the effective date of the Agreement).

**OWNER:**

**CONTRACTOR:**

Sabine River Authority

\_\_\_\_\_

By: \_\_\_\_\_  
David Montagne, General Manager

By: \_\_\_\_\_  
Authorized Agent

Attest: \_\_\_\_\_  
Travis Williams, Assistant General Manager

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

Address for giving notices:

Address for giving notices:

169 Rcr 1480  
Point, Texas 75472  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



Endorsed by





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

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

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.



24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
  1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
  1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
  1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. does not conform to the Contract Documents; or
    - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
    - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
  1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

### **2.02 *Copies of Documents***

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

### **2.03 *Before Starting Construction***

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

#### 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### 2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

### **ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### **3.01 *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

#### **3.02 *Reference Standards***

- A. Standards Specifications, Codes, Laws and Regulations
  - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

#### **3.03 *Reporting and Resolving Discrepancies***

- A. *Reporting Discrepancies:*
  - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

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

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.



2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. abnormal weather conditions;
  3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
  4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

## **ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **5.02 *Use of Site and Other Areas***

- A. *Limitation on Use of Site and Other Areas:*
  - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
  - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  2. is of such a nature as to require a change in the Drawings or Specifications; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
    - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
  3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
  1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
    - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
    - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
    - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
  - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
    - d. Contractor gave the notice required in Paragraph 5.05.B.
  - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
  - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.



## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

### 6.02 *Insurance—General Provisions*

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

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

### 6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
  - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  2. claims for damages insured by reasonably available personal injury liability coverage.
  3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
    - a. Such insurance shall be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground, explosion, and collapse coverage.
  6. Personal injury coverage.
  7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
  8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
  - 1. include at least the specific coverages provided in this Article.
  - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
  - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
  - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
  - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

#### 6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

#### 6.05 *Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
  - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
  - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  6. extend to cover damage or loss to insured property while in transit.
  7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
  8. allow for the waiver of the insurer's subrogation rights, as set forth below.
  9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  10. not include a co-insurance clause.
  11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
  12. include performance/hot testing and start-up.
  13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

## 6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

## 6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

## **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

### *7.01 Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

### *7.02 Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

### *7.03 Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and



guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) it has a proven record of performance and availability of responsive service; and
      - 4) it is not objectionable to Owner.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

#### 7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified.
    - b. will state:
      - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
      - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
      - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    - c. will identify:
      - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
  - C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
  - D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
  - E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
  - F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

#### 7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

- O. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

#### 7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

#### 7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
  - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
  - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
  - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
  - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.16 *Shop Drawings, Samples, and Other Submittals*

##### A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

##### 1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to



provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
  3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
  5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
  6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal;
  6. the issuance of a notice of acceptability by Engineer;
  7. any inspection, test, or approval by others; or
  8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

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

#### 7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

## **ARTICLE 8 – OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

## 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

## 8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9 – OWNER'S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02 *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

### **9.03 *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

### **9.05 *Lands and Easements; Reports, Tests, and Drawings***

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### **9.06 *Insurance***

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

### **9.07 *Change Orders***

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

**ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

#### 10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

#### 10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

#### 10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

#### 10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.



- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

#### 10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

### **ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

#### 11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - 1. *Change Orders:*
    - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
    - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
  - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

#### 11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
    - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

#### 11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

#### 11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
  2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

#### 11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

#### 11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 12 – CLAIMS**

#### 12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
  - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
  - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
  - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### 13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
  1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
  1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.



- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### 13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

## **ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **14.01 Access to Work**

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### **14.02 Tests, Inspections, and Approvals**

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

## **ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

### **15.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
  2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
    - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
    - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
  4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    - a. to supervise, direct, or control the Work, or
    - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
    - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
    - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
    - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
  5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
  6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. the Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. the Contract Price has been reduced by Change Orders;
  - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
  - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

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

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.



- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
  - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

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

#### 15.06 *Final Payment*

- A. *Application for Payment:*
  - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all disputes that Contractor believes are unsettled; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

**B. *Engineer's Review of Application and Acceptance:***

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

**C. *Completion of Work:*** The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

**D. *Payment Becomes Due:*** Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

#### 15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such other adjacent areas;
  - 2. correct such defective Work;
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
  - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

## **ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

### **17.01 *Methods and Procedures***

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
  - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
  - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
  - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agree with the other party to submit the dispute to another dispute resolution process; or
  - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 *Giving Notice***

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

### **18.02 *Computation of Times***

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### **18.03 *Cumulative Remedies***

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

## **SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700) (2013 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. To the extent of a conflict between the standard General Conditions and these Supplementary Conditions, these Supplementary Conditions Control.

### **COPIES OF PLANS AND SPECIFICATIONS FURNISHED**

Standard General Condition 2.02A is deleted in its entirety and replaced with the following:

Six (6) sets of hard copy plans and three (3) copies of specifications shall be furnished to the CONTRACTOR, at no charge, for construction purposes. Additional copies of the documents may be purchased by the CONTRACTOR from the ENGINEER at cost plus 15% handling charges.

### **ELECTRONIC TRANSMITTALS**

Standard General Condition 2.06A and 2.06B are deleted in their entirety and replaced with the following:

ENGINEER or OWNER may, for convenience and expediency, furnish data in electronic format, including but not limited to, CAD files. Before receiving electronic drawings CONTRACTOR is required to execute a disclaimer specifically relating to electronic documents. ENGINEER and OWNER make no representations or guarantees that the electronic format used will be compatible with CONTRACTOR's operating systems, software or hardware.

CONTRACTOR shall immediately notify ENGINEER if it is unable to access electronic data or if electronic data appears inconsistent with hard copy documents.

Email may be used for routine Project correspondence and transmittal of documents. If a dispute arises as to whether the email, including any attachments, was received by the intended recipient, the Party sending the email has the burden of proving receipt by the intended recipient.

Even if transmitted by email, Parties shall provide a hard copy of: amendments to the Contract; change orders; pay applications; lien releases; certificates of Substantial and Final Completion; and any document requiring signature by an authorized Party to be effective. If a Party also emails a copy of these documents as attachments, the attachments shall be in a file format which does not allow revision of the document.

### **REFERENCE STANDARDS AND ADDITIONAL REGULATIONS AND SPECIFICATIONS**

Standard General Condition 3.02 is modified by adding the following:

3.02.A.3 All construction by the CONTRACTOR, or subcontractors, shall be in accordance with all applicable municipal, county, State of Texas, and other Governmental ordinances, rules, and regulations. The applicable city or county Standard Specifications, latest edition, shall apply to this Project, and are included herein by reference.

### **REPORTING AND RESOLVING DISCREPANCIES**

Standard General Condition 3.03B is deleted in its entirety and replaced with the following:

3.03.B. CONTRACTOR shall seek ENGINEER's written opinion if CONTRACTOR discovers discrepancies. In general, if the Contract Documents have discrepancies or conflicts, the order of precedence shall be as follows: the Special Conditions prevail over Supplementary Conditions, and both Special and Supplementary Conditions prevail over the Standard General Conditions.



In case of discrepancy in the Contract Documents, not resolved by the order of precedence, or in case any ambiguity, error or omission is discovered by CONTRACTOR, the ENGINEER should be notified immediately so that a written clarification can be issued. If a discrepancy occurs between the technical specifications in these Contract Documents and the technical specifications of the jurisdiction where the Work is being performed, the more stringent shall take precedence.

### **COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED**

Standard General Conditions 4.01A is deleted in its entirety and replaced with the following:

The Contract Times will commence to run on the day indicated in the Notice to Proceed. CONTRACTOR is required to begin Work within ten (10) days of the date indicated on the Notice to Proceed.

### **CONSTRUCTION STAKING AND PROTECTION OF PROPERTY PINS**

Standard General Condition 4.03A shall be modified by adding the following:

Owner will set limited control stakes (reference points) one time only. Contractor must satisfy himself, before commencing work, as to the meaning or correctness of all stakes or marks, and no claim will be considered for, or on account of any alleged inaccuracies, or for alterations subsequently rendered necessary on account of such alleged inaccuracies, unless Contractor notifies ENGINEER in writing before commencing work thereon.

Contractor shall be responsible for construction staking. Contractor shall protect stakes and pay all costs involved in any restaking. Stakes will be furnished as required by Contractor within 72 hours after written notification to ENGINEER by Contractor.

### **MARKING WATER AND SEWER LEADS AND STACKS AND OTHER PERMANENT MARKERS PER PLANS**

Standard General Condition 4.03 shall be modified by adding the following:

4.03B All leads and stacks shall be marked at the property line or in the manner required by the governmental body having jurisdiction or as provided in the construction plans at the time of construction. The required marking shall begin at the flow line of the lead or stack and extend two (2) feet above finished grade. It shall be labeled appropriately, and be maintained plumb and in good condition throughout the remainder of the Project. This does not relieve the CONTRACTOR of his obligation to furnish exact locations in the form of Record Drawings. No additional compensation shall be paid for marking leads or stacks. Until all sewer leads and stacks are completely marked to the ENGINEER's satisfaction, final payment to the CONTRACTOR will not be made. As a requirement of the Texas Commission on Environmental Quality (TCEQ), new wastewater collection lines must be constructed with "stub outs" for the connection of anticipated extensions. The location of such "stub outs" must be marked on the ground such that the location of such "stub outs" can be easily determined at the time of connection of the extensions. Such "stub outs" must be manufactured wyes or tees that are compatible in size and material with both the sewer line and the extension. At the time of original construction, new "stub outs" must be constructed sufficiently to extend beyond the edge(s) of any street pavement under which they must pass to the property line. All "stub outs" must be sealed with a manufactured cap to prevent leakage.

### **DELAY**

Standard General Condition 4.05A shall be deleted in its entirety and replaced with the following:

If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such

adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

Notwithstanding anything else in the Contract, CONTRACTOR will not receive compensation from OWNER for claimed interference or delay by other contractors or utility or facility owners.

## **USE OF SITE AND OTHER AREAS**

Standard General Condition 5.02 shall be modified by adding the following:

5.02E CONTRACTOR shall propose, for ENGINEER's review and approval, access roads for moving construction personnel and equipment. CONTRACTOR shall comply with all ordinances and regulations of local, municipal, county and State Governments, including without limitation, limits on the type of, or the gross weight of, motor vehicles or construction equipment operating on public roads and streets or restrictions on the use of such equipment on certain streets.

The access routes are subject to change by the ENGINEER, occasioned by the progress of the Work or unforeseen conditions. If routes are changed, CONTRACTOR may propose alternate routes. Changes required in haul routes shall not be the basis for extra payment.

CONTRACTOR shall, whenever possible, keep all construction traffic out of existing neighborhoods. CONTRACTOR shall keep haul routes clean at all times to the satisfaction of the ENGINEER and the local governing body having jurisdiction over the haul routes. CONTRACTOR shall care for existing pavement (all types), and will be held liable for any damage to the existing pavements, which will be used by construction equipment or suppliers while construction is in progress. On completion of the construction, the street or route, whether paved or not, shall be restored to its original condition or better.

The cost for maintaining and repairing the existing road surface shall be included in the prices bid for other items. No additional payment will be made to the CONTRACTOR for these repairs. Any bonds, permits or fees required for use of roadways will be the sole obligation of the CONTRACTOR.

All private property along and adjacent to the CONTRACTOR's operation, including lawns, yards, shrubs, trees, structures, trails, paths, livestock, and fences, shall be adequately protected, and when damaged or removed, shall be repaired, replaced, renewed or otherwise put in a condition equal to or better than that which existed before the CONTRACTOR caused the damage or removal, at the CONTRACTOR's expense. Where livestock are present, CONTRACTOR shall take all necessary precautions to assure that no construction or construction related activity will allow livestock to leave their confine. Where existing fences are being crossed, CONTRACTOR shall maintain the integrity of the fence during construction through placement of guards, temporary fences, or other adequate measures as approved by the ENGINEER. All construction activities, including ingress and egress, shall occur within the boundaries and Contract constraints of the temporary and permanent construction limits. Additionally, no staging, parking, loading and/or unloading shall occur outside of the designated construction limits.

Additionally, if CONTRACTOR damages public property, including without limitation facilities, pavement or utilities, CONTRACTOR shall restore the facility to its original condition prior to completion of the Work.

## **SUBSURFACE AND PHYSICAL CONDITIONS REPORTS**

Standard General Condition 5.03 is modified by adding the following:

5.03C If the ENGINEER used drawings or reports of physical conditions to prepare the Contract Documents, those drawings or reports will be identified in the Special Conditions.

OWNER and ENGINEER disclaim any responsibility for the accuracy, true location and extent of the surface and subsurface investigations that have been prepared by others. OWNER and ENGINEER further disclaim responsibility for interpretation of that data by CONTRACTOR, i.e. projecting soil-bearing values,

rock profiles, soil stability and the presence, level and extent of underground water.

## **ARCHEOLOGICAL OR HISTORICAL MATERIAL**

Standard General Condition 5.04A shall be modified by adding the following:

If any materials are discovered which might be of archeological or historical significance, all construction shall immediately cease, and the CONTRACTOR shall notify ENGINEER. The ENGINEER shall then consult with a professional archeologist and the Texas Historical Society to determine the significance of the find. The CONTRACTOR shall protect the site and material from disturbance until a professional has examined the site or CONTRACTOR is cleared by ENGINEER to Work.

**SC-5.06** Delete Paragraph 5.06.I of the General Conditions in its entirety.

**SC-5.06** Delete Paragraph 5.06.K of the General Conditions in its entirety.

**SC-6.01** Add to the end of 6.01B the following:

“The surety company issuing Payment and Performance Bonds, and a Maintenance Bond (if so required by the Contract Documents), must (a) be authorized to do business in the State of Texas as evidenced by licensing through the Texas Department of Insurance; (b) be authorized to issue Payment and Performance Bonds, and Maintenance Bonds (if so required by the Contract Documents), in the amount required for the contract as indicated by the records of the Texas Department of Insurance; (c) for contracts over \$100,000.00, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law (“Certificate of Authority”) or have obtained reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a Certificate of Authority; and (d) have a rating of at least “A-” in the current Best’s Key Rating Guide. The person executing the Bonds must be licensed as a Texas Local Recording Agent as required by the laws of the State of Texas and such licensing must be recorded.

**SC-6.02.D** Delete Paragraph 6.02.D of the General Conditions in its entirety.

## **INSURANCE**

Standard General Conditions 6.02K shall be modified by adding the following:

Without intending to limit indemnification liability, CONTRACTOR and subcontractor shall furnish the insurance below and shall maintain it in full force until a minimum of four (4) years after completion of the Work. The CONTRACTOR shall not perform any Work until he has obtained all insurance required under these insurance provisions and until proof of such insurance has been submitted. Nor shall the CONTRACTOR allow any subcontractor to commence any Work on this subcontract until proof of required insurance has been so submitted by the subcontractor. If requested, CONTRACTOR shall furnish certified copies of the policies.

**SC-6.03** The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

Workers Compensation under 6.03.A

(1) State:	Statutory
(2) Applicable Federal:	Statutory
(3) Employers Liability:	Accident \$500,000 each accident;

Disease \$500,000 each employee;  
Disease \$500,000 policy limit

CONTRACTOR shall provide Waiver of Subrogation on Worker's Compensation to OWNER and ENGINEER.

Commercial General Liability Insurance under Paragraphs 6.03.C:

Commercial General Liability form, including Premises/ Operations, Independent Contractors, Products - Completed Operations, Broad Form Property Damage (including Completed Operations). Contractual Liability, Blanket basis insuring the liability assumed under this contract.

Limits of Liability: Bodily Injury, \$1,000,000 each occurrence, \$2,000,000 aggregate; Products - Completed Operations, \$2,000,000 aggregate; Personal Injury, \$1,000,000 each occurrence, \$1,000,000 aggregate; and Property Damage, \$1,000,000 each occurrence, \$1,000,000 aggregate.

Business Automobile Liability (including owned, non-owned and hired) under 6.03.D:

Combined Single Limit (Bodily Injury and Property Damage): \$1,000,000 each accident

Umbrella or excess liability under 6.03.E:

\$5,000,000 per occurrence; \$5,000,000 aggregate

**SC-6.03.F** Delete Paragraph 6.03.F of the General Conditions in its entirety.

**SC-6.03.A** Add the following language to the end of Paragraph 6.03.A of the General Conditions:

"Workers' Compensation Insurance Coverage

(A) Definitions

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission (the "TWCC"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the CONTRACTOR's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Section 406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (B) The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amount and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project.
- (C) The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the contract.
- (D) If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER, showing that the coverage has been extended.
- (E) The CONTRACTOR shall obtain from each person providing services on the project, and provide to the OWNER:
  - (1) a certificate of coverage, prior to that person beginning work on the project, so that the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) no later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (F) The CONTRACTOR shall retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (H) The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
- (I) The CONTRACTOR shall contractually require each person with whom it contracts to provide service on a project to:
  - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011(44) for all its employees providing services on the project, for the duration of the project;
  - (2) provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
  - (3) provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the CONTRACTOR:

- (a) a certificate of coverage, prior to the other person beginning work on the project; and
  - (b) a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (6) notify the OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should know, of any change that materially affects the provision of coverage of any person providing service on the project; and
  - (7) contractually require each other person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificate of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (K) The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the contract void if the CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from the OWNER."

**SC-6.05G** Add the following language to the end of Paragraph 6.05 of the General Conditions:

Installation Floater: If builder's risk insurance is not generally available in the insurance marketplace for the Work, the Contractor shall obtain an installation floater insurance policy acceptable to the Owner, or other acceptable equivalent policy in the amount of all installed fabricated, or erected property being incorporated into the Work under the Contract.

Such policy shall cover all risks of physical loss or damage, including flood and earthquake, to the Work. The installation floater or equivalent policy shall name the Owner, Contractor, and any individuals or entities required by the Special Conditions to be insured under such installation floater, as insureds.

#### **INSUREDS OR ADDITIONAL INSUREDS**

Standard General Condition 6.03G shall be modified by adding the words "and/or Special Conditions" after the words "Supplementary Conditions."

**SC-6.06.B** Delete 6.06.B of the General Conditions in its entirety.

**SC-6.06.C** Delete 6.06.C of the General Conditions in its entirety.

**SC-7.01.A** Delete 7.01.A and substitute the following in lieu thereof:

“Contractor shall supervise and direct the Work, using the Contractor’s best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Owner, shall exercise the degree of care, skill and diligence in the performance of the Work in accordance with and consistent with industry standards for similar circumstances, shall utilize its best skill, efforts and judgment in furthering the interests of Owner, and shall furnish efficient business administration and supervision (the Contractor’s “Standard of Care”).”

**WORK DAYS AND HOURS**

Standard General Condition 7.02 B shall be deleted in its entirety and replaced with:

Recognized holidays are New Years Day, Good Friday, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, the day after Thanksgiving, the day before Christmas and Christmas.

The CONTRACTOR shall limit his Work to the following hours unless otherwise extended in writing by the OWNER or unless otherwise limited by the governmental entity with jurisdiction:

Monday - Friday:	7:00 AM to 7:00 PM
Saturday:	8:00 AM to 7:00 PM
Sunday:	No Work Allowed
Legal Holidays:	No Work Allowed

If CONTRACTOR requests, and is allowed, to work other than during working hours, CONTRACTOR shall be liable for any and all additional costs incurred by the ENGINEER. These costs will be deducted from the Contract, and the OWNER will make payment to the ENGINEER for these costs. Overtime is at CONTRACTOR’s expense.

**SC-7.06.P** Add Paragraph 7.06.P as follows:

“CONTRACTOR SHALL AT ITS COST INDEMNIFY, DEFEND, AND SAVE OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF THE DEMANDS OF PERSONS SUPPLYING LABOR AND/OR MATERIALS FOR THE WORK, AS THOSE TERMS ARE DEFINED IN CHAPTER 2253 OF THE TEXAS GOVERNMENT CODE. Contractor shall furnish satisfactory evidence that all obligations for labor and materials have been satisfied in the form of an Affidavit of Bills Paid as set forth in these Contract Documents. If Contractor fails to provide an affidavit as to any laborer or supplier, then Owner may, at Owner’s option, pay directly any unpaid sums otherwise due to Contractor under this Contract or withhold from Contractor’s unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to Contractor shall be resumed in full in accordance with the terms of this Contract. In no event shall the provisions of this paragraph be construed to impose any obligation upon Owner by either Contractor or its Surety.”

**SC-7.07** Delete Paragraph 7.07 of the General Conditions in its entirety and insert the following in its place:

**“INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION**

- (A) Contractor shall not furnish or provide to Owner any Materials or Work that infringes a third party’s intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to Owner.

- (B) Contractor represents and warrants that the Materials, the Work, all processes or methods utilized and all information, ideas, concepts improvements, discoveries, inventions or forms of expression of ideas disclosed shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such Materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like)."
- (C) **CONTRACTOR SHALL DEFEND, PROTECT, INDEMNITY AND HOLD OWNER HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES, OR JUDGMENTS SUSTAINED OR INCURRED BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OF OR RELATING TO: (I) CONTRACTORS BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS.**

**SC-7.08.B** Add the following language as new Paragraph 7.08 of the General Conditions:

"The Construction Drawings and Special Specifications include a Storm Water Pollution Prevention Plan in accordance with TCEQ requirements. The Contractor shall be responsible for obtaining permit coverage under the TCEQ's Construction Storm Water General Permit for all phases of project construction, and shall be further responsible for all activities necessary to initially meet and thereafter continuously maintain strict compliance with such permit as well as all applicable rules of TCEQ relating to Storm Water discharges (including, but not limited to, implementing the best management practices set forth in the Storm Water Pollution Prevention Plan for this project."

**SC-7.09** Add the following language at the end of Paragraph 7.09 of the General Conditions:

"Owner is exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.309 as a political subdivision of the State of Texas. Owner shall provide Contractor with a completed Texas Sales and Use Tax Exemption Certification as evidence of the applicability of such exemption and, accordingly, Contractor shall not collect Texas sales and use taxes from Owner with respect to this contract. Contractor and all subcontractors to Contractor shall issue a Texas Sales and Use Tax Exemption Certification with respect to, and shall not pay Texas sales and use taxes on, all purchases of the following items that are exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.311: (i) tangible personal property that will be incorporated into Owner's realty; (ii) tangible personal property that is necessary and essential for the performance of this contract and is consumed entirely on the job site; and (iii) taxable services for use in the performance of this contract that are performed at the job site and are either integral to the performance of this contract or expressly required to be provided by this contract. In addition, Contractor and all subcontractors to Contractor (i) shall not include any provision for Texas sales and use taxes with respect to such exempt items in any bid or contract amount, and (ii) shall pass on to the Owner cost savings due to the exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor shall include the foregoing provision regarding the exemption from Texas Sales and use taxes.

Contractor shall pay, when due, all taxes, fees, and contributions imposed by reason of prosecution of the Work **AND SHALL PROTECT, INDEMNIFY, AND HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM FAILURE TO MAKE TIMELY PAYMENT OF THESE AMOUNTS AND COMPLY WITH THE REPORTING, FILING, OR OTHER PROCEDURAL REQUIREMENTS WITH RESPECT TO PAYMENT.** Interest, penalties, or other liabilities arising from failure to make payments shall not be reimbursed to Contractor."



**SC-7.10.D** Add Paragraph 7.10.D as follows:

“Contractor shall at all times observe and comply with federal, state, and local laws, ordinances, and regulations which in any manner affect this Contract of the Work; TO THE MAXIMUM EXTENT PERMITTED BY LAW INDEMNIFY AND SAVE OWNER HARMLESS AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAWS OR ORDINANCES WHETHER BY CONTRACTOR, ITS EMPLOYEES, AGENTS, PERMITTEES, OR LICENSEES; and notify Owner promptly upon discovery of any instance of failure to comply with applicable laws, ordinances, and regulations.”

**SC-7.10.E** Add the following language as new Paragraph 7.10.E of the General Conditions:

“Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall ascertain the general prevailing wage rate received by the classes of workers employed on projects similar to this project and shall specify in the call for bids and in the Contract the minimum wage rates which shall be paid for each type of worker. This statute further provides that the Contractor or Subcontractors shall pay, as a penalty, to the Owner Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. The Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract.

The statute likewise requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of the Owner.

The Prevailing Wage Rate Scale that applies to this Contract is attached in the Instructions to Bidders.”

**SAFETY**

Standard General Condition 7.12 shall be modified by adding the following:

7.12H Observance and compliance with all safety regulations and provisions of a safe site is the sole and unqualified responsibility of CONTRACTOR and/or its subcontractors.

The Work and the CONTRACTOR’s operational activities shall comply with all applicable provisions of the Department of Labor, Safety and Health Regulations (“OSHA”) for Construction and applicable Occupational Safety and Health Standards, and any applicable regulations of governmental units that have jurisdiction over the site and Work.

CONTRACTOR acknowledges that ENGINEER and OWNER are relying upon CONTRACTOR to provide a safe Workplace and to establish a comprehensive safety program to accomplish this goal. CONTRACTOR further represents that CONTRACTOR is experienced and knowledgeable in the area of construction safety and applicable laws, ordinances, codes and regulations, including, but not limited to OSHA regulations and CONTRACTOR shall supervise, train, or educate the laborers on the choice of particular safety procedures or equipment or choice not to use particular safety methods or equipment. CONTRACTOR further agrees that due to the “ENGINEER’s Limitations,” stated below, a failure by the ENGINEER to give directions or instructions during the course of the Work shall not be a primary cause of injury or damage on the job site.

## TRAFFIC CONTROL

Standard General Condition 7.12 shall be modified by adding the following:

7.12I Traffic control during construction shall be generally in accordance with the Texas Department of Transportation (TxDOT) and the Texas Manual on Uniform Traffic Control Devices. CONTRACTOR shall provide for the safety and convenience of workers, pedestrians and the public, and comply with all applicable traffic regulations and ordinances.

## GUARANTEE

Standard General Conditions 7.17 and 15.08 shall be modified by adding the following:

7.17E and 15.08F The CONTRACTOR shall guarantee the Work against failure and malfunction due to defective materials or Workmanship and nonconformance with the Contract documents for the period specified in the Special Conditions.

The guarantee period shall begin following the later of the start of actual operation of the equipment or final acceptance, exclusive of the time for installing, testing, adjusting, equipment prior to final acceptance of the facilities from the CONTRACTOR.

**SC-7.18** Delete Paragraph 7.18 of the General Conditions in its entirety and insert the following in its place:

**“TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS BOARD, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, ENGINEER AND ITS CONSULTANTS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES AND DEVELOPER AND ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE “INDEMNITEES”), FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, SETTLEMENTS, LIABILITIES, COSTS, EXPENSES, FINES, AND JUDGMENTS (INCLUDING, WITHOUT LIMITATION, REASONABLE AND NECESSARY COURT COSTS, EXPERTS’ FEES AND ATTORNEY’S FEES) (COLLECTIVELY, “LOSSES”), WHETHER ARISING IN EQUITY, AT COMMON LAW, OR BY STATUTE, INCLUDING WITHOUT LIMITATION THE TEXAS DECEPTIVE TRADE PRACTICES ACT (AS AMENDED) OR SIMILAR STATUTE OF OTHER JURISDICTIONS, OR UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY WITHOUT REGARD TO FAULT) OR PROPERTY, OF EVERY KIND OR CHARACTER (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY (INCLUDING WITHOUT LIMITATION EMOTIONAL DISTRESS), AND ECONOMIC LOSS), ARISING IN FAVOR OF OR BROUGHT BY ANY OF THE CONTRACTOR’S EMPLOYEES, AGENTS, SUBCONTRACTORS SUPPLIERS OR REPRESENTATIVES, OR BY ANY GOVERNMENTAL AGENCY OR ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RELATING TO OR ARISING OUT OF THE WORK, THE CONTRACTOR’S FAILURE TO COMPLY WITH THE CONTRACT DOCUMENTS, OR THE CONTRACTOR’S ACTIONS OR INACTIONS UNDER THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION ANY FAILURE TO PAY TAXES OR FAILURE TO COMPLY WITH ANY APPLICABLE LAW, AND EVEN IF ANY SUCH LOSSES ARE DUE IN PART TO ANY INDEMNITEES’ SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF STATUTE, OR STRICT LIABILITY WITHOUT REGARD TO FAULT. TO THE EXTENT THIS INDEMNITY IS LIMITED BY TEXAS INSURANCE CODE SECTION 151.102, THEN THE LIMITATIONS OF SAID STATUTE SHALL BE INCORPORATED HEREIN SO THAT THIS INDEMNITY PROVIDES THE MAXIMUM PERMISSIBLE INDEMNITY UNDER 151.102**

The foregoing indemnification obligation shall apply regardless of the amount of insurance

coverage held by the Contractor, including without limitation any such coverage under any worker's compensation act, disability act, or other act or law which would limit the amount or type of damages, compensation, or benefits payable by or for the Contractor, and shall not be limited by any insurance carried or provided by the Contractor in accordance with the Contract Documents or otherwise.

Contractor shall and does hereby waive all causes of action it has for, and releases and forever discharges the Indemnitees from, Losses for injuries (including death) to any person or damage to or destruction of any property sustained or alleged to have been sustained in connection with or arising out of or incidental to the Work.

Contractor shall promptly settle or cause the settlement of all Losses for which it is responsible pursuant to the Contract Documents. Upon becoming aware of facts which may constitute any Loss, Contractor shall immediately notify the Owner of the full particulars thereof, and the Owner may elect, by notice to Contractor, to have its representative accompany Contractor's representative in making settlement of the same.

Contractor agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that it has no notice or knowledge of any such provision or that any such provision is not "conspicuous."

Other provisions in the Contract Documents containing indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided above such that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnitees to the fullest extent possible."

## **COOPERATION BETWEEN CONTRACTORS**

Standard General Conditions 8.01B and 8.02 shall be deleted in their entirety and replaced with:

Prior to other contractors mobilizing, OWNER may, but is not obligated to, notify CONTRACTOR of the name of the other contractors, their respective site management personnel, and the general scope of work. Upon CONTRACTOR's written request, ENGINEER will promptly provide such information pertaining to each separate CONTRACTOR performing work on the site. Each contractor shall be responsible to the other for all damage to the other's work, to persons, or to property caused to the other by its operations, and for loss caused to the other from unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested.

## **EVIDENCE OF FINANCIAL ARRANGEMENTS**

Standard General Condition 9.11 shall be deleted in its entirety and replaced with:

If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

## **ENGINEER'S LIMITATIONS OF AUTHORITY**

Standard General Condition Article 10 shall be modified by adding the following:

10.10 As stated elsewhere herein, CONTRACTOR has control of, and responsibility for, the safe performance of Work and safety on the site. ENGINEER and OWNER reserve the right, but not the obligation, to stop Work when OWNER or ENGINEER has observed and/or has actual knowledge of unsafe practices and to order the Work remains stopped until CONTRACTOR remedies same. CONTRACTOR's responsive actions and those of its subcontractors or suppliers will be at CONTRACTOR's expense.

Notwithstanding anything else herein, neither OWNER nor ENGINEER is responsible for means and methods, procedures or safety programs and practices for safe performance of Work or a safe site.

## **DUTIES, RESPONSIBILITIES AND LIMITATION OF AUTHORITY OF PROJECT REPRESENTATIVE**

Standard General Condition 10.03 shall be modified by adding the following:

10.03B General: Project Representative will act as ENGINEER's Agent, will be under the direct supervision of the ENGINEER, and will confer with ENGINEER regarding his actions. Project Representatives shall, in general, deal only with the ENGINEER and CONTRACTOR, and will deal directly with subcontractors only with the full knowledge of the CONTRACTOR.

### Duties and Responsibilities Project Representative include:

Schedules: Review the progress schedule and schedule of values prepared by CONTRACTOR, and consult with ENGINEER concerning their acceptability. Review does not relieve CONTRACTOR from responsibility to meet all Contract deadlines.

Conferences: Attend pre-construction conferences, progress meetings and other job conferences as required in consultation with ENGINEER; notify those expected to attend in advance and maintain and circulate copies of minutes thereof.

Liaison: Serve as ENGINEER's liaison with CONTRACTOR to assist in understanding the intent of the Contract Documents. As requested by ENGINEER, assist in obtaining from OWNER additional details or information, when required at the job site for proper execution of the Work.

Review of Work, Rejection of Defective Work, Observations and Tests: Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is proceeding in accordance with the Contract Documents.

Report to ENGINEER and CONTRACTOR whenever he believes that any Work is unsatisfactory, faulty, defective, does not conform to the Contract Documents, does not meet the requirements of the plans and specifications, tests or approval required to be made, or has been damaged prior to final payment. Advise ENGINEER when he believes Work should be corrected or rejected or should be uncovered for observation or requires special testing, inspection, or approval.

Verify that tests of equipment and systems, startups, and operating and maintenance instructions are conducted as required by the Contract Documents and in the presence of the required personnel, and that CONTRACTOR maintains adequate records thereof. Observe, records and reports to ENGINEER appropriate details relative to the test procedures and startups.

Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections, and report to ENGINEER.

Coordination of Procedures: Transmit to CONTRACTOR the ENGINEER's clarifications and interpretations of the Contract Documents.

Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report them with recommendations to ENGINEER.

Records: Maintain orderly files for correspondence, reports of job conferences, Contract Documents including all addenda, change orders, field orders, additional drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, cut sheets, and other Project related documents. These items will be submitted to the ENGINEER for his final review and approval.

Keep a diary or log book, recording hours on the job site, weather conditions, data relative to questions of extras or deductions, list of visiting officials and representatives of manufacturers, fabricators, suppliers and distributors daily activities decisions, observations in general, and specific observations in more detail, as in the case of observing test procedures. Send copies to ENGINEER.

Record names, addresses, and telephone numbers of all contractors, subcontractors and major suppliers of materials and equipment.

Reports: Furnish ENGINEER periodic reports as required of progress of the Work and CONTRACTOR's compliance with the approved progress schedule.

Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work and report as necessary.

Report immediately to ENGINEER upon the occurrence of any accident.

Payment Requisitions: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward them with recommendations to ENGINEER, noting particularly their relation to the schedule of values, Work completed, and materials and equipment delivered at the site but not incorporated in the Work.

Completion: Before ENGINEER issues a Certificate of Substantial Completion submit to CONTRACTOR a list of observed items requiring completion or correction.

Conduct final walk through in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final punch list of items to be completed or corrected.

Verify that all items on the final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

Limitations of Authority to Deviate: Except upon written instructions of ENGINEER, and in the event the deviation affects the contract price or scope, the agreement of the OWNER, Project Representative shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.

## **ENGINEER'S PROFESSIONAL SERVICES**

Standard General Condition 10.08 shall be modified by adding the following:

10.08F "Professional Services" provided by the ENGINEER are defined as the drawing and approving of designs, Plans or Specifications.

"Professional Services" do not include:

1. Training of CONTRACTOR or subcontractors or their agents, employees or representatives;
2. Supervision of CONTRACTOR or subcontractors or their agents, employees or representatives;
3. Implementation, enforcement or approval of safety programs or procedures on the job site;
4. Instructing or directing CONTRACTOR or subcontractors or their agents, employees or representatives to use or not use safety equipment or to follow or disregard safety procedures;
5. Constant physical presence on the job site;
6. Constant inspection of soil conditions during trenching operations or any excavations;

7. Inspection of trenching or excavation operations or any other part of the Work for the purpose of determining compliance with OSHA or other regulations statutes, ordinances or laws;
8. Ensuring safety on the job site including but not limited to compelling the CONTRACTOR, subcontractors, their agents, employees, or representatives to comply with applicable laws, ordinances, statutes or regulations; or
9. Giving directions or instructions to CONTRACTOR or subcontractors or their agents, employees or representatives regarding the methods or manner of their Work.

## **COSTS**

Standard General Conditions 13.01 shall be modified by adding the following.

13.01F Costs identified in 13.01B subparagraphs 4 (consultants) and 5 (supplemental costs) are excluded unless approved in writing by ENGINEER before CONTRACTOR incurs the costs.

CONTRACTOR's markup, if applicable, shall be as stated in the Special Conditions.

## **UNIT PRICE WORK**

Standard General Condition 13.03C shall be deleted in its entirety and replaced with the following:

Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover completion of all Work, including without limitation, labor, materials, excavation, incidentals, clean up, disposal of materials, clearing and Contractor's overhead and profit for each separately identified item.

## **DEWATERING**

Standard General Condition 13.03 shall be modified by adding the following:

13.03 F. If, and only if, the proposal includes a Unit Price, either as part of the base Contract or as an alternate, for dewatering, then dewatering shall be compensated at the Contract price. If the proposal does not include a price, then dewatering, if necessary, will be considered incidental to the Work and will not constitute a basis for additional payment.

## **CONTRACTOR'S RESPONSIBILITY FOR TESTING**

Standard General Condition 14.02B shall be modified by adding the following:

If any test fails, the test will be retaken at the CONTRACTOR's expense, until the test results meet the applicable requirements or standards. Any additional tests requested by the CONTRACTOR will be paid for by the CONTRACTOR. The OWNER will deduct the re-testing and additional testing cost from the Contract amount.

CONTRACTOR is referred to the specifications and Special Conditions for additional information concerning specifics for testing procedures.

## **PROGRESS PAYMENTS**

Standard General Condition 15.01A and 15.01B shall be deleted in their entirety and replaced with the following:

- A. *Basis for Progress Payments:* All Work and material in the Contract are to be paid for through applications for payment prepared by the CONTRACTOR and subject to approval of the OWNER

and ENGINEER. The Bid Proposal will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

**B. Applications for Payments:**

- a. CONTRACTOR shall meet with the project representative of the ENGINEER prior to submittal of pay requests to verify the quantities of items being requested for payment.
- b. CONTRACTOR shall submit its pay application to the ENGINEER on the 25th day of each month covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. CONTRACTOR shall not submit a pay application more often than once a month.
- c. CONTRACTOR shall submit Applications for Payment using standard forms supplied by the ENGINEER. The Progress Estimate Form, Texas Conditional Waiver and Release on Progress Payment, Texas Unconditional Waiver and Release on Progress Payment, Texas Conditional Waiver and Release on Final Payment, Texas Unconditional Waiver and Release on Final Payment, and Affidavit of Bills Paid forms that must be used are located in the appendix of the contract. These forms may be copied from the contract for submission with pay applications. If the CONTRACTOR submits retyped forms they will be returned for resubmission.
  - 1) Monthly Applications for Payment must include Progress Estimate Form, schedule of values showing quantities complete to date signed by LJA Inspector, Texas Conditional Waiver for Progress Payment, Texas Unconditional Waiver for Progress Payment (for previous payments), and Consent of Surety to Reduction in or Partial Release of Retainage (if applicable).
  - 2) The Final Applications for Payment must include the Progress Estimate Form, Texas Conditional Waiver and Release on Final Payment, Texas Unconditional Waiver and Release on Progress Payment (for previous estimates), Affidavit of Bills Paid (effective through the completion date), As-Built Drawings, Maintenance Bond, Consent of Surety to Final Payment, receipts from agencies to show all inspection and maintenance fees have been paid, and any other documentation required by the ENGINEER. Upon ENGINEER's request, subcontractors shall submit a Final Waiver of Lien and Release effective through the completion date, appropriately completed, fully executed by and properly acknowledged for each person and attached to the CONTRACTOR's Affidavit of Bills Paid and Conditional Waiver for Final Payment. CONTRACTOR must also submit all bonds, manuals, and warranties (accompanied with a written assignment of CONTRACTOR's rights thereunder), if requested, for any materials or equipment installed or furnished.
- d. Work must be completed for the ENGINEER to consider recommending payment of an item.
  - 1) No payment will be made for materials at the site which have not been incorporated into the Work unless otherwise agreed to in writing in advance.
  - 2) If OWNER has agreed in advance to pay for materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
- e. CONTRACTOR is notified that its late, incorrect, or incomplete submission will delay any payment due for that draw period, and may delay payment until the next scheduled draw payment at no expense to the OWNER or ENGINEER.

- f. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Retainage will be released in accordance with and per the terms of the Contract and governing law. Completion of punch list items is required along with the issuance of appropriate "completion" and acceptance" letters and certificates, and the execution and delivery of such other affidavits and lien waivers, and upon acceptance of the Project by the OWNER, ENGINEER, and as applicable by the Developer. Partial release of retainage shall be only with the consent of surety.
- g. Upon ENGINEER's request CONTRACTOR shall also submit an affidavit of account or any documentation reasonably requested to verify contract accounting and payments. Upon ENGINEER's request, subcontractors shall submit Partial Waiver of Lien and Release.
- h. Before the CONTRACTOR receives a progress payment, the CONTRACTOR must certify that the quantities and prices of Work and materials shown on the estimate are correct, and that all Work has been performed and materials supplied in full accordance with the terms and conditions of the construction documents.
- i. If OWNER and CONTRACTOR have a payment dispute, OWNER shall pay, in accordance with the Contract, all undisputed amounts, and each Party will reserve the right to resolve the disputed amounts at a later date.
- j. Final pay estimates will not be approved by the ENGINEER until all acceptances have been made by the OWNER and governmental bodies having jurisdiction. Partial payment to the CONTRACTOR of the final progress payment does not constitute final acceptance of the Project by the OWNER/ENGINEER.

#### **PAYMENT BECOMES DUE**

Standard General Condition 15.01D shall be deleted in its entirety and replaced with the following:

Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will become due, and when due will be paid by Owner to Contractor via the method determined by Owner.

#### **PUNCH LIST**

Standard General Condition 15.03 C shall be modified by adding the following:

CONTRACTOR shall start work on any punch lists immediately and shall require all subcontractors to begin punch list work within 48 hours of receipt of the punch list and to pursue diligently until deemed complete by OWNER and ENGINEER. If CONTRACTOR fails to comply with this requirement, OWNER may, after one day written notice, hire another CONTRACTOR(s) to complete the work and deduct the cost of completion and any repair from any money due CONTRACTOR.

#### **ECONOMIC DISINCENTIVE FOR LATE COMPLETION OF WORK**

Standard General Condition 15.06 shall be modified by adding the following as 15.06 E:

The CONTRACTOR and the OWNER agree that time is of the essence of this Contract. The CONTRACTOR and the OWNER agree that the Contract requires completion of the Work by CONTRACTOR within a specified time. The CONTRACTOR and the OWNER agree that a breach of this Contract by failure to complete the Work in the specified time will cause harm to the OWNER and further agree that the harm the OWNER would sustain and the actual measure of damages the OWNER would incur from the breach are incapable or very difficult of ascertainment.

CONTRACTOR and the OWNER agree that for each and every calendar day the Work or any portion



thereof shall remain uncompleted after the expiration of the time limit set in the Contract, or as extended under the provisions for Extension of Time in this Contract, CONTRACTOR shall be liable to OWNER for an economic disincentive in the amount for such calendar days as stated in the Special Conditions.

The Parties agree this sum is a reasonable forecast of the damages the OWNER will sustain per day that the Work remains uncompleted and in no way constitutes a penalty. The OWNER shall have the option to deduct and withhold the amount of any economic disincentive from any monies that the OWNER owes the CONTRACTOR or to recover such amount from the CONTRACTOR or the Sureties on the CONTRACTOR's bond.

The OWNER shall have the option to deduct and withhold said amount from any monies that the OWNER owes the CONTRACTOR or the Sureties on the CONTRACTOR's bond.

## **SUSPENSION OF WORK AND TERMINATION**

Standard General Condition 16.01 shall be deleted in its entirety and replaced with:

At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall receive a time extension in working days equivalent to the working days lost. The OWNER will compensate CONTRACTOR for demobilization and remobilization charges deemed reasonable by ENGINEER.

## **TERMINATION FOR CAUSE**

Standard General Condition 16.02B shall be deleted and replaced with the following, Standard General Condition 16.02B (1) and 16.02B (2) shall remain unchanged.

OWNER's written notice to CONTRACTOR and, if necessary, CONTRACTOR's surety, of default and intent to terminate shall identify the grounds of default with sufficient particularity that CONTRACTOR may attempt to cure the default. If CONTRACTOR fails to cure within 2 working days, or if cure is not possible in 2 working days, if CONTRACTOR fails to make significant effort to cure within 2 days and to continuously and effectively pursue the cure, then OWNER may, without further notice, terminate CONTRACTOR.

## **TERMINATION FOR CONVENIENCE OF OWNER**

Standard General Condition 16.03 shall be modified by adding the following:

16.03C OWNER may terminate CONTRACTOR's performance under the Contract for OWNER's convenience at any time upon written notice to CONTRACTOR, whether or not CONTRACTOR is in default and, in such event, OWNER's only liability will be to pay CONTRACTOR the following amounts:

- a. The unpaid balance due CONTRACTOR for the Work actually performed and accepted based on the Unit Prices and lump sums enumerated in the CONTRACTOR's bid;
- b. All expenditures made and costs incurred by CONTRACTOR for the materials ordered by CONTRACTOR for the Work prior to the date of termination and not incorporated in the Work, provided such materials conform to the plans and specifications included within the Contract Documents, and provided also that OWNER has not directed CONTRACTOR to return the materials to the appropriate vendor and for labor performed on any such materials prior to the date of termination and associated labor insurance and labor payroll taxes; and
- c. From the total of the items enumerated in Items a & b above inclusive, there shall be deducted all claims of OWNER against CONTRACTOR, including, without limitation, claims on account of delay or defects in materials and/or workmanship.

d. For the sake of clarity, OWNER shall not be liable for lost profits on unperformed work.

The amount payable under the provisions of this Section, plus the sum of all amounts previously paid under the Contract, shall in no event exceed the total Contract Price.

CONTRACTOR shall transfer and assign to OWNER in accordance with OWNER's instructions, all materials, supplies, Work in process, and other things for which CONTRACTOR is entitled to receive reimbursement hereunder, and all plans, drawings, working drawings, sketches, specifications, and information in connection with the Work, and shall take such action as may be necessary to secure to OWNER, at its election, the rights of CONTRACTOR under any or all orders and subcontracts made in connection with the Work.

If requested by OWNER, CONTRACTOR shall endeavor to cancel or assign any or all of its outstanding orders or subcontracts upon such terms as may be approved by OWNER.

Should OWNER elect to terminate CONTRACTOR, all obligations of the respective Parties under the Contract shall be discharged, except such obligations as by their terms, express or implied, contemplate continued obligations after acceptance of the Work, including without limitation, warranties, dispute resolution, insurance and indemnity obligations.

The remedies provided herein shall be cumulative of and not in lieu of all other remedies available to OWNER hereunder, or at law or in equity.

## **DISPUTE RESOLUTION**

Standard General Condition 17.01 is deleted in its entirety and replaced with the following.

CONTRACTOR is required to address any dispute regarding this Contract with the ENGINEER's Representative. If the dispute is not resolved, CONTRACTOR's Officer or Senior Manager shall discuss the dispute with the ENGINEER. CONTRACTOR shall present all facts it deems pertinent and identify the Contract provisions it relies on. ENGINEER shall consider and respond with facts and Contract provisions it deems pertinent. Both shall discuss the matter in good faith. If the dispute persists, either side may seek mediation if the other party consents thereto. CONTRACTOR understands and agrees that mediation is a condition precedent to CONTRACTOR filing any lawsuit or, if specified by this Contract, demanding any Arbitration. The Party seeking mediation must give a written demand for mediation to the other Party. The Parties may select a mediator by mutual agreement. If the Parties do not agree to a mediator within 30 days of the demand for mediation, then the mediator shall be selected from the Construction Industry Rules of the Arbitration Association of America's mediation panel consistent with the Construction Industry Rules of the Arbitration Association of America rules.

Absent written agreement by the Parties to extend the deadline for mediation, the Parties shall mediate within 90 days of the date that the mediation is consented to. Absent written agreement to extend, a condition for selection of any mediator is the mediator's availability on a date agreeable to the Parties which is within 90 days of the demand.

The above may be modified by written agreement of all Parties.

If Arbitration is required for this Contract, it will be stated in the Special Conditions.

If not settled voluntarily through mediation or arbitration, then any dispute, if pursued, will be resolved in the State District court in the county where Project is located.

CONTRACTOR's sureties shall be bound by any award rendered in a court of competent jurisdiction or in any Arbitration. The CONTRACTOR's surety consents to joinder in any arbitration proceeding involving their principal.

## **CORPORATE AUTHORIZATION**

Standard General Condition 18.01 shall be modified by adding the following:

18.01B If requested by Engineer, the CONTRACTOR shall provide a corporate resolution certifying the authorized agent of the corporation to sign all documents for this Project, and shall give written notice of any change.

## **EXAMINATION OF THE PROJECT SITE AND PHYSICAL CONDITIONS**

CONTRACTOR, prior to submitting a Proposal, shall make a careful examination of the Project site to determine and evaluate site conditions. All proposals shall consider conditions including without limitation, soil and water conditions to be encountered, improvements to be protected, disposal sites for surplus materials not designated to be salvaged materials, a method of providing ingress and egress to private properties, methods of handling traffic during construction of the entire Project, and other factors that may affect the Work.

## **INSOLVENCY OF CONTRACTOR**

If a petition in bankruptcy is filed by or against CONTRACTOR, or if CONTRACTOR makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the insolvency of CONTRACTOR, or if facts exist to reasonably indicate that CONTRACTOR lacks the finances to perform the Work, then CONTRACTOR shall be in default under the Contract Documents. Unless precluded by any bankruptcy Court, OWNER may terminate the Contract for cause.

CONTRACTOR shall submit to the personal jurisdiction of the State or Federal courts having subject matter jurisdiction and in the county where the Contract is executed, for the adjudication of any suit brought to enforce OWNER's rights and remedies under the Contract.

## **NON-WAIVER OF RIGHTS**

Any failure by the OWNER or ENGINEER to enforce the strict compliance and performance of any of the terms or conditions of the Contract Documents shall not constitute a waiver of the right to enforce the subsequent strict compliance with such terms or conditions. Further, such failure shall not affect or impair the right of OWNER to avail itself of such remedies as it may have for any subsequent breach or breaches of any such term or condition of the Contract Documents, including, without limitation, the right to suspend and the right to terminate.

In the event of termination by OWNER of CONTRACTOR's performance under the Contract for convenience, on account of Force Majeure, or by reason of CONTRACTOR's default, no rights or remedies of OWNER shall thereby be waived, nor shall any breach by CONTRACTOR of the material covenants in the Contract Documents which has occurred and is continuing at the time of such termination be waived, regardless of whether or not default has been declared.

Neither the making of final payment by OWNER nor any provision in the CONTRACT DOCUMENTS, shall relieve CONTRACTOR of: (i) the obligation for fulfillment of any warranty that may be required in the Contract Documents and plans and technical specifications; (ii) the obligation to repair defective Work or materials; (iii) CONTRACTOR's indemnification obligations under this Agreement; or (iv) any of CONTRACTOR's continuing obligations.

## **TECHNICAL SPECIFICATIONS**

**Where standard specifications reference "City" or "County", it is intended and meant to refer to the Owner, and where the term Engineer or Inspector is used it is intended to refer to the Owner's Engineer or Project Representative.**

**Certain Texas Department of Transportation “Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges” are incorporated in these technical specifications without modification. Certain references in these standard specifications make reference to other TxDOT specifications. See the Table of Contents for reference to the applicable specification included in these specifications, which may not be the published TxDOT specification.**

**The technical specifications are broken into five separate sections, by discipline. The technical specifications included in any one of the five sections are intended only to cover that portion of the work covered by that discipline.**

# SPECIAL CONDITIONS

For each contract, check all that apply, and include only those clauses.

## ADDITIONAL INSUREDS

Standard General Condition 2.01 B shall be modified by adding the following:

In addition to additional insured requirements in the Supplementary Conditions, CONTRACTOR shall list the following as Additional Insureds for all required policies except Worker's Compensation. CONTRACTOR shall obtain the Additional Insured endorsement form CG 2026 1185 or equivalent and shall state that the liability insurance is primary as to the additional insured.

Sabine River Authority; LJA Engineering, Inc.

## NOTICE TO PROCEED

Standard General Condition 4.02 shall be deleted in its entirety and replaced with:

CONTRACTOR shall mobilize and begin Work in earnest within ten (10) days of the date indicated in the Notice to Proceed. Failure of CONTRACTOR to begin work in earnest decreases the ability of CONTRACTOR to complete in time and for OWNER to take possession. OWNER may assess \$500.00/day in damages for each day that CONTRACTOR fails to pursue the work. If CONTRACTOR completes on time, such amounts shall be refunded at Final Completion.

## REPORTS

Standard General Conditions 5.03 and 5.06 C shall be modified by adding the following:

ENGINEER reviewed the following reports and drawings in connection with this Project:

[List reports reviewed by Engineer.]

Upon request, ENGINEER will make same available in its office.

## SUBSURFACE REPORTS AND PHYSICAL CONDITIONS

Standard General Condition 5.03 shall be modified by adding the following:

The following reports and investigations are available for CONTRACTOR's information at the office of LJA Engineering, Inc. at 3600 W. Sam Houston Parkway S, Suite 150, Houston, Texas 77042. Such data is limited and such data is not warranted as stated in Standard General and Supplementary Conditions 4.02.

[Insert names and locations of reports.]

## HAZARDOUS CONDITIONS

Standard General Condition 5.06 shall be modified by adding the following:

The following reports may be reviewed at the office of LJA Engineering, Inc.:

[List names of reports.]

## **BONDS**

Standard General Conditions 6.01C is modified by adding the following:

### Payment and Performance Bonds

CONTRACTOR shall provide performance and payment bonds meeting the following requirements. The CONTRACTOR shall provide performance and maintenance and payment bonds from a surety company holding a permit from the State of Texas to act as surety. Unless otherwise specified, the cost of providing such Bonds shall be included in the bidders total bid amount. The surety company must have a minimum Best Key Rating of "B+" or better. The surety company, the agency and agent issuing the Bonds must be authorized to issue Bonds in Texas in an amount equal to the total Contract Price and such authorization must be recorded in the files of the Texas Department of Insurance. The Bonds must be executed by a duly appointed representative of the surety company licensed by the State of Texas as a General Lines Agent and such licensing must be recorded in the files of the Texas Department of Insurance. If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the rules and regulations of the Treasury Department with respect to performance and payment bonds for federal jobs, including specifically the rules related to underwriting limitation. For contracts over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law, or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. If bidder's proposed surety company, agency or agents do not meet the aforementioned requirements, then Owner may refrain from considering the bidder for Contract award and Owner may require bidder to forfeit the Bid Security.

Neither OWNER's receipt of non-compliant bonds or non-compliant insurance certificates nor OWNER's allowance of CONTRACTOR to proceed with the Work, shall be construed to relieve CONTRACTOR of its obligation to provide bonds and insurance according to the requirements of these CONTRACT DOCUMENTS. Additionally, failure to provide compliant bonds shall be a material breach justifying immediate termination for cause.

The OWNER adopts these criteria as the minimum standards for the acceptability of surety companies issuing payment and performance bonds for the construction of all OWNER's facilities; however, the OWNER reserves the right to adopt more stringent criteria depending upon the conditions and circumstances affecting a specific Project.

### Maintenance Bond

CONTRACTOR shall supply a maintenance bond in the amount of 100% the total Contract price which shall remain in effect for one year(s), the Guarantee Period.

## **INDEMNIFIED PARTIES**

Standard General Conditions 7.01, 7.10, 5.02, and 7.18 shall be modified by adding the following:

CONTRACTOR's indemnification obligations shall include indemnification of all entities identified in the Supplementary Conditions and the following:

Sabine River Authority; LJA Engineering, Inc.

**PERMITS**

Standard General Condition 7.08 shall be modified by adding the following:

The following permits will be obtained and paid for by OWNER:

[List permits provided by owner.]

**SHOP DRAWINGS**

Standard General Condition 7.16 B and 7.16 D shall be modified by adding the following:

The CONTRACTOR shall submit 1 digital copy of shop drawings. The submission schedule shall allow ENGINEER 10 days for review, or if 10 days will delay Work, within such time so as not to delay Work. If the Project is delayed due to late submission or due to the submission of nonconforming shop drawings, CONTRACTOR shall not receive an extension for such delay.

The CONTRACTOR shall submit shop drawings for the following items:

[List shop drawing items.]

**ESTIMATES OF EXCAVATION AND FILL QUANTITIES**

Standard General Condition 13.03 A shall be modified by adding the following:

Payment for excavation and fill will be based on the quantities shown on the Bid Proposal. If the CONTRACTOR thinks that more or less excavation or fill is required than called for in the bid items, it should adjust the Unit Prices on its Bid Proposal accordingly. No additional compensations will be allowed for excavating or filling more or less than the indicated cubic yards of material as long as the Project is completed in accordance with the lines and grades shown in the construction drawings. If during the course of this Contract, and in the opinion of the ENGINEER, it becomes necessary to adjust the lines and grades of the drawings, the resulting change in excavation or fill quantities will be calculated by the ENGINEER and an appropriate change order will be issued reflecting the change in the excavation or fill quantities.

**TESTING**

Standard General Condition 14.02 shall be modified by adding the following:

The testing lab may not revoke, release or alter the requirements of the Contract Documents. The lab may not approve the Work, assume the duties of CONTRACTOR, or stop the Work. Unless specifically modified in the Special Conditions, all material testing shall be paid by the OWNER. All retests, due to failure of the initial test, shall be paid by the CONTRACTOR. All testing will be incidental to the Unit Price. Unless specifically modified in the Special Conditions, all performance testing shall be paid by the CONTRACTOR.

The CONTRACTOR's responsibilities regarding the testing of the materials and OWNER's responsibilities regarding performance testing are as follows:

Notice: The CONTRACTOR shall notify the ENGINEER and laboratory at least three (3) Working days prior to when material testing is required. The CONTRACTOR shall notify the laboratory as to which concrete supplier it will be using and at which plant the material will be mixed.

Defects: Materials and Work which do not meet or exceed those specified as determined by the testing laboratory shall be removed from the Work site and correct materials and Work installed at the CONTRACTOR's expense.

Paving: The OWNER may hire a competent testing laboratory to perform the necessary testing which will be paid

for by the OWNER. The following material tests may be performed: Sub-grade Preparation (Densities); Embankment (Densities); Proof Rolling; Base and Asphalt (Densities); and Concrete design mix (curbs and pavement)

Structure: The OWNER may hire a competent testing laboratory to perform the necessary testing which will be paid for by the OWNER. The following may be tested: Concrete Mix Design; Back fill and Compaction; and Beams and Core.

Storm Drainage and Underground Utilities: The CONTRACTOR shall be responsible for furnishing all materials, labor, equipment and incidentals to test the water distribution lines and sanitary sewer as per the procedures prescribed in the Drawings, Technical Specifications and/or Supplementary Conditions.

Tests for the wastewater lines shall include leakage tests for the pressure sewer systems and infiltration/exfiltration/low-pressure air tests and deflection tests for the gravity system. Tests for water lines shall include leakage tests and bacteriological tests. The CONTRACTOR shall be responsible for collecting sufficient water quality samples from the water distribution system and transmitting said samples to the appropriate laboratory for bacteriological testing. Copies of all test results shall be provided to the OWNER and ENGINEER prior to final acceptance of the Project.

Testing for backfill and compaction for storm drainage and underground utilities may be provided by the OWNER if specified in the Special Conditions. The CONTRACTOR is responsible for notifying the laboratory and the ENGINEER at least three (3) working days prior to when testing is required. Materials and Work which do not meet or exceed those specified as determined by the testing laboratory shall be removed from the Work site and correct materials and Work installed at the CONTRACTOR's expense.

Contractor Requested Substitutions: For items that the CONTRACTOR requests for substitution in lieu of those included in the Bid Proposal, the CONTRACTOR shall pay for all material and performance tests required by the ENGINEER and/or jurisdictional agency.

All tests shall be performed in accordance with the specifications of the jurisdictional agency.

## **OPERATIONS & MAINTENANCE MANUALS**

Standard General Conditions 15.06 A shall be modified as follows.

CONTRACTOR shall provide O&M manuals to ENGINEER. CONTRACTOR shall provide 1 digital copy of O&M manuals, unless otherwise agreed upon with the ENGINEER, prior to the final payment.

## **RETAINAGE**

Standard General Conditions 15.01 B3 shall be modified by adding the following:

The retainage on this Project is ten percent (10%).

## **ECONOMIC DISINCENTIVE**

Standard General Condition 15.01 E shall be modified by adding the following:

The CONTRACTOR shall be liable to OWNER in the amount of \$500.00/day for each day the CONTRACTOR is late in meeting the contract Substantial Completion, as adjusted by any time extensions.

**ALTERNATE(S)** [Select if proposal includes Alternates.]

The Proposal includes Alternates. OWNER retains the right to evaluate the bid based on the base bid alone, considering one Alternate, or more than one Alternate, whichever is deemed most advantageous to the OWNER.



**BURNING** [Note: Select one or the other or none]

Burning of trash, organic material, or construction-related material shall not be allowed. CONTRACTOR shall haul unsuitable material off site for disposal and costs shall be considered incidental and included in the Unit Prices for the Work.

OR

Burning of trash, organic material, or construction-related material shall be allowed if Contractor confirms burning is allowed by the governing agency or political subdivision, and if Contractor has requested and received written authorization from the Owner and jurisdictional agencies prior to any burning. Any costs of burning, including damages, shall be at Contractor's sole expense. If Contractor hauls unsuitable material offsite for disposal, costs shall be considered incidental and included in the Unit Prices for the Work.

**ENVIRONMENTAL SPECIAL CONDITIONS** [Specify any conditions specific to the site] (by way of example)

*The Project is covered by a United States Fish & Wildlife Service Section 10(a) Permit, which was issued to OWNER. CONTRACTOR shall not take, and shall use its best efforts to prevent, any action with respect to construction of the Project that would jeopardize the existence or good standing of the Section 10(a) Permit. The permit states clearing or utility construction in occupied warbler habitat will occur only during times of year when golden-cheeked warblers are not present or if breeding season territorial surveys conducted in accordance with Service protocols during April reveal no warblers present within 300 feet of proposed construction activities. Habitat is typically occupied between March 1 and September 1.*

*OWNER may suspend or partially suspend construction and/or request a change in the location of construction operations under this Contract between March 1st and September 1st if warblers are identified within 300 feet of the construction activities.*

**STORM WATER POLLUTION PREVENTION PLAN**

CONTRACTOR is required to fully comply with all applicable requirements including without limitation TCEQ requirements.

**TOPSOIL** [Specify P.I. values.]

P.I. shall be between \_\_\_\_\_ and \_\_\_\_\_, and shall be placed with a minimum thickness of \_\_\_\_\_.

PERFORMANCE BOND

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF \_\_\_\_\_ §

**THAT WE**, \_\_\_\_\_, as Principal, hereinafter called "Contractor" and the other subscriber hereto \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to Sabine River Authority "Owner", in the sum of \_\_\_\_\_ /100<sup>th</sup> Dollars (\$ \_\_\_\_\_) for the payment of which sum, well and truly to be made to Owner and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS**, the Contractor has on or about this day executed a Contract in writing with Owner for construction of the Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape, Sabine River Authority, City of Wills Point, Van Zandt County, Texas all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the Owner, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE**, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of Contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof, as more fully set forth herein. It is further understood and agreed that the Owner or its representatives shall exercise reasonable diligence in securing compliance on the part of the Contractor with the terms of the Contract. The Surety understands and agrees that the provision in the Contract that Owner shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the Owner's benefit.

It is further expressly agreed by Surety that Owner or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless Owner from any liability, loss, cost, expense, or damage arising out of or in connection with the failure of the Contractor to perform work as required under the Contract. In the event that Owner shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to Owner the sum of 10 percent of whatever amount may be recovered by Owner in suit or legal proceeding, which sum of 10 percent is agreed by all parties to be indemnity to Owner for the expense of or time consumed by its Attorney, his assistants,

and office force, and other cost and damage occasioned to Owner. This amount of 10 percent is fixed and liquidated by the parties, it being agreed by them that the exact damage to Owner would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Van Zandt County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

\_\_\_\_\_  
(Name of Contractor)

Attested By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/WITNESS (SEAL)

\_\_\_\_\_  
(Full Name of Surety)

Attested By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

(Address of Surety for Notice)  
\_\_\_\_\_  
\_\_\_\_\_

Local Recording Agent Personal Identification Number: \_\_\_\_\_

The name and address of the Resident Agent of Surety is: \_\_\_\_\_  
\_\_\_\_\_

TEXAS STATUTORY PAYMENT BOND

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF \_\_\_\_\_ §

**THAT WE**, \_\_\_\_\_, as Principal, hereinafter called "Principal" and the other subscriber hereto \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to Sabine River Authority "Owner", in the sum of \_\_\_\_\_ /100<sup>th</sup> Dollars (\$\_\_\_\_\_) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS**, Principal has entered into a certain contract with Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for construction of the Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape, Sabine River Authority, City of Wills Point, Van Zandt County, Texas, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW THEREFORE**, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

**IN WITNESS THEREOF**, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST, SEAL: (if a corporation)  
WITNESS: (if not a corporation)

\_\_\_\_\_  
(Name of Contractor)

Attested By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/WITNESS (SEAL)

\_\_\_\_\_  
(Full Name of Surety)

Attested By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

(Address of Surety for Notice)  
\_\_\_\_\_  
\_\_\_\_\_

Local Recording Agent Personal Identification Number: \_\_\_\_\_

The name and address of the Resident Agent of Surety is: \_\_\_\_\_

\_\_\_\_\_

**STATEMENT OF QUALIFICATIONS**

Bidder shall submit the Statement of Qualifications to the Engineer. All questions must be answered and the data given must be clear and comprehensive. This Statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit additional information.

1. Submitted By: \_\_\_\_\_  
\_\_\_\_\_

2. Principal office, address and telephone number: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. How many years has your Organization been in business as a Contractor? \_\_\_\_\_  
If less than five years, identify all principals or officers of your Organization that have been in business as a Contractor for five years, the name of the prior Organization for each principal or officer.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. How many years has your Organization been in business under its present name?  
\_\_\_\_\_

5. If your Organization is a corporation, answer the following:  
Date of incorporation: \_\_\_\_\_  
State of incorporation: \_\_\_\_\_  
President's name: \_\_\_\_\_  
Vice President's name(s): \_\_\_\_\_  
\_\_\_\_\_  
Secretary's name: \_\_\_\_\_  
Treasurer's name: \_\_\_\_\_  
Other Officers: \_\_\_\_\_

6. If your Organization is a partnership, answer the following:  
Date of Organization: \_\_\_\_\_  
Type of partnership (if applicable): \_\_\_\_\_  
Name(s) of general partners(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. If your Organization is individually owned, answer the following:  
 Date of Organization: \_\_\_\_\_  
 Name of Owner: \_\_\_\_\_
8. Has your Organization ever failed to complete any work awarded to it? \_\_\_\_\_  
 If yes, submit details identifying the Project, the Owner and explaining fully the failure and the circumstances.  
 Has your Organization ever been awarded a bonus for early completion of work? \_\_\_\_\_ Yes  
 \_\_\_\_\_ No. If yes, give details of job and incentives.
9. Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your Organization or its officers? \_\_\_\_\_ If yes, attach details for each.
10. Has your Organization ever filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? \_\_\_\_\_ If yes, attach details for each.
11. Other than lawsuits or arbitrations explained in 9 or 10 above, has your Organization ever been a party to a lawsuit or arbitration with regard to construction contracts within the last five years? \_\_\_\_\_ If yes, attach details for each.
12. Within the last five years, has any officer or principal of your Organization ever been an officer or principal of another Organization when it failed to complete a construction contract or was a party to a lawsuit or arbitration? \_\_\_\_\_ If yes, please attach details for each.
13. Has your Organization ever been assessed liquidated damages or an economic disincentive on any project? \_\_\_\_\_ Provide explanation of contract, circumstances and manner addressed by your Organization.
14. On a separate sheet, list the major contracts your Organization has completed in the past two years, giving the name of the project, owner, engineer, contract amount, date of completion and percentage of work performed by your Organization.
15. On a separate sheet, list the major contracts (over \$250,000 – USE FOR ALIANA) (over \$1,000,000) your Organization has in progress, giving the name of the project, owner, engineer, contract amount, percent complete, start date and scheduled completion date.
16. State the average annual dollar amount of work performed by your Organization during the last five years.  
 \_\_\_\_\_
17. Attach statements of background and experience of the principle members of your Organization, including the officers and the person who may be the superintendent and project manager for this Contract.
18. Identify recent projects similar in type and size to this Contract. List the names and phone numbers of references for each if not previously noted above. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
19. List all projects completed or started by your Organization within the last two (2) years listing the owner, a contact reference, superintendent in charge and indicate whether you were the general or a sub contractor. State what jurisdictions provided and/or required inspections and observed the work performed. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

20. Attach a list of equipment your Organization owns which is available for this contract.
21. Bonding Capacity: \_\_\_\_\_  
Name of bonding company: \_\_\_\_\_  
Name of principal being bonded: \_\_\_\_\_  
Name, address and telephone number of agent/broker: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
22. If requested by Engineer or Owner, attach a financial statement, the name of the Organization preparing the statement and whether the statement is audited.
23. Is the attached financial statement for the identical Organization named on page five?  
\_\_\_\_\_
24. If not, explain the relationship and financial responsibility of the Organization whose financial statement is provided (e.g., parent-subsiary). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
25. Attach copies of Certificates of Good Standing from the Secretary of State's Office for the company, corporation or entity.

**[EXECUTION PAGE TO FOLLOW]**



The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the ENGINEER, (Sabine River Authority) The Owner, or their agents, collectively, in verification of the recitals comprising this Statement of Bidders Qualifications.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Bidder \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, did appear \_\_\_\_\_ of \_\_\_\_\_ and affix the above noted signature.

Notary Public: \_\_\_\_\_

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_ (Seal)

\_\_\_\_\_, being duly sworn, deposes and says that the answers to the foregoing questions and all statements therein contained are true and correct and sufficiently complete so as not to be misleading.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022

(Seal)

Notary Public: \_\_\_\_\_

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**HOLD HARMLESS AGREEMENT**

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

To: LJA Engineering, Inc.

Re: Construction of the Lake Tawakoni  
Tournament Facility Restroom, Hardscape,  
and Landscape

LJA Job No: B883-1015D

Hold harmless agreement: We have requested and are receiving electronic media containing intermediate survey and design information, not intended for construction or design. We agree to hold LJA Engineering, Inc. harmless for any defects in this data, including all assumptions made from or using this preliminary data. We agree that it shall be our responsibility to reconcile this electronic data with the construction plans, recorded plats, and specifications, and that only the construction plans, recorded plats, and specifications shall be regarded as the contract documentation for this project. In addition, we agree not to modify this information in any way and we agree not to release this information to any other parties.

The undersigned acknowledges his/her receipt of the electronic information, concurrence with the above statement and that he/she is an officer of \_\_\_\_\_ with authority to sign this document.

Accepted by: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**PROGRESS ESTIMATE**

Project: Construction of the Lake Tawakoni  
Tournament Facility Restroom,  
Hardscape, and Landscape  
Sabine River Authority  
City of Wills Point  
Van Zandt County, Texas

LJA Job No. B883-1015D Estimate No. \_\_\_\_\_  
For Period From \_\_\_\_\_ to \_\_\_\_\_  
Contract Completion Date: \_\_\_\_\_  
Notice to Proceed Date: \_\_\_\_\_  
Approved Time Extensions: \_\_\_\_\_  
Revised Contract Completion Date: \_\_\_\_\_

Contract Date: \_\_\_\_\_  
Original Contract Amount: \$ \_\_\_\_\_  
Revised Contract Amount: \$ \_\_\_\_\_  
Final Contract Amount: \$ \_\_\_\_\_  
TOTAL AMOUNT WORK:  
DONE TO DATE: \$ \_\_\_\_\_  
Less Late Start Amount: (\$ \_\_\_\_\_ )  
Less Amount Retained: (\$ \_\_\_\_\_ )  
Less Previous Payments: (\$ \_\_\_\_\_ )  
Less Economic Disincentives: (\$ \_\_\_\_\_ )  
AMOUNT DUE  
CONTRACTOR: \$ \_\_\_\_\_

Owner: Sabine River Authority

Contractor:

CERTIFICATE OF THE CONTRACTOR OR HIS DULY AUTHORIZED REPRESENTATIVE

To the best of my knowledge, I certify that all items, quantities and prices of work and materials shown on the face of this estimate are correct; that all work has been performed and materials supplied in full accordance with the terms and conditions of the corresponding construction contractual documents between the Owner and the Contractor, including all changes authorized thereto; that the foregoing is a true and correct statement of the contract amount up to and including the last day of the period covered by this estimate and that no part of the "AMOUNT DUE CONTRACTOR" has been received.

I further certify that all just and lawful bills against the below named Contractor, for labor, material and expendable equipment employed in the performance of said contract have been paid in full accordance with the Contract requirements.

\_\_\_\_\_  
Contractor Signature  
\_\_\_\_\_  
Date Title

CERTIFICATE OF ENGINEER'S REPRESENTATIVE

I certify that a qualified project representative was present on the project on a periodic basis to observe construction and that all materials and work included in this statement have been performed in general accordance with the construction plans and specifications and authorized changes thereto. I further certify that I have verified this estimate and that, to the best of my knowledge and belief, it is a true and correct statement of work performed and materials supplied by the Contractor, that the amount due him is correct and just.

PROJECT MANAGER: \_\_\_\_\_ DATE: \_\_\_\_\_

OWNER'S ACCEPTANCE: \_\_\_\_\_ DATE: \_\_\_\_\_

**REQUEST FOR EXTENSION OF TIME**

Project: Construction of the Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape

Owner: Sabine River Authority

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

LJA Job No: B883-1015D

Gentlemen:

We request extension of completion time on our Contract in the amount of \_\_\_\_\_ Calendar/Working Days specified as follows: (Please circle day of the month)

Month: \_\_\_\_\_ Year \_\_\_\_\_

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Reasons for Request: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

_____ Recommend approval for extension of _____ calendar/working days.
_____ Recommend disapproval. (See following comments)
_____
_____
Reviewed By: _____ Date: _____ Project Representative
Approved By: _____ Date: _____ Project Manager

**FORM I: CONDITIONAL WAIVER FOR PROGRESS PAYMENTS**

\* \* \* \* \*

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape

Job No.: B883-1015D

On receipt by the signer of this document of a check from Sabine River Authority (maker of check) in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Sabine River Authority (owner) located at Van Zandt County, Texas (location) to the following extent: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Sabine River Authority (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The Signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

\_\_\_\_\_  
(Company Name)

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

Title: \_\_\_\_\_

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

**FORM 2: UNCONDITIONAL WAIVER FOR PROGRESS PAYMENTS**

\* \* \* \* \*

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape

Job No.: B883-1015D

The signer of this document has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for all labor, services, equipment, or materials furnished to the property or to Sabine River Authority (person with whom signer contracted) on the property of Sabine River Authority (owner) located at Van Zandt County, Texas (location) to the following extent: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Sabine River Authority (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

\_\_\_\_\_  
(Company Name)

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

Title: \_\_\_\_\_

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

**FORM 3: CONDITIONAL WAIVER FOR FINAL PAYMENT**

\* \* \* \* \*

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape

Job No.: B883-1015D

On receipt by the signer of this document of a check from Sabine River Authority (maker of check) in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Sabine River Authority (owner) located at Van Zandt County, Texas (location) to the following extent: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to Sabine River Authority (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

\_\_\_\_\_  
(Company Name)

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

Title: \_\_\_\_\_

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

**FORM 4: UNCONDITIONAL WAIVER FOR FINAL PAYMENT**

\* \* \* \* \*

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape

Job No.: B883-1015D

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to Sabine River Authority (person with whom signer contracted) on the property of Sabine River Authority (owner) located at Van Zandt County, Texas (location) to the following extent: Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

\_\_\_\_\_  
(Company Name)

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

Title: \_\_\_\_\_

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



**AFFIDAVIT OF BILLS PAID**  
(TO BE FILED WITH FINAL PAY ESTIMATE ONLY)

STATE OF TEXAS                    §

COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_

\_\_\_\_\_

representing Contractor under the following Contract:

Owner:            Sabine River Authority

Contractor:        \_\_\_\_\_

Date:                \_\_\_\_\_

Project:            Construction of the Lake Tawakoni Tournament Facility Restroom, Hardscape, and Landscape

LJA Job No.:      B883-1015D

The undersigned was by me duly sworn and now states upon oath:

1.        The improvements required by the Contract have been erected and completed in full compliance with the Contract and the agreed plans and specifications for the Contract.
  
2.        All bids and claims for materials furnished and labor performed on the Contract have been paid. There are no outstanding unpaid bills or legal claims for labor performed or materials furnished upon the job.
  
3.        This Affidavit is being made by the undersigned realizing that it is in reliance upon the truthfulness of the statements contained in this Affidavit that final and full settlement of the balance due on the Contract is being made, and in consideration of the disbursement of funds by Owner, the undersigned expressly gives and releases all liens, claims and rights to assert a lien on said premises and agrees to indemnify and hold Owner safe and harmless from and against all losses, damages, costs, and expenses of any character whatsoever, specifically including court costs, bonding fees and attorney fees, arising out of, or in any way relating to, claims for unpaid labor or material used or associated with construction of improvements under the Contract.

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn before me, the undersigned authority, on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas