AGREEMENT AND SPECIFICATIONS

HASKELL R. SREET WASTEWATER TREATMENT PLANT FATS, OILS, AND GREASE RECEIVING STATION IMPROVEMENTS

BID NUMBER 93-22

VOLUME 2 OF 3

CONTRACT DOCUMENTS

OCTOBER, 2022

el paso WATER

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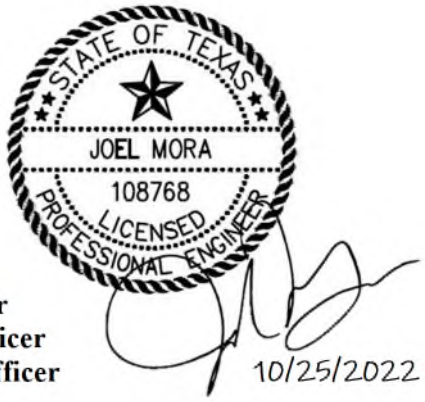

CIP No. S090011
Eng. / Proj. ID 2372

EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD

PSB BID NO. 93-22

INFORMAL NOTICE

Sealed proposals for construction of HASKELL R. STREET WWTP FOG RECEIVING STATION IMPROVEMENTS will be received by the City of El Paso Water Utilities - Public Service Board at the Board's principal office located at 1154 Hawkins Boulevard or by mail to 1154 Hawkins Boulevard, El Paso, Texas, 79925 until December 14, 2022, 1:30 p.m. local time. **After 1:30 p.m., bids will not be accepted.** Bid Opening will occur at 2:00 p.m. and bids will be publicly opened and read aloud via the "GoToMeeting" format noted in Section 00020.

The work under this contract shall be for furnishing all labor, materials, transportation, and services for the construction and installation of the following work:

> Construction of the Fats, Oil, and Grease (FOG) Receiving Station, which consists of all piping, equipment and connections necessary to receive pre-screened FOG material from LES, temporarily store and mix within the existing storage tank, and transfer to the facility's sludge mixing well at a determinable rate. Work includes all necessary augmentation and modifications to boost the production of digester gas and optimize the performance of the existing cogeneration system. New equipment to be installed will include an offloading nozzle, rock trap with grinder, metering pumps, offloading pumps, carbon filter, control panel, valves, and instruments shown in the drawings. New installations include stainless steel and PVC piping, electrical, I&C, water and drainage connections. Site construction will include new foundation and concrete knee wall. Work will include modifications to existing 18,000-gallon tank, tie-in to mixed sludge well and pumping station. Work will include all necessary equipment training and functional testing of all equipment and processes.

Contract documents may be examined and obtained by accessing the following El Paso Water's website:
www.epwater.org/business_center/purchasing_overview/bids

If you have trouble accessing the Contract Documents, please contact the Purchasing Department of the El Paso Water Utilities, Public Service Board, at (915) 594-5628. Physical (hard) copies of the Contract Documents will **NO** longer be made available.

A pre-bid meeting will be held on **November 16, 2022 at 10 a.m.,** local time *(see instructions at the end of Section 00020)*.

Each Bid shall be submitted in accordance with the Instructions to Bidders and be accompanied by a Bid Security in the amount of five percent of the amount bid.

The Successful Bidder states he or she must furnish a 100 percent (100%) Performance Bond and a 100 percent (100%) Payment Bond, in accordance with the Instructions to Bidders and the General Conditions.

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid 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), name and address of the 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. The Bid proposal package shall include one original, three copies and an electronic version of the bid, containing a copy of the full bid package submitted, saved on a USB drive.

By submission of the bid, Bidder fully understands the requirements of the Contract Documents and agrees to comply with all requirements thereof.

Wages paid on this project shall be not less than the minimum prevailing wage rates listed in the Contract Documents, Section 00840, General Wage Requirements.

The El Paso Water Utilities (EPWU) adheres to the Cone of Silence policy which prohibits any communication regarding the bid between potential bidders (and subcontractors) and EPWU Board Members, Staff, and assigned Consulting Engineers. The provisions do not apply to oral communications with Purchasing Agent or Administrative Analyst, provided the communications is limited strictly to matters of process or procedure already contained in the solicitation document, oral communications at pre-bid conferences, or communications in writing (email preferred) submitted to the Administrative Analyst in response to inquiries regarding the bid. In addition to any other penalties provided by law, violation of the Cone of Silence by any bidder shall render that bidder's bid voidable. Any person having personal knowledge of a violation of these provisions shall report such violations to the EPWU General Counsel and/or the Purchasing Agent in writing.

SECTION 00020

INVITATION TO BID

Sealed proposals for construction of HASKELL R. STREET WWTP FOG RECEIVING STATION IMPROVEMENTS, will be received by the City of El Paso Water Utilities - Public Service Board at the Board's principal office located at 1154 Hawkins Boulevard or by mail to 1154 Hawkins Boulevard, El Paso, Texas, 79925 until December 14, 2022, 1:30 p.m. local time. **After 1:30 p.m., bids will not be accepted.** Bid Opening will occur at 2:00 p.m. and bids will be publicly opened and read aloud via the "GoToMeeting" format noted in Section 00020.

The work under this contract shall be for furnishing all labor, materials, transportation, and services for the construction and installation of the following work:

> Construction of the Fats, Oils and Grease (FOG) Receiving Station, which consists of all piping, equipment and connections necessary to receive pre-screened FOG material from LES, temporarily store and mix within the existing storage tank, and transfer to the facility's sludge mixing well at a determinable rate. Work includes all necessary augmentation and modifications to boost the production of digester gas and optimize the performance of the existing cogeneration system. New equipment to be installed will include an offloading nozzle, rock trap with grinder, metering pumps, offloading pumps, carbon filter, control panel, valves, and instruments shown in the drawings. New installations include stainless steel and PVC piping, electrical, I&C, water and drainage connections. Site construction will include new foundation and concrete knee wall. Work will include modifications to existing 18,000 gallon tank, tie-in to mixed sludge well and pumping station. Work will include all necessary equipment training and functional testing of all equipment and processes.

Contract documents may be examined and obtained by accessing the following El Paso Water's website:
www.epwater.org/business_center/purchasing_overview/bids

If you have trouble accessing the Contract Documents, please contact the Purchasing Department of the El Paso Water Utilities, Public Service Board, at (915) 594-5628. Physical (hard) copies of the Contract Documents will **NO** longer be made available.

A pre-bid meeting will be held on November 16th, 2022 at 10:00 a.m., local time. *(see instructions at the end of this Section 00020).*

Each Bid shall be submitted in accordance with the Instructions to Bidders and be accompanied by a Bid Security in the amount of five percent of the amount bid.

The Successful Bidder must furnish a 100 percent (100%) Performance Bond and a 100 percent (100%) Payment Bond, in accordance with the Instructions to Bidders and the General Conditions.

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid 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 the 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. The Bid proposal package shall include one original, three copies and an electronic version of the bid, containing a copy of the full bid package submitted, saved on a USB drive.

By submission of the bid, Bidder states he or she fully understands the requirements of the Contract

Documents and agrees to comply with all requirements thereof.

Wages paid on this project shall be not less than the minimum prevailing wage rates listed in the Contract Documents.

The El Paso Water Utilities (EPWU) adheres to the Cone of Silence policy which prohibits any communication regarding the bid between potential bidders (and subcontractors) and EPWU Board Members, Staff, and assigned Consulting Engineers. The provisions do not apply to oral communications with Purchasing Agent or Administrative Analyst, provided the communications is limited strictly to matters of process or procedure already contained in the solicitation document, oral communications at pre-bid conferences, or communications in writing (email preferred) submitted to the Administrative Analyst in response to inquiries regarding the bid. In addition to any other penalties provided by law, violation of the Cone of Silence by any bidder shall render that bidder's bid voidable. Any person having personal knowledge of a violation of these provisions shall report such violations to the EPWU General Counsel and/or the Purchasing Agent in writing.

PRE-BID MEETING INSTRUCTIONS

The Pre-Bid meeting will be held via Microsoft Teams. Please join the meeting from your computer, tablet, or smartphone using the link below:

Bid No. 93-22 Haskell R. Street WWTP FOG Receiving Station Improvements
Wednesday, November 16th, 2022, 10:00 A.M. – 11:00 A.M. (MDT)

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MGFhMjgxNDItZGQ5Zi00NjJjLTgzODUtNGVkNDIxNGM0NDM4%40thread.v2/0?context=%7b%22Tid%22%3a%223eebb7d9-9c59-4af3-aca0-00b46518374d%22%2c%22Oid%22%3a%22b1060454-b65c-4d1c-b33a-aaebccf478f3%22%7d

BID OPENING INSTRUCTIONS

Bid Openings are now to be broadcast through "GoToMeeting" format.
To View Bid Opening Click the Link Below:

Bid No. 93-22 Haskell R. Street WWTP FOG Receiving Station Improvements

Wednesday, December 14th, 2022 2:00 PM - 2:30 PM (MS T)

Please join my meeting from your computer, tablet or smartphone.
https://meet.goto.com/733908173

You can also dial in using your phone.
United States (Toll Free): 1 866 899 4679
United States: +1 (571) 317-3116

Access Code: 733-908-173

Get the app now and be ready when your first meeting starts: https://meet.goto.com/install

SECTION 00100

INSTRUCTIONS TO BIDDERS

1. DEFINED TERMS (Revised 3/18/96, 9/9/96, 4/21/97, 7/13, 10/16/20)

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (EJCDC C-700, 2018 ed.) have the meanings assigned to them in the General Conditions. The term "Bidder" means the entity (such as a corporation, partnership, or sole proprietor) that submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a Bid to a Bidder. The term "Successful Bidder" means the lowest, responsible, and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, the Bid Bond or other Bid Security, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids). Other terms are defined in this Section 00100.

Other terms used in the Bidding Documents and not defined elsewhere have the following meanings which are applicable to both the singular and plural thereof:

Texas Resident Bidder - A bidder whose principal place of business is in this state and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Nonresident Bidder - A bidder whose principal place of business is not in this state, but excludes a Contractor whose ultimate parent company or majority owner has its principal place of business in this state.

EPWID #1 - El Paso County Water Improvement District #1 which authorizes dewatering into its facilities under certain terms and conditions and with whom the Owner has negotiated specific basic fees and procedures.

NADB – North American Development Bank

2. COPIES OF BIDDING DOCUMENTS *(Revised 10/16/20)*

2.1 Complete sets of the Bidding Documents stated in the Advertisement or Invitation to Bid may be obtained by accessing the following El Paso Water Utilities – Public Service Board (EPWU-PSB) website:

https://www.epwater.org/business_center/purchasing_overview/bids/construction

If you have trouble accessing the Contract Documents, please contact the Purchasing Department of the EPWU-PSB at (915) 594-5628. Physical (hard) copies of the Contract Documents will no longer be made available.

2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither the Owner nor the Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

3. DETERMINING LOWEST RESPONSIBLE, RESPONSIVE BIDDER *(Revised 9/2/92, 2/25/94, 1/10/95. 5/22/95, 3/18/96, 9/9/96, 4/17/97, 6/17/97, 9/26/97, 12/10/97, 6/3/99, /10/99, 12/17/99, 3/13/00, 8/19/04, 1/18/10, 1/12/11,7/18/11, 11/2/16, 1/11/17, 9/27/17, 11/9/17, 7/23/18, 1/17/19, 10/16/20)*

To demonstrate that the Bidder is responsible and able to perform the Work, each Bidder must be prepared to submit written evidence, such as financial data, previous experience, present commitments and other data as may be called for below (or in the Supplementary Instructions). Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to Award of the Contract.

In determining the lowest responsible, responsive Bidder, in addition to price, the following elements will be considered:

(a) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;
(b) the number and scope of conditions attached to the bid;
(c) the ability, capacity, and skill of the entity to perform the contract or to provide the service required;
(d) whether the bidder can perform the contract and provide the service promptly, or within the time required, without delay or interference;
(e) the character, responsibility, integrity, reputation, and experience of the bidder;
(f) the quality of performance of previous services, or contracts;
(g) the previous and existing compliance by the bidder with laws relating to the contract or service;
(h) any previous or existing noncompliance by the bidder with specifications, or requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
(i) the sufficiency of the financial resources and ability of the bidder to perform the contract or to provide the service;
(j) the ability of the bidder to provide maintenance, repair parts, and service for the use of the subject of the contract during the required one-year warranty period.
(k) the ability of the bidder to provide competent personnel for the job, as demonstrated by a listing of the names and the skills of experienced personnel who are currently employed by the bidder and who will be available for performing this work;
(l) the experience of the bidder in performing work similar in type, size and complexity to this project, as demonstrated by a listing of projects, with verifiable references (names, addresses, phone numbers, etc.), successfully completed.

MINIMUM GENERAL REQUIREMENTS - ALL CONSTRUCTION PROJECTS
QUALIFYING PROJECTS

Bidders on Qualifying Projects must provide a Safety Record consisting of: (1) copies of the bidder's OSHA Forms 300, 300A, and 301 for the last three calendar years (January – December); (2) the Establishment Search Results from the Occupational Safety and Health Administration's website (https://www.osha.gov/pls/imis/establishment.html); and (3) a completed and signed Contractor Pre-Qualification Form. A Qualifying Project is a project with a value greater than $100,000 or one that the Chief Technical Officer and Vice President of Operations and Technical Services determine poses a significant hazard.

EPWU will deem a bidder not responsible if the bidder (1) fails to provide a complete Safety Record; (2) received within the last three calendar years (January – December) six or more serious violations, one or more willful violations, or a single repeat of a serious violation; or (3) has experienced a workplace

fatality in the last three calendar years (January – December), unless the bidder can demonstrate that the factors that caused the fatality were outside the bidder's control. A bidder, however, may fail the above criteria but still be deemed responsible if (1) no other appropriate bidder can be found; (2) the bidder is approved by the Chief Technical Officer and the Vice President of Operations and Technical Services; and (3) the bidder agrees to implement the special safety procedures (which might include a requirement to work only with trained EPWU personnel present) that the Vice President of Operations and Technical Services establishes for the project.

PROJECTS WITH VALUE LESS THAN $1,000,000:

The Bidder, or at least two *Key Personnel employed by the Bidder, must demonstrate **Successful Completion of a project similar in nature and scope to this project within the past five years and a similar project with a value of at least one-third the value bid for this project.

PROJECTS WITH VALUE BETWEEN $1,000,000 AND $3,000,000:

The Bidder, **or** at least three *Key Personnel employed by the Bidder, must demonstrate **Successful Completion of one project similar in nature and scope to this project within the past five years and one similar project with a value of at least 50% of the value bid for this project.

PROJECTS WITH VALUE BETWEEN $3,000,000 AND $6,000,000:

The Bidder must demonstrate a minimum of four years of experience in projects similar in nature and scope to this project. At least four *Key Personnel employed by the Bidder must have a minimum of five years of experience in similar construction projects. The Bidder must demonstrate **Successful Completion during the last five years of at least one project comparable in nature and scope to this project and one similar project with a dollar value of at least 60% of the value bid for this project. The Bidder must have an employee, to be dedicated to this project, who is experienced in scheduling, with demonstrated ability in employing scheduling techniques similar to those to be used for this project.

PROJECTS WITH VALUE BETWEEN $6,000,000 AND $15,000,000:

The Bidder must have a minimum of five years of experience in projects similar in nature and scope to this project. At least four of the Bidder's *Key Personnel must have a minimum of five years of experience in similar construction projects. The Bidder must demonstrate **Successful Completion of at least two projects similar in nature and scope to this project and one similar project with a dollar value of at least 75% of the value bid for this project, both within the past five years. The Bidder must demonstrate that it has an experienced employee who will serve as the scheduler; who is dedicated to this project; who has successfully employed scheduling techniques appropriate for this project. At least two *Key Personnel for this project must have completed at least two projects, similar in scope and nature to the project being bid, as an employee of the Company bidding this project.

* KEY PERSONNEL: Defined as individuals who will be directly assigned to this project which includes, but is not limited to, the Bidder's Project Manager, the Project Superintendent, the Scheduler, the Bidder's Construction Engineer, and Supervisory personnel such as the Foremen who will be directly assigned to this project as well as similar Subcontractor Key Persons. Resumes of Key Personnel must be submitted and accepted by the Owner in order for Bidder to receive the Award.

** SUCCESSFUL COMPLETION: Defined as completion of a project on time, which generally means no more than thirty days later than the original contract time allocated. It also means within budget, which generally means within 5% of the original contract price. If there is any project submitted by the Bidder as qualifying, but which does not meet these requirements, in order to be fully responsive the Bidder is required to submit detailed information on that project demonstrating what caused the increases to cost or time. The name and telephone numbers of the Design Engineer and the Client are to be provided for

evaluation as to whether the project may be considered "successful". For any project where liquidated damages were assessed, the Bidder will not be considered to have been on time.

MINIMUM PROJECT SPECIFIC CRITERIA FOR THIS PROJECT

Bidder must demonstrate that it meets the following Minimum Project Specific Criteria in order to qualify for award of the bid:

BIDDER

The Bidder must demonstrate one (1) wastewater treatment plant projects in the last five years where new equipment was installed while maintaining process operation.

The Bidder or a qualified Subcontractor must demonstrate one (1) wastewater treatment plant project in the last five years where electrical upgrades were completed while maintaining process operation.

The Bidder or a qualified Subcontractor must demonstrate one (1) wastewater treatment plant project in the last five years where programming upgrades were completed within the existing SCADA system.

PROJECT MANAGER

Bidder's Project Manager is a full-time employee of Bidder, who has at least five years of Project Management experience, and who has served as the Project Manager on (1) one municipal project at a wastewater treatment plant while maintaining process operation.

PROJECT SUPERINTENDENT

Bidder's Project Superintendent is a full-time employee of Bidder, who has at least five years of Project Superintendence experience, and who has served as the Project Superintendent on (1) one municipal project at a wastewater treatment plant while maintaining process operation.

The Project Superintendent will be physically present at the Project site at all times when work is being performed by Bidder's personnel and/or Bidder's subcontractors' personnel. The Bidder will certify its commitment to comply with this requirement by signing the Qualification and Financial Disclosure Statement.

OSHA COMPLIANCE PERSON

Bidder's OSHA compliance person is a full-time employee of Bidder, who has at least five years of experience in OSHA compliance, and who has served as OSHA compliance person on (1) one municipal project. This Person may be Superintendent, or other qualified person, who shall be physically present at the Project site at all times when work is being performed by Bidder's personnel and/or Bidder's subcontractors' personnel.

SYSTEM INTEGRATION EXPERIENCE

The Bidder or Bidder's System Integration Subcontractor has experience as a System Integrator for at least three years. The System Integration experience shall include one (1) municipal project at a wastewater treatment plant. The project(s) must have included controls and instrumentation, specifically including SCADA integration equipment.

EPWU CIP FUNDED PROJECTS
GOOD FAITH EFFORTS
TO OBTAIN MINORITY PARTICIPATION IN THIS PROJECT

The Utility's policy for its projects is to encourage the participation of Small Locally-Owned Businesses (SLBE), Minority Business Enterprises (MBE), and Women-Owned Business Enterprises (WBE). The utility's minimum goals for this project are:

25% FOR SMALL LOCALLY-OWNED BUSINESSES
10% FOR MINORITY-OWNED BUSINESSES
7% FOR WOMEN-OWNED BUSINESSES

The bidder must meet each of these three goals or demonstrate at the time of making the bid that he or she has made a good faith effort to meet each of the three goals in order to qualify for award of this project. The definition of a "Good Faith Effort" is described below. If the bidder fails to meet the goals, *and also fails to provide evidence that a good faith effort has been made to meet each goal*, the Owner reserves the right to request additional information from the bidder as support to Good Faith Effort documentation. The bidder may meet the requirement in one of three ways:

1. If goals in each category are fully achieved, bidder to provide all details of the actual participation in the Bid Form, Section 00300, where space has been provided for bidder's use.

2. If goals are partially achieved in each of the categories, bidder to provide the details of the actual participation in the Bid Form, and to provide evidence of the Good Faith Effort to meet each goal, as part of the bid, at the time the bid is submitted.

3. If goals are not achieved, bidder to provide evidence of a demonstrated Good Faith Effort, as defined below, as part of the bid, at the time the bid is submitted.

Although a single prime contractor, a subcontractor, or a supplier may be a Small Locally-Owned Business and also a Minority Business or a Woman-Owned Business, each firm will be counted in only one category (SLBE, MBE, or WBE) for purposes of meeting these goals.

DEFINITIONS *(Revised 7/28/14, 10/16/20)*

GOOD FAITH EFFORT: Documentation that minority firms were given a genuine opportunity to participate. Evidence of a Good Faith Effort must include copies of a reasonable number of letters sent to bona fide firms in each of the categories described showing the full details of the work solicited to be performed by the minority firm; copies of certified mail/return receipts, facsimile or e-mail confirmations of receipt, copies of responses to the letters, and copies of correspondence with the Chamber of Commerce, Small Business Administration, Minority Business Development Agency, MBE and WBE associations, and/or newspaper or trade magazine notices. Facsimile and e-mail confirmations of receipt must show sufficient information to identify the company name to which the solicitation was sent. Sample solicitation letters are included at the end of Section 00300. The Owner's Purchasing Department has a listing of qualified firms in each of these categories, which are available on the Owner's website, https://www.epwater.org/business_center/purchasing_overview/become_a_hub_vendor. Additional sources for locating Small Locally-Owned Business Enterprises, Minority-Owned Business Enterprises, and Women-Owned Business Enterprises: Texas Comptroller of Public Accounts http://www.window.state.tx.us/procurement/prog/hub/hub-reporting/, El Paso Hispanic Chamber of Commerce Minority Business Enterprise Center, http://ww.elpasombec.org.

SMALL LOCALLY-OWNED BUSINESS ENTERPRISE (SLBE): A business corporation, partnership, joint venture, sole proprietorship, or other legal entity formed for the purpose of making a profit, has been located within the County of El Paso for at least twelve months and is 51% or more owned by residents of

El Paso County; furthermore, that business must employ fewer than 100 employees or have annual gross sales of less than $7,000,000 and is not a subsidiary of a business which would not meet these guidelines.

MINORITY-OWNED BUSINESS ENTERPRISE (MBE): A business that is at least 51% owned and controlled by one or more citizens or lawful permanent residents of the United States who are either African American, Hispanic American, Asian American, Native American, or Service Disabled Veteran.

WOMEN-OWNED BUSINESS ENTERPRISE (WBE): A business that is at least 51% owned and controlled by one or more citizens or lawful permanent resident of the United States who are non-minority females.

The form entitled "Minority Certification and Participation Summary", which is located at the end of Section 00300, Bid Form, should be completed and submitted by the Successful Bidder within ten days of Notice of Award.

It is mandatory that bidder submit with his or her bid a fully executed bid (including the tabulation of proposed subcontractors and suppliers), an original bid bond, the certificate of insurance availability, and minority participation categories reflecting bidder has met minority participation goals OR evidence of bidder's good faith effort to do so. Failure to submit these items with the bid will result in a finding that the bid is non-responsive and the bid will be disqualified.

Evidence of bidder's good faith effort *or* evidence of *full* participation in each category is also required at the time of bid. Owner reserves the right to request additional information from the bidder as support to good faith effort documentation.

Bidders shall furnish a financial statement or other evidence of the Bidder's financial sufficiency to perform the contract, a sworn statement of his or her experience record, and a listing of the equipment available to him or any other statement or documentation required by the Owner or Owner's consultant as to his or her capability to complete the Work. The Post-Bid/Pre-Award Checklist and the Qualifications Statement may require submittal of additional documentation. PLEASE REVIEW THE CHECKLISTS PROVIDED AT THE END OF THIS SECTION 00100.

To assist the Owner in evaluating the Bidder's responsibility, the lowest responsive Bidder is required to complete and submit the "Qualification and Financial Disclosure Statement" found at the end of Section 00100 within five calendar days of the consulting Engineer's request. The Engineer will submit this document and any additional information received as requested by the consulting Engineer, to the Owner as an attachment to his or her Recommendation of Award.

The Checklists found at the back of this Section are provided to assist the Bidder in fulfilling these requirements.

The Purchasing Department will evaluate the responsiveness of the Bidder's submittal. Purchasing Agent will forward the bids and results of the Purchasing Department's evaluation to the consulting Engineer for further evaluation of responsiveness, qualifications of the Bidder and other related conditions of this Bid. Engineer will forward the results of the evaluation to the Owner in writing. Owner will review Engineer's evaluation and present its recommendation to the Public Service Board for award.

Bidder is required to submit information regarding his or her status as a "RESIDENT" or "NONRESIDENT" as shown on the spaces provided in the bid form.

A "Nonresident Bidder" will not be awarded the Contract if the state of his or her principal place of business assesses a penalty against out-of-state bidders unless his or her bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's

principal place of business is located.

The terms "Texas Resident Bidder" and "Nonresident Bidder" shall the meanings set forth for those terms in Chapter 2252 of the Texas Government Code.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE *(Revised 3/18/96, 4/21/97, 1/18/10, 1/12/11, 4/13, 10/16/20)*

4.1 It is the responsibility of each Bidder, before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, and to determine the character of equipment and facilities needed preliminary to and during the prosecution of the Work, (c) consider federal, state and local laws and regulations that may affect cost progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify Engineer of all conflicts, errors, or discrepancies in the Contract Documents.

When information as to soil conditions, test borings, and existing underground and overhead utility locations is shown on the Plans, Specifications, Drawings, or in preliminary reports prepared by the Engineer or under the Engineer's direction, such information was obtained for the Owner. The correctness of such information is not guaranteed by the Owner or by the Engineer and in no event shall be considered as a part of the contract, an inducement to bidding, or a factor for computation of bids. If such information is used by the Bidder in preparing a bid, the Bidder must assume all risks that conditions encountered in performing the Work may be different from the approximation shown. Owner hereby grants reasonable access to Bidder and/or his employees or contractors to examine the work site over which Owner has ownership or control.

4.2 Reference is made to the Supplementary General Conditions for identification of:

4.2.1 Those reports of explorations and tests of subsurface conditions at the site which have been utilized by Engineer in preparation of the Contract Documents.

4.2.2 Those drawings of physical conditions in or relating to existing surface and subsurface conditions (except Underground Facilities) which are at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents.

Copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents. Technical data has been identified and established in the Supplementary General Conditions.

4.2.3 See SC 18.13. Those certain dewatering issues, procedures, payment terms, submittal requirements, and close out terms which are the responsibility of the Bidder and which may impact Bidder's pricing of this Bid.

4.3 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner does not assume responsibility for the accuracy or completeness thereof.

4.4 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in Paragraphs 5.03 and 5.04 of the General Conditions, and as may be amended in the Supplementary General Conditions.

4.5 Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

4.6 Each Bidder will be required to get permission from property owners to obtain access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition and to the satisfaction of the Engineer, upon completion of such explorations. Owner hereby grants reasonable access to Bidder and/or his employees or contractors to examine the work site over which Owner has ownership or control.

4.7 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 or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

4.8 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey to Bidder the understanding of all terms and conditions for performance and furnishing of the Work.

5. INTERPRETATIONS AND ADDENDA *(Revised 10/16/20)*

5.1 Pursuant to the Cone of Silence policy, all questions about the meaning or intent of the Contract Documents are to be directed to the Purchasing/Contracts Department *(see Purchasing Contacts on EPWU website: https://www.epwater.org/business_center/purchasing_overview/bids/construction).* Interpretations or clarifications considered necessary by EPWU staff, Engineer, or Consultant in response to such questions will be issued by Addenda and will be posted on the EPWU website. Bidder will be responsible to check the website regularly for any addenda or additional information for the project. Questions received less than seven (7) days prior to the date for opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications, either by EPWU staff, Engineer, or Consultant will be without legal effect.

5.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer, with Owner’s approval.

6. BID SECURITY *(Revised 10/12/92, 2/25/93, 1/10/95, 5/22/95, 1/18/10, 7/13, 1/17/19, 10/16/20)*

6.1 Each Bid must be accompanied by an original and notarized Bid security made payable to Owner in an amount of five percent of the Bidder's maximum Bid price and in the form of a certified or cashier's check or a Bid Bond issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions and Paragraph 6.01 of the Supplementary General Conditions.

6.2 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security and insurance, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security, insurance and other required contract documents within ten days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. 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 day after the Effective Date of the Agreement or the forty-sixth 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 days after the Bid opening.

The Bidder agrees by signing this Bid that he fully understands the requirements of the bid documents.

An incentive payment is available in the amount of $100 per day, up to a maximum of $300, for the Bidder's successful efforts in expediting delivery of fully compliant documents in a time period shorter than the 10-day maximum called out in the Notice of Award.

Should the Bidder fail to return the Agreements, acceptable Bonds, Insurance Certificates and insurance policies within ten days of receipt of the documents, the Utility may charge excess costs generated by such delay at the rate of $100 for each day of delay. In the event more than two reviews of insurance submittals are required by the Utility's Risk Manager, the Successful Bidder will additionally reimburse the Utility for those costs at the rate of $150 per hour which will apply to each fifteen minute fraction thereof charged by the Risk Manager. These reimbursed costs will be deducted from the Bidders first Application for Payment or, in the event a Bid Bond is forfeited, such expenses may be reimbursed from the proceeds of the Bid Bond as part of the excess costs or re-procurement.

7. CONTRACT TIME

The number of Calendar Days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Time) are set forth in the Agreement. Completion within this time is of the essence in the performance of this contract.

8. LIQUIDATED DAMAGES *(Revised 3/18/96, 10/16/20)*

Provisions for liquidated damages, if any, are set forth in the Agreement and in the Supplementary General Conditions SC11.11.

9. SUBSTITUTE OR "OR EQUAL" ITEMS

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or equal" item of material or equipment may be furnished or used by Contractor is acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the date of the Notice to Proceed. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 7.05 and 7.06 of the General Conditions and may be supplemented in the General Requirements.

10. SUBCONTRACTORS, SUPPLIERS AND OTHERS *(Revised 10/12/92, 9/9/96, 12/10/97, 12/17/99, 7/13, 10/16/20)*

10.1 The Bidder is required to identify all Subcontractors and Suppliers; to provide the value of each proposed subcontract or purchase order; and to report their own and their subcontractor's business classification (Small Locally-Owned Business Enterprise, Minority Business Enterprise, Woman-Owned Business Enterprise, or Other). The Bidder shall submit with his or her Bid a list of all proposed Subcontractors and Suppliers. Space for this submittal is provided within the Bid Form, Section 00300. Use additional sheets as necessary. The Bidder is required to submit the MWBE Certification and Participation Summary Form with his or her Bid. If requested by Engineer or by Owner, Bidder shall provide an experience statement with pertinent information regarding similar projects and other evidence of qualifications for each such Subcontractor, Supplier, person, or organization. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, either Owner or Engineer may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute, in which case the apparent Successful Bidder shall submit an acceptable substitute, that Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution and Owner may consider such price adjustment in evaluating Bids and making the Contract Award.

10.2 No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

10.3 The Bidder shall submit a Final Report of total payments made to each subcontractor and supplier, as part of the required close out documents.

This submittal shall be made as a condition precedent to Final Payment.

11. BID FORM *(Revised 10/16/20)*

11.1 The Bid Form is included with the Bidding Documents.

11.2 All blanks on the Bid Form must be completed in ink. Bids which do not have all blanks filled in or completed may be rejected at the Owner's option by Owner or Purchasing Agent.

11.3 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 if any must be affixed and officer’s signature must be attested by the secretary or an assistant secretary. The corporate address, state of incorporation, and state of principal place of business must be shown below the signature.

11.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title and authority to sign must appear under the signature and the official address of the partnership must be shown below the signature.

11.5 All names must be printed below the signature.

11.6 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

11.7 The address and telephone number for communications with Bidder regarding the Bid must be shown.

12. SUBMISSION OF BIDS *(Revised 10/16/20)*

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid 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 the 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. The Bid packet shall include one original, three copies and an electronic version of the bid, containing a full copy of the full bid package submitted (e.g., saved on a USB drive or compact disk). Any questions or clarifications pertaining to the bid documents, requirements, specifications, or terms and conditions of the bid or contract documents should be addressed via the Addendum process described above in Section 5. Any extraneous documentation, letters, explanations, limitations, commentary, conditions, or the like submitted with a Bid will ***NOT*** be considered or incorporated as the basis of any award. Bidder agrees to be held solely to the terms and conditions of these Bid documents; General and Supplementary Conditions (as may be amended from time to time); and any other documents identified by EPWU.

13. MODIFICATION AND WITHDRAWAL OF BIDS

13.1 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.

13.2 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 the mistake is clerical; that the mistake is so serious that enforcement of the Bid would be unconscionable; and that the mistake has occurred despite the exercise of ordinary care; 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.

14. OPENING OF BIDS

Bids will be opened and (unless obviously nonresponsive) read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

15. BIDS TO REMAIN SUBJECT TO ACCEPTANCE *(Revised 12/10/97, 1/18/10, 7/13, 10/16/20)*

All Bids will remain subject to acceptance for a minimum of 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. In the case of State, Federal, or NADBank-funded projects, all Bids will remain subject to acceptance for 90 days or such reasonable time as the funding agency may require.

16. AWARD OF CONTRACT *(Revised 3/18/96, 12/10/97, 10/9/98, 1/18/10, 10/16/20)*

16.1 Owner reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work and the right to disregard all immaterial, nonconforming, nonresponsive, unbalanced, or conditional Bids. Also, Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to the Bidder, whether because the Bid is not responsive or the Bidder is not responsible because the Bidder is deemed to be unqualified or of doubtful financial ability or fails to meet any

other pertinent criteria established by Owner under Paragraph 3 hereof. Discrepancies in 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. Any bids submitted in which there is a material failure to comply with the Bid requirements or specifications will be rejected and the contract will be awarded to the lowest responsible Bidder conforming to the specifications unless the Owner decides to reject all Bids.

16.2 In evaluating Bids, Owner will consider the responsiveness of the Bid, responsibility of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

16.3 Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary General Conditions or other sections of this bid document. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award or as a substitute.

16.4 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 within the prescribed time.

16.5 If the contract is to be awarded, it will be awarded to the lowest Bidder whose responsibility has been evaluated in accordance with these Instructions to Bidders.

16.6 If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 90 days after the day of the Bid opening. In the case of State or Federally-funded projects, Owner will give the Successful Bidder a Notice of Award within 90 days after the day of the Bid opening, or such reasonable time as the funding agency may require.

17. CONTRACT SECURITY *(Revised 9/17/93; 3/18/96, 7/13, 10/16/20)*

Paragraph 6.01 of the General Conditions and the Supplementary General Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required Performance and Payment Bonds and the Certificate of Insurance and insurance policies. A Payment Bond must be provided for contracts $25,000.00 or greater in value. If the contract requires an expenditure of less than $100,000, the Owner reserves the right to waive the requirement for a Performance Bond, provided that payment is not due to the Contractor until the Work is completed and accepted by the Owner. Any provision in any bond furnished in attempted compliance with House Bill No. 31 that expands or restricts the rights or liabilities provided under this Act shall be disregarded and the provisions of this Act shall be read into that Bond.

18. 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 ten days after, Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds and a copy of the Certificate of Insurance along with a copy or copies of the actual Insurance policy or policies. Owner shall deliver fully

signed final contract to Contractor when all pre-construction contract requirements have been met.

19. PRE-BID CONFERENCE *(Revised 10/16/20)*

A pre-bid conference will be held at 10 a.m., local time, on the 16th day of November, 2022 virtually using Microsoft Teams software. The link for the meeting will be posted on the EPWU website. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. Owner will publish on the EPWU website such Addenda as Engineer considers necessary in response to questions arising at the conference.

20. SALES AND USE TAXES *(Revised 3/18/96, 4/13)*

Owner is exempt from Municipal and State Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to Supplementary General Conditions SC-6.10.B for additional information.

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

Bidder: _____

Street Address: _____ City/State/Zip: _____

Phone: _____ Email Address: _____

1. ORGANIZATION

1.1. How many years has your organization been in business as a Contractor? _____ years

1.2. How many years has your organization been in business? _____ years

1.3. Under what former names has your organization operated? _____

_____

1.4. If your organization is controlled or substantially owned by another organization, identify that organization and explain the relationship.

_____

_____

1.5. If your organization is a corporation, answer the following:

1.5.1. Date of incorporation: _____ State of incorporation: _____

1.5.2. President's name: _____

1.5.3. Vice-presidents' names: _____

1.5.4. Secretary's name: _____

1.5.5. Treasurer's name: _____

1.6. If your organization is a partnership, answer the following:

1.6.1. Date of organization: _____

1.6.2. Type of partnership (if applicable): _____

1.6.3. Name(s) of partner(s): _____ _____

1.7. If your organization is an individually owned sole proprietorship, answer the following:

1.7.1. Date of organization: _____

1.7.2. Name of owner: _____

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

2. LICENSING

2.1. List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable. _____

_____

_____

2.2. Indicate name, license number and expiration date for the Master Electrician who will supervise electrical work. _____

_____

2.3. List jurisdictions in which your organization's partnership or trade name is filed. _____

_____

3. EXPERIENCE *(revised 3/18/96, 9/9/96, 12/10/97, 10/9/98, 7/13, 02/20/21)*

3.1. Years of experience in the construction of waterworks projects? _____ years

3.2. List the categories of work that your organization normally performs with its own forces. _____

_____

_____

3.3. Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

3.3.1. Has your organization ever failed to complete any work awarded to it? ☐ Yes ☐ No

3.3.2. Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or its officers? ☐ Yes ☐ No

3.3.3. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? ☐ Yes ☐ No

3.3.4. Within the last five years, has any officer or principal of your organization been an officer or principal of another organization when it failed to complete a construction contract? ☐ Yes ☐ No

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

4. CURRENT WORK

List the five largest construction projects your organization has in progress based on amount remaining to be invoiced.

Name of Project #1: _____ Location: _____

Project Manager: _____ Project Superintendent: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Remaining to be Billed: $_____

Name of Project #2: _____ Location: _____

Project Manager: _____ Project Superintendent: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Remaining to be Billed: $_____

Name of Project #3: _____ Location: _____

Project Manager: _____ Project Superintendent: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Remaining to be Billed: $_____

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

Name of Project #4: _____ Location: _____

Project Manager: _____ Project Superintendent: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Remaining to be Billed: $_____

Name of Project #5: _____ Location: _____

Project Manager: _____ Project Superintendent: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Remaining to be Billed: $_____

Sum total of the contract amounts for all work under currently contract: $_____

Total of the amount invoiced to date for the above contracts: $_____

Subtract to determine current backlog for the above contracts: $_____

State annual amount of construction work performed each year during the past five years:

2017: $_____ 2018: $_____

2019: $_____ 2020: $_____

2021: $_____

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

5. WASTEWATER TREATMENT PROJECT EXPERIENCE

The Bidder must have successfully completed at least at least one municipal wastewater treatment project similar in nature and scope to this Project and a wastewater works project which had a dollar value of at least one-half of the Total Bid Price for this Project. The same project may be used to satisfy both requirements.

List one (1) municipal wastewater treatment project Bidder has constructed as a prime contractor for water utility owners.

Name of Project #1: _____ Location: _____

Project Manager: _____ Project Superintendent: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Year Completed: _____ Complete on time? ☐ Yes ☐ No

Wastewater treatment unit process: _____

SCADA system? ☐ Yes ☐ No

Wastewater treatment facility remained in service until the new Project was installed? ☐ Yes ☐ No

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

6. MWBE CERTIFICATION

Attach the MWBE Certification Summary Form found at the end of Section 00300.

7. REFERENCES

7.1. Trade References:

7.1.1. Name: _____

7.1.2. Name: _____

7.2. Bank Reference:

7.2.1. Name: _____

7.2.2. Name: _____

7.3. Surety (Bonding Company):

Name: _____

Address: _____

Agent: _____ Telephone number: _____

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

8. FINANCIAL INFORMATION

8.1. Attach a CPA-prepared financial statement, preferably audited, for the fiscal year end immediately preceding the date set for Bid opening. The pages should be numbered sequentially. The financial statement should include a balance sheet, income statement, and statement of cash flows. Include auditor's statements and notes, if any.

8.2. Provide the following values from the financial statement. Indicate the page number on the financial statement which is the source of each value.

Financial Term	Amount	Page of Financial Statement
Working Capital	$	
Retained Earnings	$	
Earnings Before Interest and Taxes (EBIT)	$	
Market Value	$	
Book Value	$	
Sales	$	
Total Assets	$	

8.3. CPA's contact information:

Firm Name: _____

CPA's Name: _____

Address: _____

Email: _____ Telephone number: _____

8.4. Is the attached financial statement for the identical organization named on page one?
☐ Yes ☐ No

8.5. If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary). Also explain if organization whose financial statement is attached act as guarantor of the contract for construction.

_____

_____

_____

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

9. KEY PERSONNEL

9.1. Project Manager's Name: _____

Number of years full-time employment by Bidder: _____

Number of years as Project Manager [cumulative years for all employers]: _____

The Project Manager must have served as the Project Manager on a municipal wastewater treatment project while maintaining process operation, and a SCADA system. Identify the project(s) that Bidder uses to satisfy this requirement.

Name of Project #1: _____ Location: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Year Completed: _____ Complete on time? ☐ Yes ☐ No

Wastewater treatment unit process: _____

Wastewater treatment facility remained in service until the new Project was installed? ☐ Yes ☐ No

SCADA system? ☐ Yes ☐ No

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

9.2. Project Superintendent's Name: _____

Number of years full-time employment by Bidder: _____

Number of years as Project Superintendent for prior employers: _____

The Project Superintendent must have served as the Project Superintendent on a municipal wastewater treatment project while maintaining process operation, and a SCADA system. Identify the project(s) that Bidder uses to satisfy this requirement. Two projects will be scored, so it is in the Bidder's best interest to list two projects.

Name of Project #1: _____ Location: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Year Completed: _____ Complete on time? ☐ Yes ☐ No

Wastewater treatment unit process: _____

Wastewater treatment facility remained in service until the new Project was installed? ☐ Yes ☐ No

SCADA system? ☐ Yes ☐ No

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

9.3. System Integrator's Name: _____

Number of years' experience as System Integrator: _____

The System Integrator must have served as the System Integrator for the construction of on a municipal wastewater treatment project while maintaining process operation, and a SCADA system. The project must have included controls and instrumentation (specifically including SCADA integration equipment). Identify the project that Bidder uses to satisfy this requirement.

Name of Project: _____ Location: _____

Owner: _____

Owner Point-of-Contact: _____ Phone: _____

A/E: _____

A/E Point-of-Contact: _____ Phone: _____

Contract Amount: $_____ Year Completed: _____ Complete on time? ☐ Yes ☐ No

Wastewater treatment unit process: _____

Wastewater treatment facility remained in service until the new Project was installed? ☐ Yes ☐ No

SCADA system? ☐ Yes ☐ No

QUALIFICATION AND FINANCIAL DISCLOSURE STATEMENT

BID CHECKLIST (packet should be submitted unbound and unstapled)	
Section 00100/00300	1. MANDATORY: Signed Bid Form with all blanks filled in, including acknowledgement of any issued addenda and names of all Subcontractors and Suppliers.
Section 00100/00300	2. MANDATORY: Original and Notarized Bid Security or Bond
Section 00100/00300	3. MANDATORY: Certificate of Insurance Availability
Section 00100/00300	4. MANDATORY: Names and categories (SMLB, MBE OR WBE) of all Subcontractors and Suppliers with SMLB, MBE OR WBE certifications
Section 00100/00300	5. MANDATORY: Evidence of Good Faith Efforts if Minority Participation Goals are not met
Section 00100/00300	6. MANDATORY: Texas Ethics Commission requirement, "Certificate of Interested Parties", Form 1295 – Contractor must have registered/completed on-line application
Section 00100/00300	7. MANDATORY: Safety Record (Qualifying Projects only)
Section 00100/00300	8. MANDATORY: Statement of Residency
Section 00100/00300	9. MANDATORY: Statement of Non-Divestment from Israel
Section 00100/00300	10. MANDATORY: Resume of Key Employees
	11. OPTIONAL: Electronic version of the bid, containing a copy of the full bid package submitted, (saved on a USB or Compact Disk)
	12. Provide one original and three copies of bid submitted

POST-BID/PRE-AWARD CHECKLIST	
Section 00100/00810	1. MANDATORY: Evidence of Worker's Compensation Insurance Coverage: a Certificate of Insurance or Form DWC-81, DWC-82, DWC-83, DWC-84, DWC-85 or if self-insured, a coverage agreement filed with the Texas Worker's Compensation Commission's Division of Self Insurance Regulation.
Section 00100/00810	2. MANDATORY: If employees provided by leasing company, evidence of Texas State License and copy of their Worker's Compensation policy. If no leased employees will be used, provide a letter on Contractor's letterhead stating so.
Section 00100/00300	3. MANDATORY: Financial Statements
Section 00100/00300	5. MANDATORY: Qualification Statement and Qualifications of Key Personnel (included in Section 00100)
Section 00100/00300	6. MANDATORY: Updated Minority Certification And Participation Summary

SECTION 00300

BID FORM

PROJECT IDENTIFICATION: El Paso Water Utilities

Haskell R. Street WWTP Fats, Oils and Grease Receiving Station Improvements

BID NO.: 93-22

Name and Address of OWNER:
El Paso Water Utilities
Public Service Board
1154 Hawkins Boulevard
P. O. Box 511
El Paso, Texas 79961

Name and Address of BIDDER:
_____
_____
_____
_____
_____

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for ninety days after the day of Bid opening. In the case of State, Federal, or NADBank-funded projects, all Bids will remain subject to acceptance for 90 days or such reasonable time as the funding agency may require. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within ten days after the date of OWNER's Notice of Award.

3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:

   A. BIDDER has examined copies of all the Bidding Documents and of the following Addenda **(receipt of all which is hereby acknowledged)**:

Date	Number

B. BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

C. BIDDER has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 5.03 of the General Conditions, and accepts the determination set forth in Paragraph SC-5.03 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings.

D. BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies (in addition to or to supplement those referred to in "C." above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 5.03 of the General Conditions.

E. BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities.

F. BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.

G. BIDDER has given ENGINEER written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER.

H. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

I. All prices quotes by the bidder shall be entirely in United States Currency (U.S. Dollars).

4. Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

********** HIGH IMPORTANCE **********

TEXAS ETHICS COMMISSION
REQUIREMENT

*****IN THE EVENT YOU RECEIVE AN AWARD OF THIS CONTRACT*****

Reference: FORM 1295 (revised 12/22/17) "Certificate of Interested Parties"

A business entity must file Form 1295 electronically with the Texas Ethics Commission using the Commission's online filing application, which can be found at:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

SEE INSTRUCTIONS: Form 1295 and Sample Form 1295 (Section 00302)

Item No.	Estimated Quantity	UOM	Brief Description of Item	Unit Bid Price	Extended Amount (Qty. x Unit Price)
1.	1	L.S.	Insurance, Bonds, and Move-In Related Expenses, Not to Exceed 5% of Bid Item No. 2 through 15. (If Item No. 1 exceeds 5%, bid may be deemed non-responsive).	$ _____	$ _____
2.	1	L.S.	Demolition of existing concrete pad and CMU wall, curb, asphalt (including basecourse), excavation, underground utility relocations. Complete in place.	$ _____	$ _____
3.	1	L.S.	Furnish and install new 4-inch PVC drain system including 2 floor drains within proposed FOG Station, trench drain, and sewer manhole tie-in. Complete in place.	$ _____	$ _____
4.	1	L.S.	Furnish and install new concrete foundation and pad, tank anchor system including footer, wall, slab, all coatings, four pump support trust blocks, rock trap and inline grinder support trust blocks, asphalt pavement (including basecourse), curb, bollards, and trench drain. Complete in place.	$ _____	$ _____
5.	1	L.S.	Furnish and install 4-inch stainless steel pipe, fittings, flanges, quick connect, hose bib, flushing points, pipe supports, and tie-in to existing Sludge Mixing Well as shown on drawings. Complete in Place	$ _____	$ _____
6.	17	EACH	Furnish and install stainless steel knife gate valves. Complete in place.	$ _____	$ _____
7.	5	EACH	Furnish and install stainless steel check valves. Complete in place.	$ _____	$ _____
8.	1	L.S.	Furnish and install breathing valve, carbon canister, 6-inch CPVC piping, relief valve, 6-inch stainless steel flame arrester and support, flanged tee and fittings, tank custom cover, Complete in place.	$ _____	$ _____

9.	1	L.S.	Furnish and install Davit crane, rock trap, and inline grinder and all other mechanical appurtenances for a complete in place.	**$**_____	**$**_____
10.	4	EA.	Furnish and install mixing/metering pump, Complete in Place.	**$**_____	**$**_____
11.		EA.	Furnish and install 3" and 4 " Corious flowmeters, Complete in Place.	**$**_____	**$**_____
12.	1	L.S.	Furnish and install all electrical upgrades, conduit, cabling, terminations, and control paneling required for a complete the Installation of the proposed FOG Station.	**$**_____	**$**_____
13.	1	L.S.	Furnish and install all instrumentation and control upgrades for a complete in place integration of proposed FOG Station, including tank level, metering pumps, VFDs, flowmeter with existing SCADA system.	**$**_____	**$**_____
14.	1	L.S.	Provide startup, testing, and training services by the individual manufacturers factory representatives to verify proper installation of all FOG Station equipment including controls and system operation.	**$**_____	**$**_____
15.	2	EA.	Pre-and Post-Construction Site – project corridor video recording.	**$**_____	**$**_____

TOTAL BID PRICE (BID ITEMS NO. 1 THROUGH 15) $ _____

Quantities are not guaranteed.

If multiple awards are contemplated under a single bid document, an additional breakdown of bid amounts, subcontractors, and suppliers is required. It will also be necessary to adjust the MWBE Certification and Participation Summary Form accordingly.

In accordance with Section 151.311 of the Texas Tax Code (V.A.T.C.S.), regarding taxes on materials and services, and requiring a separated contract, the following is the breakdown of cost for materials and cost for labor for this bid:

MATERIALS TO BE INCORPORATED IN PROJECT NOT SUBJECT TO SALES TAX: $_____

LABOR TO BE INCORPORATED IN PROJECT NOT SUBJECT TO SALES TAX: $_____

RENTAL EQUIPMENT AND OTHER TAXABLE ITEMS: **$_____**

OTHER (I.E. BONDS, INSURANCE, CAPITAL EQUIPMENT, ETC.) **$_____**

***TOTAL CONTRACT:** **$_____**
***(TOTAL MUST EQUAL TOTAL BID PRICE)**

5. BIDDER agrees that the Work will be Substantially completed within 395 Calendar Days from the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions, and as revised in Supplementary Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions, and as revised in the Supplementary Conditions, within 425 calendar days. Final completion includes CONTRACTOR'S resolution of all punch list items and CONTRACTOR'S submission of required close-out documentation. Any failure of the CONTRACTOR to complete the project within the contract time will be considered a material breach of this contract.

   BIDDER accepts the provisions of the Supplementary Conditions and the Agreement as to liquidated damages in the event of failure to complete the Work on time.

6. BIDDER MUST ANSWER THE FOLLOWING QUESTIONS: (Refer to INSTRUCTIONS TO BIDDERS for definitions.)

   A. Is the bidder that is making and submitting this bid a "RESIDENT BIDDER" or a "NONRESIDENT BIDDER"?

      Answer: _____

   B. If the bidder is a "NONRESIDENT BIDDER", does the state in which the Nonresident Bidder's principal place of business is located have a law requiring a Nonresident Bidder of that state to bid a certain amount of percentage under the bid or a Resident Bidder of that state in order for the nonresident bidder of that state to be awarded a contract on his or her bid in such state?

      Answer: _____

   C. If the answer to the question in Paragraph 6B above is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid of a Resident Bidder of that state in order to be awarded a contract on such bid in said state?

      Answer: _____

7. The following documents are attached to and made a condition of this Bid:

   A. Required Bid Security in the form of _____

      _____

   B. A tabulation of all Subcontractors who will provide labor at the site of the work or render

services to the CONTRACTOR in or about the construction of the work and Suppliers and other persons and organizations is required to be identified in this Bid. Complete the following table, designating each as Small Locally-Owned Business Enterprise (SLBE), Minority Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), Small Business Enterprise (SBE), Small Business in Rural Areas (SBRA), or Other (not either SLBE, WBE MBE, SBE or SBRA) is required. Only one category may be checked. Include the work item and value of work to be provided by the Prime Contractor, as well as its category.

Tabulation of Subcontractors and Suppliers

SUBCONTRACTOR/SUPPLIER	WORK ITEM	SUBCONTRACT OR PURCHASE ORDER VALUE (If value is unknown, please list *Pending*)	SLBE	MBE	WBE	SBE	SBRA	OTHER
			Please check one box					
Prime Contractor:								

C. Will the Contractor meet the Small Locally Owned Business Enterprise, Minority Business Enterprise and Women-Owned Business Enterprise goals as required by these contract documents and the funding agencies?

YES _____ NO _____

If "YES", include above each of the firms to be used, their business status as a SLBE, MBE, or WBE, the proposed dollar value and type of work to be performed.

If "NO", documentation supporting good faith effort is required.

8. Communications concerning this Bid shall be addressed to the following named individual, address, telephone number, facsimile number, and e-mail address:

Name: _____

Address: _____

_____

Phone: _____ Fax: _____ E-mail: _____

9. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

SUBMITTED on _____, 20__.

If BIDDER is:

An Individual

By _____(SEAL)
(Name of Bidder)

_____
(Title) (Signature)

doing business as _____

Business Address: _____

_____

Phone No.: _____

A Partnership

By _____(SEAL)
(Firm Name)

_____
(Signature - general partner)

Business Address: _____

Phone No.: _____

A Corporation *(Revised 10/12/92, 1/7/93, 4/13, 3/1/22)*

By _____
(Corporation Name)

_____
(State of Incorporation and State of Principal Place of Business)

By _____
(Name of Person Authorized to Sign)

_____
(Title) (Signature)

(Corporate Seal)

Attest _____
(Secretary)

Business Address: _____

_____

Phone No.: _____

Federal Tax Identification Number: _____

When proposing as a Corporation, Bidder swears and affirms by signing this Bid that the proposing Corporation is currently in existence, is currently authorized to do business in the State of Texas (or State of incorporation) and that no franchise tax reports or payments are delinquent as of the date of this Bid Proposal. The Bidder will provide a Certificate of Account Status with the signed Contract Documents. See Section 00510, for the sample form which is to be obtained by the successful Contractor from the Texas (or other state) Comptroller of Public Accounts and submitted as part of the final, executed Contract Documents.

CERTIFICATION OF INSURANCE AVAILABILITY

Date _____

I, _____ (Name of Insurance Agent), certify that I have reviewed the insurance requirements listed in Article 5 of the Supplementary Conditions of the specifications for the HASKELL R. WWTP FOG RECEIVING STATION IMPROVEMENTS, Bid No. 93-22, and further certify that _____ (Name of Bidder) has or can obtain the insurance coverage required by this Project so that a certificate of insurance and a copy(s) for the actual insurance policies can be submitted to the Owner within ten (10) days of the Notice of Award.

Signed _____

Title _____

Insurance Agency _____

Address _____

Telephone _____

MINORITY CERTIFICATION
AND
PARTICIPATION SUMMARY

(EPWU CIP FUNDED PROJECTS)

BID NUMBER: 93-22

BID TITLE: HASKELL R. WWTP FOG RECEIVING STATION IMPROVEMENTS

I certify that the Small Locally-Owned Businesses (SLBE), Minority (MBE) and Women's Business Enterprises (WBE) participating in this project are qualified in accordance with the Minority requirements included in the above listed Bid Documents and that we will ensure all consultants, contractors, suppliers, and subcontractors will comply with the Minority guidelines. Definitions of each category are found in the 00100, Instructions to Bidders Section. Attached are:

Solicitation Documents: _____ Proposed Subcontracts for the below listed firms: _____

SLBE, MBE, or WBE FIRM NAME	ADDRESS	PHONE	CONTRACT AMOUNT	SLBE	MBE	WBE

The attached documents outline the Good Faith Effort taken in complying with the Minority Guidelines.

_____ _____

CONTRACTOR SIGNATURE OF AUTHORIZED REPRESENTATIVE

_____ _____

DATE PRINTED NAME OF AUTHORIZED REPRESENTATIVE

MINORITY CERTIFICATION
AND
PARTICIPATION SUMMARY

(TWDB FUNDED PROJECTS)

BID NUMBER: 93-22

BID TITLE: HASKELL R. WWTP FOG RECEIVING STATION IMPROVEMENTS

I certify that the Minority (MBE) and Women's Business Enterprises (WBE), Small Business Enterprises (SBE), and Small Business in Rural Area (SBRA) participating in this project are qualified in accordance with the Minority requirements included in the above listed Bid Documents and that we will ensure all consultants, contractors, suppliers, and subcontractors will comply with the Minority guidelines. Definitions of each category are found in the 00100, Instructions to Bidders Section. Attached are:

Solicitation Documents: _____ Proposed Subcontracts for the below listed firms: _____

MBE, WBE, SBE or SBRA FIRM NAME	ADDRESS	PHONE	CONTRACT AMOUNT	MBE	WBE	SBE	SBRA

The attached documents outline the Good Faith effort taken in complying with the Minority Guidelines.

_____ _____

CONTRACTOR SIGNATURE OF AUTHORIZED REPRESENTATIVE

_____ _____

DATE PRINTED NAME OF AUTHORIZED REPRESENTATIVE

CONTRACTOR PRE-QUALIFICATION FORM

EPWater requires any contractor who will work on EPWater Qualifying Projects, as well as subcontractors performing 20% of the work on a Qualifying Project, to demonstrate their ability to work safely. A Qualifying Project is a project with a value greater than $100,000 or one that the Chief Technical Officer and Vice President of Operations and Technical Services determine poses a significant hazard. This procedure allows EPWater to identify contractors that can perform site activities without compromising the safety or health of EPWater personnel.

Any contractor wishing to perform work on any Qualifying Project must complete this form and return with the bid package.

The information contained on this form will be evaluated and considered as a part of the overall selection process. Contractors who do not complete and submit this form will be considered non-responsive for any work they propose.

As part of this process, Contractors must certify that its employees have, or will have, appropriate training on the following subjects:

- Basic health and safety issues,
- the Contractor's health and safety programs, and
- the methods and techniques the Contractor will use on the project,
- Procedures for Contractor entrance into and exit from the area of work, and
- Informing EPWater about any unique hazards presented by the Contractor's work or found as a result of the Contractor's work.

Although EPWater will not ask for training documentation on each employee, EPWater requires that this documentation be available within twenty-four hours of request.

CONTRACTOR PRE-QUALIFICATION FORM

1.0 Company Name: _____

Address of Principal Place of Business: _____

Street: _____

City, State, Zip: _____

Telephone Number: _____

E-Mail: _____

2.0 Other Company Names Used: _____

3.0 Name(s) and Relationships of Parent Company, Affiliates, Subsidiaries, Partners:

Company: _____

Address: _____

City, State, Zip: _____

Relationship: _____

Company: _____

Address: _____

City, State, Zip: _____

Relationship: _____

4.0 Has the ownership in your company changed within the last three years? If so, please indicate who the previous owner was in the space below.

YES _____ NO _____

_____

_____

_____

_____

5.0 Please attach certificates showing the extent of coverage, exclusions, and deductibles for the following:

- General Business Liability Insurance Coverage
- Contractors Pollution Liability Insurance Coverage
- Professional Liability Insurance (limits and exclusions)
- Workers' Compensation Insurance Coverage

5.1 How long have you been covered by your current provider of Worker Compensation Insurance?

_____

CONTRACTOR PRE-QUALIFICATION FORM

6.0 Please transfer the numbers and rates of injuries and illnesses from your firm's OSHA No. 300 Logs to the table below:

Injuries & Illnesses in Year:	2019		2020		2021	
Type of Injury Statistic	#	Rate	#	Rate	#	Rate
Lost Workday Cases						
Restricted Workday Cases						
Medical Treatment (not First Aid) Cases						
Total Illness Cases						
Total Recordable Cases						
Employee Hours Worked in Year:						

6.1 List any fatalities your company has had in the last three calendar years (January-December). Include location, cause, and corrective action.

_____
_____
_____
_____
_____

7.0 Do you require that documented safety meetings be held for:

a. Field Supervisor? Yes_____No_____Frequency _____
b. Employees? Yes_____No_____Frequency _____
c. New Hires? Yes_____No_____Frequency _____
d. Subcontractors? Yes_____No_____Frequency _____

8.0 Will a corporate representative audit safety practices on this job?

YES_____ NO_____

8.1 Name _____ Title_____

8.2 How frequently will the representative visit the project?_____

8.3 Does the representative have the authority to take corrective action? Yes____ No____

8.4 To whom does the representative report?

Name _____ Title_____

CONTRACTOR PRE-QUALIFICATION FORM

9.0 Does the company have a health and safety plan? If yes, please give details.

_____

_____

_____

10.0 Describe the type and extent of training Contractor employees will have.

_____

_____

_____

10.1 What percentage of those employees will have this training? _____

11.0 Please give the name of the company's health and safety officer, if any.

_____

12.0 Attach a list of any State or Federal Health and Safety citations received in the past three years.

13.0 Signature of Company Officer: _____

Title: _____

Date: _____

INSTRUCTIONS – FORM 1295

*****IN THE EVENT YOU RECEIVE AN AWARD OF THIS CONTRACT*****

Effective January 1, 2016, a governmental entity may not enter into a contract requiring Board approval, unless the business entity submits a Disclosure of Interested Parties (Form 1295) prior to the convening Board awarding the contract.

The following definitions apply:

1. "Interested Party" means a person:
    a. Who has a controlling interest in a business entity with whom a governmental entity contracts, or;
    b. Who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, attorney, or representative of, or agent for, the business entity.

2. "Intermediary" means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of, or agent for, the business who:
    a. Receives compensation from the business entity for the person's participation;
    b. Communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contact, and;
    c. Is not an employee of the business entity.

3. "Business Entity" means any entity, recognized by law, through which business is conducted, including a sole proprietorship, partnership, or corporation. "Business entity includes a for-profit or non-profit entity. The term does not include a governmental entity or state agency.

4. "Contract" includes an amended, extended, or renewed contract.

5. "Controlling Interest" means:
    a. An ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise, that exceeds ten (10) percent;
    b. Membership on the board of directors or other governing body of a bustiness entity of which the board or other governing body is composed of not more than ten (10) members, or;
    c. Service as an officer of a business entity that has four (4) or fewer officers, or serve as one of the four (4) officers most highly compensated by a business entity that has more than four (4) officers.

A business entity must file Form 1295 electronically with the Texas Ethics Commission using the Commission's online filing application, which can be found at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The business entity must print a copy of the completed form, which will include a certification of filing containing a unique certification number. "Section 6 - Unsworn Declaration" of Form 1295 must be signed by an authorized agent of the business entity. The business entity must then submit the completed, signed Form 1295 to El Paso Water.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY

1 **Name of business entity filing form, and the city, state and country of the business entity's place of business.**

2 **Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

3 **Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 **Check only if there is NO Interested Party.** ☐

6 **UNSWORN DECLARATION**

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20_____.
(month) (year)

_____
Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

Must file online at www.ethics.state.tx.us/File

STATEMENT OF RESIDENCY

The following information is required by El Paso Water Utilities – Public Service Board ("EPWU") in order to comply with the provisions of Texas Government Code §§ 2252.001 *et. seq.* Failure to provide the required information may constitute a basis for rejection of your bid. Bidders' cooperation in this regard will avoid costly time delays in the award of bids by EPWU. Failure to provide all required information may result in the apparent low bidder being considered non-responsive and non-responsible, and the second low bidder being considered for award.

Definitions

Resident Bidder: a person whose principal place of business is in the State of Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.

Nonresident Bidder: a person who is not a resident.

Principal Place of Business in Texas: a permanent business office located in Texas from which a bid is submitted and from which business activities are primarily conducted for the organization other than submitting bids to governmental agencies, where at least one employee works for the business entity.

Bidder's Complete Company Name: _____

State the address of your principal place of business in the space provided below:

_____

_____

_____

State the nature of the business conducted at your principal place of business in the space provided below:

_____

_____

_____

State the number of employees you have at your principal place of business: _____

I swear and attest that the information provided above is true and correct as of the date _____ ("Bidder") submitted its bid on Bid No._____. I further attest that I am an authorized representative of Bidder or have been duly authorized to represent Bidder in this matter. I understand that the information provided is being relied on by EPWU in order for it to comply with state purchasing laws and will materially affect its decisions in this regard. Should the information provided be false or materially misleading, any contract entered into between EPWU and Bidder will be void and EPWU may pursue any legal claims it may have against Bidder.

[SIGNATURE ON NEXT PAGE]

By: _____

Name: _____

Title: _____

Company: _____

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20___, by _____, as _____ of_____, a _____.

_____

Notary Public, State of _____

My Commission Expires:

_____

STATEMENT OF NONDIVESTMENT FROM ISRAEL

The following information is required by El Paso Water Utilities – Public Service Board ("EPWater") in order to comply with the provisions of Texas Government Code §§ 2270.002.

I swear and attest that the following is true and correct as of the date _____ ("Bidder") submitted its bid on Bid No. _____: Bidder does not boycott Israel and will not boycott Israel during the term of the contract should it be awarded to Bidder. I further attest that I am an authorized representative of Bidder or have been duly authorized to represent Bidder in this matter. I understand that the information provided is being relied on by EPWater in order for it to comply with State purchasing laws and will materially affect its decisions in this regard. Should it be discovered that the statement by Bidder contained herein is false, any contract entered into between EPWater and Bidder will be void and EPWater may pursue any legal claims it may have against Bidder.

By: _____
Name: _____
Title: _____
Company: _____

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 20___, by _____, as _____ of _____, a _____.

_____

Notary Public, State of _____

My Commission Expires:

_____

ACME CONSTRUCTION

10518 Burr Oak Drive
San Antonio, Texas 78609

512-557-7089
Fax 512-557-2097

January 5, 2008

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Amazing Results Landscape and Supply Company
111 Red Rock Terrace
Lignite, Texas 72533

Gentlemen:

We are actively seeking MWBE Contractors and suppliers for work to be done under Project Number 123456, Sewer System Improvements, City of Anywhere, Texas. The work will consist of utility worm, concrete, paving, fencing, landscaping, masonry, excavation and trucking, barricades, back-hoe work and supplies and materials.

Plans and specifications may be viewed or obtained at the project engineer's general offices, Bing, Campbell and Associates, 19510 Jackson Blvd., Muleshoe, Texas 76698.

All bids must be submitted to the above mentioned address by Noon, Friday, February 16, 2008.

Sincerely,

John Q. Doe, Project Director
Acme Construction

EXAMPLE

Amazing Results
Landscaping

January 12, 2008

Mr. John Q. Doe, Project Director
Acme Construction
10518 Burr Oak Drive
San Antonio, Texas 78609

RE: PROJECT NO. 123456, ANYWHERE TEXAS SEWER SYSTEM IMPROVEMENTS PROJECT

Dear Mr. Doe:

We wish to submit the following bid for the above mentioned project:

St. Augustine sod – 900 square yards at $1.75 per square yard $1,575.00
(Includes installation, rolling, fertilizing, and days of watering)

Hydro-Mulch – 15 acres at $1,175 per acre $17,625.00
(5-acre minimum pre trip; No water; No maintenance; areas that do not germinate will be reseeded) Proper watering is the responsibility of customer.

Hay Bales – We will furnish and install at a rate of $15.00 per bale

We look forward to hearing from you concerning our bid. Thank you.

Sincerely,

Theodore T. "Red" Robbins
Manager

EXAMPLE

*** * * * A Certified MBE FIRM * * * ***

1111 Red Rock Terrace
Lignite, Texas 72533
(512) 489-5678 (800) 549-0000
(512) 489-5679 fax
www.amazingresults.com

ACME CONSTRUCTION

10518 Burr Oak Drive
San Antonio, Texas 78609

512-557-7089
Fax 512-557-2097

January 5, 2008

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Rider Excavation Services
7856 Dry Gulch
Little Indian Mound, Texas 74561

Gentlemen:

We are actively seeking MWBE Contractors and suppliers for work to be done under Project Number 123456, Sewer System Improvements, City of Anywhere, Texas. The work will consist of utility worm, concrete, paving, fencing, landscaping, masonry, excavation and trucking, barricades, back-hoe work and supplies and materials.

Plans and specifications may be viewed or obtained at the project engineer's general offices, Bing, Campbell and Associates, 19510 Jackson Blvd., Muleshoe, Texas 76698.

All bids must be submitted to the above mentioned address by Noon, Friday, February 16, 2008.

Sincerely,

John Q. Doe, Project Director
Acme Construction

EXAMPLE

Rider Excavation Services

January 8, 2008

Mr. John Q. Doe, Project director
Acme Construction
10518 Burr Oak Drive
San Antonio, Texas 78609

RE: PROJECT NO. 123456
ANYWHERE TEXAS SEWER SYSTEM IMPROVEMENTS PROJECT

Dear Mr. Doe:

Thank you for your letter of January 5, 2008 requesting bids for the Anywhere, Texas Sewer System Improvements Project. We will not be submitting a bid because we are scheduled to begin work on another project that is projected to start on approximately the same date as ours.

We appreciate the opportunity to participate in your project. Please contact us again for any future projects.

Sincerely,

Easy Rider President
Rider Excavation Services

EXAMPLE

7856 Dry Gulch
Little Indian Mound, Texas 74561
512-767-9818 ph 512-767-9800 fax

ACME CONSTRUCTION

10518 Burr Oak Drive
San Antonio, Texas 78609

512-557-7089
Fax 512-557-2097

January 5, 2008

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Shadow Paving
P. O. Box 903
Pharr, Texas 72579

Gentlemen:

We are actively seeking MWBE Contractors and suppliers for work to be done under Project Number 123456, Sewer System Improvements, City of Anywhere, Texas. The work will consist of utility worm, concrete, paving, fencing, landscaping, masonry, excavation and trucking, barricades, back-hoe work and supplies and materials.

Plans and specifications may be viewed or obtained at the project engineer's general offices, Bing, Campbell and Associates, 19510 Jackson Blvd., Muleshoe, Texas 76698.

All bids must be submitted to the above mentioned address by Noon, Friday, February 16, 2008.

Sincerely,

John Q. Doe, Project Director
Acme Construction

EXAMPLE

SHADOW PAVING

January 8, 2008

Acme Construction
John Q. Doe, Project Director
10518 Burr Oak Dr.
San Antonio, TX 78609

Dear Mr.Doe:

Thank you for your letter of January 5, 2008 requesting a bid for the paving portion of the Anywhere, Texas Sewer System Improvements Project. Because of the distance of the project from our offices, we will not be interested in submitting a bid.

We appreciate your interest in our services. Please keep us in mind for future projects that may require expertise and services.

Sincerely,

Elmer A. Paver

Office Manager, Shadow Paving

EXAMPLE

ACME CONSTRUCTION

10518 Burr Oak Drive
San Antonio, Texas 78609

512-557-7089
Fax 512-557-2097

January 5, 2008

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Construction Trades Newsletter
100 Someplace Dr.
P. O. Box 500
Anywhere, Texas 08654

Attn: Ms. Glory Everett, Editor

Dear Ms. Everett:

Please publish the following in the "Public Notices" section of your weekly newsletter on the following dates: 1/11/08; 1/18/08; 1/25/08; and 2/1/08.

"Acme Construction is soliciting subcontract and material bids in connection with the Improvements to the Sewer System for the City of Anywhere, Texas. Qualified MBE and WBE firms are encouraged to submit bids in response to this invitation. The work will consist of utility work, concrete, paving, fencing, landscaping, masonry, excavation and trucking, barricades, back-hoe work and supplies and materials. Plans and specifications may be viewed or obtained at the project engineer's general offices, Bing, Campbell and Associates, 19510 Jackson Blvd., Muleshoe, Texas 76698. Telephone No. 512-557-2091, Fax 512-557-2090. All bids must be submitted to the above mentioned address by Noon, Friday, February 16, 2008".

Please bill Acme Construction, 10518 Burr Oak Drive, San Antonio, Texas 78609. The person authorizing the placement of this ad is B. J. Tenfold. If you have any questions, you may contact Mr. Tenfold at 512-557-7000.

Sincerely,

B. J. Tenfold
Manager of Accounts

EXAMPLE

ACME CONSTRUCTION

10518 Burr Oak Drive
San Antonio, Texas 78609

512-557-7089
Fax 512-557-2097

January 5, 2008

CERTIFIED MAIL / RETURN RECEIPT REQUESTED

Anywhere Weekly Courier
1111 Main Street
P. O. Box 1
Anywhere, Texas 08654

Attn: Mr. Bucky Beaver, Circulation Manager

Dear Mr. Beaver:

Please publish the following in the "Public Notices" section of your weekly newspaper editions on the following dates: 1/11/08; 1/18/08; 1/25/08; and 2/1/08.

"Acme Construction is soliciting subcontract and material bids in connection with the Improvements to the Sewer System for the City of Anywhere, Texas. Qualified MBE and WBE firms are encouraged to submit bids in response to this invitation. The work will consist of utility work, concrete, paving, fencing, landscaping, masonry, excavation and trucking, barricades, back-hoe work and supplies and materials. Plans and specifications may be viewed or obtained at the project engineer's general offices, Bing, Campbell and Associates, 19510 Jackson Blvd., Muleshoe, Texas 76698. Telephone No. 512-557-2091, Fax 512-557-2090. All bids must be submitted to the above mentioned address by Noon, Friday, February 16, 2008".

Please bill Acme Construction, 10518 Burr Oak Drive, San Antonio, Texas 78609. The person authorizing the placement of this ad is B. J. Tenfold. If you have any questions, you may contact Mr. Tenfold at 512-557-7000.

Sincerely,

B. J. Tenfold
Manager of Accounts

EXAMPLE

THE STATE OF TEXAS }
COUNTY OF GHI }

Before me Homer Shortcut, a Notary Public in and for GHI County, Texas on this day personally appeared Bucky Beaver, Circulation Manager for Small Town Newspapers Group, Inc., publishers of the Anywhere Weekly Courier, who being by me duly sworn did depose and say that said newspaper has been published continuously for more than fifty-two weeks prior to the first insertion of this Legal Notice Number 879 at GHI County, Texas and the attached printed copy of the legal notice is a true copy of the original and was printed weekly on the following date(s): 1/11/08; 1/18/08; 1/25/08; 2/1/08.

_____
Circulation Manager
Anywhere Weekly Courier
Small Town Newspaper Group, Inc.

Appeared and sworn to before me on this
21st day of January, 2008

_____
NOTARY PUBLIC in and for the State of Texas
My Commission expires 12/28/2010

Legal Notice as Published

Acme Construction is soliciting subcontract and material bids in connection with the Improvements to the Sewer System for the City of Anywhere, Texas. Qualified MBE and WBE firms are encouraged to submit bids in response to this invitation. The work will consist of utility work, concrete, paving, fencing, landscaping, masonry, excavation and trucking, barricades, back-hoe work and supplies and materials. Plans and specifications may be viewed or obtained at the project engineer's general offices, Bing, Campbell and Associates, 19510 Jackson Blvd., Muleshoe, Texas 76698. Telephone No. 512-557-2091, Fax 512-557-2090. All bids must be submitted to the above mentioned address by Noon, Friday, February 16, 2008.

EXAMPLE

SECTION 00500

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20___ by and between El Paso Water Utilities-Public Service Board, a component unit of the City of El Paso, a Texas municipal corporation (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:

HASKELL R. WASTEWATER TREATMENT PLANT FATS, OIL & GREASE RECEIVING STATION IMPROVEMENTS

The work under this contract shall be for furnishing all labor, materials, transportation and services for the construction and installation of the following work:

> Construction of the FOG Receiving Station, which consists of all piping, equipment and connections necessary to receive pre-screened FOG material from LES, temporarily store and mix within the existing storage tank, and transfer to the facility's sludge mixing well at a determinable rate. Work includes all necessary augmentation and modifications to boost the production of digester gas and optimize the performance of the existing cogeneration system. New equipment to be installed will include an offloading nozzle, rock trap with grinder, metering pumps, offloading pumps, carbon filter, control panel, valves, and instruments shown in the drawings. New installations include stainless steel and PVC piping, electrical, I&C, water and drainage connections. Site construction will include new foundation and concrete knee wall. Work will include modifications to existing 18,000-gallon tank, tie-in to mixed sludge well and pumping station. Work will include all necessary equipment training and functional testing of all equipment and processes.

ARTICLE 2. ENGINEER

The Project has been designed by Arcadis, U.S. 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 *(Revised 9/2/92, 10/9/98, 6/3/99, 4/13, 10/16/20)*

3.1 The Work will be Substantially completed within 395 Calendar Days from the date when the Contract Time commences to run as provided in Paragraph 4.01 of the General Conditions, and as revised in Supplementary Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions, and as revised in the Supplementary Conditions, within 425 calendar days. Final completion includes CONTRACTOR'S resolution of all punch list items and CONTRACTOR'S submission of required close-out documentation. Any failure of the CONTRACTOR to complete the project within the contract time will be considered a material breach of this contract.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss and public inconvenience if the Work is not completed and the submittals are not submitted within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER the sum of two thousand, six hundred and ninety dollars ($*2,690.00*) for each Calendar Day that expires after the time specified in the Agreement for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER one thousand, six hundred and sixty dollars ($*1,660.00*) for each Calendar Day that expires after the time specified in the Agreement for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE *(Revised 10/12/92, 6/7/93; 2/13/97)*

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds, per the attached CONTRACTOR's Bid in accordance with the below listed separate charges:

MATERIALS TO BE INCORPORATED IN PROJECT NOT SUBJECT TO SALES TAX: $_____

LABOR TO BE INCORPORATED IN PROJECT NOT SUBJECT TO SALES TAX: $_____

RENTAL EQUIPMENT AND OTHER TAXABLE ITEMS: $_____

OTHER (I.E. BONDS, INSURANCE, CAPITAL EQUIPMENT, ETC.) $_____

***TOTAL CONTRACT:** $_____
*** (TOTAL MUST EQUAL TOTAL BID PRICE)**

ARTICLE 5. PAYMENT PROCEDURES *(Revised 5/14/96, 7/13, 10/16/20, 3/4/22)*

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions and Article 15 of the Supplementary Conditions. Applications for Payment will be processed by ENGINEER as provided in the General 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 for Work which is completed in accordance with the terms and conditions of the Contract Documents. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in Paragraph 2.03 and referenced in Paragraph 2.05 of the General Conditions (and in the case of Unit Price Work based on the number of units completed and accepted) or, in the event there is no schedule of values, as provided in the General Requirements. Each invoice, regardless of contract type, shall contain a summary indicating the budget, the current invoiced amount, less a withholding of a 5% retainage amount, and the billed to date figure.

Prior to Substantial Completion, progress payments will be made in an amount equal to the percentages indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall recommend, or OWNER may withhold, in accordance with Paragraph 15.06 of the General Conditions.

Ninety-five percent of Work completed (ninety percent for contracts under $400,000.00), including 95 percent of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Paragraph 15.01 of the General Conditions).

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Article 15 of the General and Supplementary Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Article.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS *(Revised 10/12/92, 7/13, 11/9/17, 10/16/20, 3/4/22)*

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

6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

6.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 5.03 of the General Conditions, and accepts the determination set forth in Paragraph SC-5.03 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings.

6.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 6.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise which may affect the

cost, progress, performance or furnishing of the Work necessary for the performance or furnishing of the Work at the Contract Price, specifically within the provisions of Paragraph 5.03 of the General Conditions. CONTRACTOR understands that the correctness of such information is not guaranteed by the OWNER or the ENGINEER and CONTRACTOR understand(s) that the conditions encountered in performing the work may be different from the approximations shown.

6.4 CONTRACTOR has reviewed all information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the location of said Underground Facilities as determined by his or her own field investigations. CONTRACTOR understands that the correctness of such information is not guaranteed by the OWNER or the ENGINEER and CONTRACTOR understand that the conditions encountered in performing the work may be different from the approximations shown.

6.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

6.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

6.7 CONTRACTOR affirms it is not a foreign-owned company that is owned or controlled by citizens of or directly controlled by the government of China, Iran, North Korea, Russia or a designated country pursuant to Chapter 2274 of the Texas Government Code. Additionally, CONTRACTOR affirms it is not a company that is headquartered in China, Iran, North Korea, Russia, or a designated country pursuant to Chapter 2274 of the Texas Government Code.

6.8 CONTRACTOR affirms it does not boycott Israel and will not boycott Israel during the term of the Agreement.

6.9 In accordance with Chapter 2274 of the Texas Government Code, CONTRACTOR affirms that it does not boycott energy companies and will not boycott energy companies during the term of the Agreement.

6.10 In accordance with Section 2274.002 of the Texas Government Code, CONTRACTOR affirms that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

ARTICLE 7. CONTRACT DOCUMENTS *(Revised 11/16/94, 1/12/11, 7/13, 11/2/16, 10/16/20, 3/4/22)*

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

7.1 CONTRACTOR's Bid (Section 00300)

7.2 Agreement (Section 00500)

7.3 Performance and Payment Bonds, and Certificate of Insurance, and insurance policies identified as Sections 00610, 00630 and 00650.

7.4 Notice of Award.

7.5 General Conditions (Section 00700)

7.6 Supplementary Conditions (Section 00800)

7.7 Supplement for Special-Funded Project (Section 00805) – IF APPLICABLE

7.8 General Wage Rates (Section 00840)

7.9 Specifications bearing the title Project Manual for the Construction of **Haskell R. Street WWTP Fats, Oil & Grease Receiving Station Improvements** consisting of division numbers 01 through 46, as listed in table of contents thereof.

7.10 Drawings consisting of a cover sheet and sheets listed in the Index to Drawings, each sheet bearing the following general title:

CITY OF EL PASO, TEXAS
EL PASO WATER UTILITIES - PUBLIC SERVICE BOARD

HASKELL R. STREET WASTEWATER TREATMENT PLANT FATS, OILS, AND GREASE RECEIVING
STATION IMPROVEMENTS

(Drawings not attached to this Agreement.)

7.11 Addenda numbers _____ to _____, inclusive (not attached to this Agreement.)

7.12 Documentation submitted by CONTRACTOR prior to Notice of Award (Pages_____ to _____, inclusive).

7.13 Contractor Health and Safety Plan

7.14 The Instructions to Bidders, Information Available to Bidders, Bid Form and Bid Security, as well as any supplements to the Bid Form.

7.15 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 11.01 of the General Conditions.

7.16 The documents listed in Paragraphs 7.2 et. seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 11.01 of the General Conditions.

ARTICLE 8. MISCELLANEOUS

8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

ARTICLE 9. OTHER PROVISIONS *(Revised 3/4/22)*

9.1 It is agreed that should any dispute arise under this Contract which culminates in litigation, venue of that suit shall be in a court of competent jurisdiction sitting in El Paso County, Texas. The court shall apply the laws of the State of Texas in construing and interpreting the terms of this Contract and the Contract Documents.

9.2 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, unenforceability shall not affect any other provisions and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been included, and the Agreement provisions shall be read and interpreted so as to harmonize with the Agreement itself.

9.3 The captions or headings of paragraphs in this Contract are for convenience only and shall not be considered in constraining the provisions hereof if any question of intent should arise.

9.4 For NADBank-funded projects, Contractor agrees to indemnify and hold harmless North American Development Bank (NADB) and each of its directors, officers, employees, agents and representatives (collectively, "NADB's Associated Persons") against all claims for death, personal injury, damages, or other relief against NADB or NADB's Associated Persons, including costs, expenses and attorney's fees, resulting from negligence or willful acts or failure to act by the Contractor.

9.5 In accordance with Sections 552.371 and 552.372 of the Texas Government Code, the following language is included, and applicable in contracts that require or result in the expenditure of public funds of at least $1,000,000:

CONTRACTING INFORMATION. CONTRACTOR must preserve all contracting information related to this Agreement as provided by the records retention schedule requirements applicable to the OWNER for the duration of this Agreement. CONTRACTOR will promptly provide the OWNER any contracting information related to this Agreement that is in the custody or possession of the CONTRACTOR on request of the OWNER. On completion of this Agreement, CONTRACTOR will either provide at no cost to the OWNER all contracting information related to this Agreement that is in the custody or possession of the CONTRACTOR or preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the OWNER.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. 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 _____, 20___.

OWNER: El Paso Water Utilities
Public Service Board of
the City of El Paso, Texas

By _____
Purchasing Agent

Address for giving notices:

1154 Hawkins Boulevard
El Paso, Texas 79925

Date Signed _____

CONTRACTOR: _____

_____

_____

By _____

Name: _____

Title: _____

Address for giving notices:

_____

_____

Date Signed _____

Federal Tax I.D. No. _____

Agent for service or process:

_____

INSTRUCTIONS FOR EXECUTING CONTRACT

If the CONTRACTOR be a corporation, the following certificate should be executed:

I,_____, certify that I am the_____of the corporation named as CONTRACTOR hereinabove; that, _____ who signed the foregoing Contract on behalf of the CONTRACTOR was then,_____ of said Corporation; that said Contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

_____

Corporate Seal

If the Contract is signed by the secretary of the corporation, the above certificate should be executed by some other officer of the corporation under the corporate seal. In lieu of the foregoing certificate, there may be attached to the Contract copies of so much of the records of the corporation as will show the official character and authority of the officers signing, duly certified by the Secretary or Assistant Secretary under the corporate seal to be true copies.

The full name and business address of the CONTRACTOR should be inserted and the Contract shall be signed with his or her official signature. Please have the name of the signing party or parties typewritten or printed under all signatures to the Contract.

If the CONTRACTOR should be operating as a partnership, each partner should sign the Contract. If the Contract is not signed by each partner, there should be attached to the Contract a duly authenticated Power of Attorney, or other appropriate resolution or document evidencing the signer's (signers') authority to sign such Contract for and in behalf of the partnership.

If the CONTRACTOR is an individual, the trade name (if the CONTRACTOR is operating under an assumed or trade name) should be indicated in the Contract and the Contract should be signed by such individual. If signed by one other than the CONTRACTOR, there should be attached to the Contract a duly authenticated Power of Attorney evidencing the signer's authority to execute such Contract for and in behalf of the CONTRACTOR.

CONTRACT SUBMITTAL CHECKLIST (The following items must be submitted within **10** calendar days of the Notice of Award unless stated otherwise in the General or Supplemental Conditions)	
	1. Executed Agreement
	2. Payment and Performance Bonds
	3. Insurance Certificate and Policies. Policies should be sent in electronic format to mailto:rguevara@epwater.org, with copy to becky.ramirez@hubinternational.com (Owner's Risk Manager) and to Purchasing.Info@epwater.org.
	4. If employees provided by leasing company, evidence of Texas State License and copy of their Worker's Compensation policy. If no leased employees will be used, provide a letter on Contractor's letterhead stating so.
	5. Certificate of Account Status (paid franchise taxes)
	6. Final/Updated (if applicable) Minority Certification and Participation Summary
	7. Preliminary Schedule of Values
	8. Preliminary Construction Schedule
	9. Schedule of Shop Drawings
	10. Trench Safety System (sealed by a Professional Engineer)
	11. Trench Safety Plan
	12. Stormwater Pollution Prevention Plan
	13. Traffic Control Plan
	14. Health and Safety Plan

- **Deliver all items to the OWNER's Purchasing Department**
- **Deliver electronic copies of items 7-14 to EPWater Project Manager**

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

SUSAN COMBS • COMPTROLLER • AUSTIN, TEXAS 78774

July 30, 2007

CERTIFICATE OF ACCOUNT STATUS

EXAMPLE

THE STATE OF TEXAS
COUNTY OF TRAVIS

I, Susan Combs, Comptroller of Public Accounts of the State of Texas, DO HEREBY CERTIFY that according to the records of this office

is, as of this date, in good standing with this office having no franchise tax reports or payments due at this time. This certificate is valid through the date that the next franchise tax report will be due November 15, 2007.

This certificate does not make a representation as to the status of the corporation's Certificate of Authority, if any, with the Texas Secretary of State.

This certificate is valid for the purpose of conversion when the converted entity is subject to franchise tax as required by law. This certificate is not valid for the purpose of dissolution, merger, or withdrawal.

GIVEN UNDER MY HAND AND
SEAL OF OFFICE in the City of
Austin, this 30th day of
July 2007 A.D.

Susan Combs
Texas Comptroller

Taxpayer number:
File number:

Form 05-304 (Rev. 02-03/14)

TEXAS STATUTORY PERFORMANCE BOND

(Penalty of this Bond must be 100% of Contract Amount)
Public Work – State of Texas

STATE OF TEXAS }
COUNTY OF_____ } BOND NUMBER_____

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter called the Principal), as Principal and _____, a corporation organized and existing under the laws of the State of _____, and whose principal office is located in the City of _____, and duly authorized to do business in the State of Texas (hereinafter called the Surety).

As Surety, are held firmly bound unto El Paso Water Utilities / Public Service Board, hereinafter called the Owner), in the penal sum of _____ Dollars ($_____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Owner, dated the _____ day of _____, 20___, a copy of which is hereto attached and made a part hereof, for _____.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be 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 thereof to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20___.

_____

BY: _____
Principal

WITNESS:

_____ BY: _____
Surety

PAYMENT BOND

Public Work – State of Texas

STATE OF TEXAS }
COUNTY OF_____ } BOND NUMBER_____

KNOW ALL MEN BY THESE PRESENTS:

That _____ of the City of _____, County of _____ and State of _____ (hereinafter called the Principal), and _____ authorized under the laws of the State of Texas to act as Surety on bonds for Principals (hereinafter called the Surety) are held firmly bound unto El Paso Water Utilities / Public Service Board, hereinafter called the Owner), in the penal sum of _____ Dollars ($_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Owner, dated the _____ day of _____, 20___, for _____ _____ to which Contract is hereby referred to and made 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 the said 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 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 of said Chapter to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anywise affect its obligation on this Bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ___ _____ day of _____, 20___.

_____

BY: _____
Principal

WITNESS:

_____ BY: _____
Surety

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext): -	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A :	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

Specimen/Sample Certificate Form

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ☐ NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ WC STATU-TORY LIMITS ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐	N / A					E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EL PASO WATER UTILITIES - PUBLIC SERVICE BOARD

ENGINEER'S CERTIFICATE OF SUBSTANTIAL COMPLETION

HASKELL R. STREET WASTEWATER TREATMENT PLANT FOG RECEIVING STATION IMPROVEMENTS,
BID NO. 93-22

(TO BE FILLED OUT AND SUBMITTED BY ENGINEER)

The above-referenced project is substantially complete as of _____, 20____. Exceptions and/or items requiring additional work are indicated as follows:

The following documents are required contract submittals. Certificate of Final Completion and Final Payment will *not* be issued until all submittals listed below are received and correct (pursuant to contract requirements).	
1. Contractor's Waiver of Claim/Lien (GC 15.06.A.3)	
2. *Original* Consent of Surety to Final Payment (GC 15-06.A.2.a)	
3. Copy of Release to Contractor from EPWID#1 for Dewatering Fees, if applicable (SC 18.13.E)	
4. Completed Operations Insurance Letter (coverage for at least 2 years after final payment (GC 6.03.B.3 and SC-6.03.C.6)	
5. Delivery to the Engineer of all Operating & Maintenance Manuals, Guarantees, Certificates of Inspection, and Marked-up As-Builts or Record Drawings, if applicable (GC 10.07.D and GC 15.06.A.1)	
6. Final Report of Total Payments to subcontractors and suppliers	
7. Evidence of Payment of Final Water Bill and Return of Water Meter	
8. Ensure that *Certified* Payrolls for entire contract period for contractor and all subcontractors, including "Final" (SC 7.11.D.5) payroll from each, are entered in the Utility Automated Payroll Software program and ensure that all outstanding corrections and/or evidence of restitution have been submitted	
9. Warranty/Guarantee, if applicable	
10. NPDES Requirements (NOT), if applicable	

EPWU Engineering Division Manager

Project Engineer of Record

Date

Date

CONTRACTOR'S PROJECT CLOSE-OUT SUBMITTALS CHECKLIST

The following documents are required contract submittals for the Close-Out of this project. Contractor is contractually required to submit the following in one packet to the Engineer for review. Certificate of Final Completion and Final Payment will not be issued until all submittals listed below are received and correct.

REQUIRED ITEM	INCLUDED
1. Final Change Order (if applicable)	
2. Contractor's Waiver of Lien (GC 15.06.A.3)	
3. *Original* Consent of Surety to Final Payment (GC 15.06.A.2.b)	
4. Copy of Release to Contractor from EPWID#1 for Dewatering Fees, if applicable (SC 18.13.E)	
5. Completed Operations Insurance Letter (coverage for at least 2 years after final payment (GC 6.03.B.3 and SC 6.03.C.6)	
6. Transmittal Letter of Delivery to Engineer of all Operating & Maintenance Manuals, Guarantees, Certificates of Inspection, and Marked-up As-Builts or Record Drawings, if applicable (GC 10.07.D and GC 15.06.A.1)	
7. Final Report of Total Payments to Subcontractors and Suppliers	
8. Final Certified Payrolls (list 'Final' atop the payrolls) (SC 7.11.D.5). Submit any and all outstanding corrections and/or evidence of paid restitution.	
9. Warranty/Guarantee, if applicable	
10. NPDES Requirements (NOT), if applicable	
11. Paid Final Water Bill, Completed Meter and Removal Forms for Fire Hydrant Meter	

* All items must be submitted and received as a complete packet. An incomplete packet will be returned.

When all items have been received and approved by EPWater, the assigned Project Compliance Specialist will notify Project Engineer, Consultant Engineer, and Contractor. At that time, Contractor may submit the Final Pay Application to Consultant Engineer. Consultant Engineer will provide the Certificate of Final Completion and the approvable Final Pay Application to the Project Compliance Specialist for processing and closing of project.

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

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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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

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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.

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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.

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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.

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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.

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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

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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

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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,

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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.

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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.

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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.

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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

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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.

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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,

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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

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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.

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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.

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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.

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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

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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).

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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

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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.

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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).

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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.

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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

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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

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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.

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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

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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.

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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.

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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

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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;

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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

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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

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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.

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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.

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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

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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.

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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.

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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.

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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

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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.

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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

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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

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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

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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.

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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

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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

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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

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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, expediters, 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.

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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.

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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

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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.

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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

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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:

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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

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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

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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.

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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

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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,

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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.

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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,

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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

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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.

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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.

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SECTION 00800
SUPPLEMENTARY CONDITIONS
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INTRODUCTORY STATEMENT

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC C-700, 2018 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

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

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

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

SC-1.01.A.4 Add the following sentence to Paragraph 1.01.A.4:

The term “Offer” has the same meaning as the term “Bid”.

SC-1.01.A.5 Add the following sentence to Paragraph 1.01.A.5

The term “Offeror” has the same meaning as the term “Bidder”.

SC-1.01.A.10.e Add the following sentence to Paragraph 1.01.A.10.e

When submitted, a Claim must be signed by the Designated Authorized Representative.

SC-1.01.A.51 Add the following paragraph as reference 1.01.A.51:

Designated Authorized Representative — the representative authorized by the party filing the Claim to execute legally-binding agreements on behalf of that party. For Owner, the Designated Authorized Representative shall be the Chief Technical Officer, a Vice President, or President and Chief Executive Officer. For Contractor, the owner or its designee authorized pursuant to a power of attorney.

SC-1.01.A.52 Add the following paragraph as reference 1.01.A.52:

Health and Safety Plan — The part of the Contract Documents prepared by Contractor that describes safety procedures for the Work, identifies the Contractor’s safety representative required by Paragraph 6.14.A, and certifies that the Contractor’s employees have received or will receive training prior to the commencement of the Work on (1) basic health and safety issues; (2) the Health and Safety Plan; (3) the methods and techniques the Contractor will use on the Project; (4) procedures for Contractor entrance into and exit from the Site(s); and (5) informing Owner about any unique hazards presented by the Work or found as a result of the Work.

ARTICLE 2 - PRELIMINARY MATTERS

2.02 *Copies of Documents*

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following in its place:

A. Owner shall provide to Contractor an electronic version of a fully executed copy of the contract documents.

2.03 *Before Starting Construction*

SC-2.03.B Add the following new paragraph immediately after Paragraph 2.03.A.3

B. *Health and Safety Plan*. Contractor shall submit a copy of Health and Safety Plan fifteen (15) days before mobilization. No Work shall proceed until the Owner has accepted the Health and Safety Plan.

2.04 *Pre-Construction Conference; Designation of Authorized Representatives*

SC-2.04.B Amend the first sentence of Paragraph 2.04.B to read as follows:

At or prior to this conference Owner and Contractor each shall designate, in writing by Owner and in writing by Contractor as a submittal, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract.

2.05 *Acceptance of Schedules*

SC-2.05.A Amend the first sentence of Paragraph 2.05.A to read as follows:

At the preconstruction conference indicated in Paragraph 2.04 or other time acceptable to the parties and Engineer, Engineer and Contractor will review the acceptability to Engineer, as provided below, of the schedules submitted in accordance with Paragraph 2.03.A.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

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

SC-3.03.B.1 Add the following to new paragraph immediately after Paragraph 3.03.B:

SC-3.03.B.1 In resolving such conflicts, errors, and discrepancies, the Contract Documents will be given precedence in the following order: Change Orders, Field Orders, Addenda, Agreement, Performance Bond and Payment Bond, Supplementary Conditions, General Conditions, Specifications and Drawings. Numerical dimensions shown on the Drawings shall govern over scaled dimensions on the Drawings. This Paragraph

SC-3.03.B.1 is not, however, a definitive enumeration of what comprises the "Contract Documents", which definitive enumeration is indicated in the Agreement.

ARTICLE 4 - COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

SC-4.01.A Amend the third sentence of paragraph 4.01.A by changing the word "60th" to read as "90th".

4.03 *Reference Points*

SC-4.03.A Amend the third sentence of Paragraph 4.03.A to read as follows:

Contractor shall report to Engineer when a reference point, including property boundary stakes or monuments, or an elevation benchmark, is disturbed, lost, or destroyed, or requires relocation because of necessary changes in grades or locations. Contractor shall be responsible for accurately replacing or relocating such reference points by a professional land surveyor licensed by and registered in the State of Texas.

4.05 *Delays in Contractor's Progress*

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

5. Weather-Related Delays

   a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Time, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.

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

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

         i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds 1-inch over a 24-hour period of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference).

         ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: wind chill factor equal or less than 25-degrees Fahrenheit;

or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: equal or greater than 110-degrees Fahrenheit.

iii) Suspension (greater than 4 hours) or postponement of construction due to high wind advisory/warning that has been issued and does not allow construction activities to continue.

2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by the El Paso International Airport weather monitoring station located at 6701 Convair Road in El Paso, Texas.

3) Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the Foreseeable Bad Weather Days table, Exhibit A included in SC-4.05.5.b.4.

4) Foreseeable Bad Weather Days:

i) Foreseeable Bad Weather Days (Standard Baseline) is defined as the normal number of calendar days for each month during which construction activity exposed to weather conditions is expected to be prevented and suspended by cause of adverse weather. Suspension of construction activity for the number of days each month as listed in the Standard Baseline is included in the Work and is not eligible for extension of Contract Time.

ii) The Foreseeable Bad Weather Days are as follows:

Exhibit A

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
4	3	3	2	3	4	8	8	6	5	3	4

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

ARTICLE 5 - SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

SC 5.01.D Add the following new paragraph immediately after paragraph 5.01.C:

SC-5.01.D All work associated with special provisions of easements shall be performed in accordance with the Contract Documents, unless the Contract Documents indicate that easement provisions govern. Should the actions of Contractor or Subcontractors or Suppliers cause the Work to be delayed to the point that the ending date of an easement is exceeded, Contractor shall reimburse Owner for additional costs required to extend the period of rights to the easement to complete the Work. Such delay shall be considered to be within the control of Contractor, in accordance with paragraph 4.05.

5.02 *Use of Site and Other Areas*

SC-5.02.E Add the following new paragraph immediately after Paragraph 5.02.D:

SC-5.02.E *Dust Control*

1. Contractor shall not cause or allow dust-generating operations, earthmoving operation, use of property, or other operation that results in fugitive dust emissions that exceed the limits prescribed by the authority having jurisdiction, in accordance with Texas Administrative Code Title 30, Part 1, Chapter 111, Subchapter A, Division 4, Rule 111.145. Contact City of El Paso Environmental Management Division at (915) 212-6000 for additional information regarding nuisance fugitive dust emissions from the Site.
2. Provide necessary equipment and materials to apply sufficient dust suppressants, properly clean all vehicle "track-out" areas on and adjacent to the Site, and provide adequate physical stabilizations of soils to comply with requirements of earthmoving permits and approved dust control plan or activities, if any.
3. Contractor shall pay fines and civil penalties imposed by authorities having jurisdiction and incurred by Owner because of Contractor's violation of earthmoving permits and dust control plans or activities.
4. Implement measures to control fugitive dust emissions from the Site in compliance with earthmoving permit and Laws and Regulations.

5.03 *Subsurface and Physical Conditions*

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

E. The following table lists the Subsurface Reports at or adjacent to the Site that are known to Owner.

The Subsurface Reports do not contain Technical Data, were prepared for the sole and exclusive benefit of Owner and Engineer, are not for the benefit of any party or entity other than Owner and Engineer, may or may not be accurate, and are not a part of the Bidding Documents or Contract Documents.

Bidders and Contractor may not rely on the reports for determining cost, means, methods, techniques, and sequences of construction.

Report Title	Date of Report	Technical Data
Geotechnical Engineering Report – Haskell WWTP Tank Replacement	June 4, 2021	Site and subsurface conditions, geotechnical evaluation and recommendations.

F. The following table lists the drawings of existing physical conditions at or adjacent to the Site that are known to Owner.

These drawings do not contain Technical Data; may not accurately indicate the character, location, size, condition, or nature of existing conditions; and are not a part of the Bidding Documents or Contract Documents.

Bidders and Contractor may not rely on these reports for determining cost, and means, methods, techniques, and sequences of construction.

Drawing Set Title	Date of Cover Page	Technical Data
TOPO FOR FOG DESIGN	May 2021	Partial survey, topographical information
S.U.E. FOR FOG DESIGN	August 3, 2021	Subsurface utility exploration drawings.

G. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at the El Paso Water Utilities' website:

www.epwater.org/business_center/purchasing_overview/bids

5.06 *Hazardous Environmental Conditions at Site*

SC-5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following in its place:

SC-5.06.A No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

SC-5-06.B Not Used.

ARTICLE 6 - BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

SC-6.01.A Delete Paragraph 6.01.A and 6.01.B in their entirety and insert the following in place of:

SC-6.01.A Except as provided in this Paragraph SC-6.01.A, Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. 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 or by the Contract Documents. Contractor shall also furnish such other bonds and certificates of insurance as are required by the Contract Documents. Certificates of insurance shall be in the form prescribed by the Contract Documents. Conditions under which a performance bond or payment bond are not required are as follows:

1. Payment bond is required when the contract award is in excess of $50,000, and;
2. Performance Bond is required when the contract award is in excess of $100,000.

SC-6.01.B Delete Paragraph 6.01.C in its entirety and insert the following in its place:

SC-6.01.B. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations including, but not limited to, Chapter 2253 of the Texas Government Code and Article 7.19-1 of the Texas Insurance Code. The bonds shall be executed by surety which shall be authorized and admitted to do business in the State of Texas, licensed by the State of Texas to issue surety bonds, and carry an A.M. Best Key rating of not less than A VIII. If the amount of the bond is in excess of ten percent of surety's capital and surplus, surety shall furnish to Owner a written certification that surety has insured that portion of surety's risk that exceeds ten percent of surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusteed to do business in the State of Texas. If any portion of surety's obligation is reinsured, the amount reinsured shall not exceed ten percent of the reinsurer's capital and surplus. Surety and the reinsurer(s) shall furnish additional information and documentation, if any, required by Owner for Owner to determine whether surety or its reinsurer(s) comply with the requirements of this Paragraph SC-6.01.B. All bonds signed by an agent or attorney-in-fact shall 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 each bond.

6.02 *Insurance - General Provisions*

SC-6.02.G Delete Paragraph 6.02.G in its entirety and insert the following in its place:

SC-6.02.G Not Used.

6.03 *Contractor's Insurance*

SC-6.03.C Add the following immediately after Paragraph 6.03.C.1:

a. In addition to the individuals or entities specified above, include as additional insured, or loss payees as their interest may appear, the following:

1. Arcadis, U.S. Inc., 400 E. Main Street, Suite 401, El Paso, TX 79901.

SC-6.03.C Add the following immediately after Paragraph 6.03.C.5:

SC-6.03.C.5 If, at any time, the required insurance policies are canceled, terminated, or modified so that the insurance is not in full force and effect as required under the Contract Documents, Owner may terminate for cause in accordance with Paragraph 16.02 of the General Conditions or, where possible, obtain insurance coverage equal to that required by the Contract Documents, the full cost of which will be charged to Contractor and deducted from any payments due Contractor.

a. Each Contractor shall require his subcontractors, at all tiers, to carry insurance coverages satisfactory to the Contractor and to provide evidence of such insurance as specified herein.

For purposes of this Bid, a Payment Bond will be required in an amount equal to the Bid Price and a Performance Bond will be required in a like amount.

SC-6.03.C.6 Add the following immediately after Paragraph 6.03.C.5:

SC-6.03.C.6 Contractor shall furnish to Owner and each other additional insured identified in the Contract Documents, to whom evidence of insurance has been issued, evidence satisfactory to Owner and other such additional insured of continuation of such insurance at final payment and for a duration thereafter equal to the correction period required under Paragraph 15.08.

SC-6.03.D Add the following new Paragraph 6.03.D:

D. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation and Employer's Liability Insurance:

a. State: Statutory

b. Employer's Liability: In accordance with Table 00800-1 of these Supplementary Conditions.

c. *Terminology*: The following terms are not defined but when used in this Paragraph SC-6.03.D for workers' compensation insurance, and have the meanings indicated below:

1) Certificate of coverage: A copy of a certificate of insurance, a certificate of authority to self-insure, issued by the Texas Workers Compensation Commission, 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 the Project, for the duration of the Project. Contractor shall not execute TWCC Forms 83 or 85 or other form that precludes coverage under Contractor's policy if Contractor hires a Subcontractor or service provider without worker's compensation insurance.

2) Duration of the Project: Is the time from the Contractor's beginning work on the Project until the time Contractor's and Subcontractor's obligations under the Contract Documents are fully complete.

3) Contractor and Subcontractors (as indicated in Texas Labor Code §406.5096) includes all persons or entities performing all or part of the Work, regardless of whether that person or entity contracted directly with Contractor and regardless of whether that person or entity 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 services related to the Project. "Services" does not include activities unrelated to the Project, such as food or beverage vendors, office supply deliveries, and delivery of portable toilets or portable sanitary facilities.

d. Comply with the following relative to Worker's Compensation and Employer's Liability insurance:

1) *Waiver of Subrogation Relative to Workers' Compensation Insurance*: The policy shall be endorsed to provide that insurer waives any right of subrogation that insurer may acquire against Owner, Engineer, Engineer's consultants, and others named in the Contract Documents as additional insured relative to Contractor's liability insurance, by reason of any payment made on account of injury, including death resulting therefrom, sustained by an employee of the insured.

2) If workers employed on the Work will be employed through a leasing company, furnish evidence of leasing company's State of Texas license and a copy of leasing company's Worker's Compensation policy insuring its employees (including sole proprietors, partners, supervisors, and executive officers) who perform work in the State of Texas.

3) Contractor shall furnish coverage, based on proper reporting of classification codes and payroll amounts and filing of coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011(44) for all employees of Contractor performing the Work or services on the Project, for the duration of the Project.

4) Contractor shall furnish to Owner a certificate of coverage prior to being awarded the Contract.

5) If the coverage period shown on the Contractor's current certificate of coverage ends during the Contract Times, Contractor shall, prior to the end of the coverage period, furnish to Owner a new certificate of coverage indicating that coverage has been extended; furnish updated certificate of coverage throughout the duration of the Project.

6) *Subcontractors and Workers' Compensation and Employee Liability Insurance*:

   a) Contractor shall contractually require each Subcontractor to comply with the workers' compensation and employer's liability insurance requirements of the Contract Documents, to same extent such requirements are binding on Contractor.

   b) Obtain from each Subcontractor and furnish to Owner a certificate of coverage, prior to that Subcontractor beginning work on the Project. Not later than seven days after receipt by Contractor, furnish updated, valid certificate of coverage for each Subcontractor throughout the duration of the Project.

7) Retain Contractor's and Subcontractors' required certificates of coverage for the duration of the Project.

8) Contractor shall notify Owner in writing, in accordance with Paragraph 18.01, within 10 days after Contractor knew or should have known, of a change that materially affects the provision of coverage of any entity performing work or services on the Contract.

9) Post at the Site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation

Commission, informing persons performing work or services on the Contract that they are required to be covered, and stating how a person may verify coverage and report lack of coverage. Such posted notice does not satisfy other posting requirements imposed by the Act or other commission rules in the State of Texas. Such notice shall be printed with a title in text that is not less than 30-point bold type, with and other text in not less than 19-point non-bold type, and shall be in English, Spanish, and other languages, if any, common to the workers at the Site. Text for the notices shall be as indicated by the Commission on the sample notice without changes.

10) By executing the Agreement or furnishing or causing to be furnished a certificate of coverage, Contractor represents to Owner that employees of Contractor and Subcontractors who will perform work or services on the Contract will be covered by workers' compensation coverage for the duration of the Project; that such coverage will be based on proper reporting of classification codes and payroll amounts; and that coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Furnishing false or misleading information may subject Contractor to administrative penalties of authorities having jurisdiction, criminal penalties, civil penalties of authorities having jurisdiction, and other civil actions.

11) Contractor's failure to comply with one or more workers' compensation insurance provisions is a breach of the Contract by Contractor, entitling Owner to terminate for cause in accordance with Paragraph 16.03, unless otherwise provided by Laws and Regulations.

12) If any provision of the Workers' Compensation and Employee Liability insurance requirements of the Contract Documents, or its application to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

2. Contractor's General Liability under Paragraphs 6.03 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of Contractor. General Liability coverage shall be for not less than the limits indicated in Table 00800-1 of these Supplementary Conditions.

3. Automobile Liability under Paragraph 6.03 of the General Conditions: Shall be for not less than the limits indicated in Table 00800-1 of these Supplementary Conditions.

4. Umbrella Liability:

   a. Contractor shall purchase and maintain, until final payment by Owner, Umbrella Liability Insurance. Such insurance shall insure against all claims in excess of the limits provided under workers' compensation and employer's liability, general liability insurance, and automobile liability policies. The limits of umbrella liability shall be in accordance with Table 00800-1 of these Supplementary Conditions.

5. *Table of Minimum Liability Insurance Coverage Limits*: The limits of liability insurance shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations. The limits of coverage under Paragraph 6.03 vary with the Contract Price as indicated in Table 00800-1:

TABLE 00800-1				
LIMITS OF COVERAGE FOR ALL CONSTRUCTION PROJECTS	AUTOMOBILE (6.03) {Combined Single Limit} Per Accident	COMMERCIAL GENERAL LIABILITY (6.03) {Combined Single Limit} Per Project	WORKERS' COMPENSATION (6.03) {Employers' Liability} Per Accident Per Employee Per Disease	UMBRELLA (SC-6.03) {Combined Single Limit}
CONTRACT PRICE LESS THAN $100,000: Occurrence *General Aggregate Products/Completed Operations Aggregate	$300,000	$ 500,000 $ 500,000 $1,000,000	$ 500,000 $ 500,000 $ 500,000	Not applicable
CONTRACT PRICE EQUAL TO $100,000 OR GREATER AND LESS THAN $500,000: Occurrence *General Aggregate Products/Completed Operations Aggregate	$500,000	$ 500,000 $1,000,000 $1,000,000	$ 500,000 $ 500,000 $ 500,000	Not applicable
CONTRACT PRICE EQUAL TO OR GREATER THAN $500,000 AND UP TO AND INCLUDING $10,000,000: Occurrence *General Aggregate Products/Completed Operations Aggregate	$1,000,000	$1,000,000 $2,000,000 $2,000,000	$1,000,000 $1,000,000 $1,000,000	$2,000,000 $2,000,000
CONTRACT PRICE GREATER THAN $10,000,000: Occurrence *General Aggregate Products/Completed Operations Aggregate	$1,000,000	$1,000,000 $2,000,000 $2,000,000	$1,000,000 $1,000,000 $1,000.000	$5,000,000 $5,000,000

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Delete Paragraph 6.04 in its entirety and insert the following in its place:

SC-6.04 *Property Insurance*

A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost of the Work. This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, Engineer, Resident Project Representative, and other individuals or entities identified herein, and the officers, directors, members, partners, employees, agents and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured, additional insured, or loss payee as their interest may appear;

a. In addition to the individuals or entities specified above, include as additional insured, or loss payees as their interest may appear, the following:

1) Arcadis, U.S. Inc., 400 E. Main Street, Suite 401, El Paso, TX 79901.

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, extended collapse, debris removal, mechanical failure, electrical failure, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood);

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

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and start-up; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph SC-6.04 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured or loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph SC-6.05.

D. The risk of loss within any deductible amount applicable to the policies of insurance purchased in accordance with this Paragraph SC-6.04 will be borne by Contractor, Subcontractors, or others suffering such loss.

6.05 *Property Losses; Subrogation*

SC-6.05 Delete Paragraph 6.05 in its entirety and insert the following in its place:

SC-6.05 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph SC-6.04 will protect Owner, Contractor, Subcontractors, Engineer, and all other individuals or entities identified in Paragraph SC-6.04 to be listed as insureds or additional insured or loss payees (and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of loss or damage the insurers will have no rights of recovery against any of the insureds or additional insured or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents and other 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 Subcontractors, Engineer, and all other individuals or entities identified in Paragraph SC-6.04 to be listed as insureds or additional insureds or loss payees (and the officers, directors, members, partners, employees, agents and other 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 as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, Engineer, and the officers, directors, partners, employees, agents, and other 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 and 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 utilization 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 SC-6.05.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, Engineer, and the officers, directors, members, partners, employees, agents and other consultants and subcontractors of each and any of them.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

7.03 *Labor; Working Hours*

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

1. Regular working hours will be between 7:00 am to 4:00 pm or 8:00 am to 5:00 pm, but in no event shall be:
   a. More than nine hours per day
   b. More than 40 hours per calendar week
   c. Between the hours of 5:00 p.m. and 7:00 a.m.
   d. On Saturdays or Sundays
2. Owner's legal holidays are New Year's Day, Martin Luther King Holiday, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

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

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

SC-7.03.E Add the following new paragraph immediately after paragraph 7.03.D:

SC-7.03.E For work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof under any statute of the United States providing wage standards for such work, the provisions of the Contract Documents are subject to the applicable provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C.A. §327 et seq. Contractor and Subcontractor shall not require or allow any laborer or mechanic to be employed on the Work in excess of forty hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one-and-one-half times his or her basis rate of pay for hours worked in excess of forty hours in such work week. Except as may be otherwise required by law, all claims pertaining to the classification of labor employed on the project shall be decided by Owner's governing body or other duly designated official.

7.07 *Concerning Subcontractors and Suppliers*

SC 7.07.N Add the following new paragraphs immediately after Paragraph 7.07.M:

SC-7.07.N Contractor shall perform, with his organization and with the assistance of workers under Contractor's immediate superintendence, not less than 40 percent of the Contract Price,

exclusive of Work not commonly found in contracts for similar construction which require specialized knowledge, craftsmanship, or equipment not ordinarily available in the organizations of contractors performing construction similar in nature to the Work. The value of the Work, exclusive of said items, will be interpreted as the value of labor, equipment, superintendence, and only those portions of materials and equipment incorporated into the Work that are related to the Contract's direct labor requirements.

7.09 *Permits*

SC-7.09.B Add the following new paragraph immediately after Paragraph 7.09.A:

SC-7.09.B TPDES Permit and Related Permits and Requirements

1. The Work is subject to the Texas Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls and stormwater pollution prevention measures throughout the construction period.

2. Owner has prepared a Storm Water Pollution Prevention Plan (SWPPP). SWPPP requirements are in the Specifications.

3. Owner will file Owner's "Notice of Intent" to the Texas Commission on Environmental Quality (TCEQ). Owner will pay the TPDES stormwater application fee.

4. Contractor's responsibilities are as follows:

   a. Prepare a Storm Water Pollution Prevention Plan (SWPPP) in compliance with Laws and Regulations.

   b. Obtain a signed certification statement from all Subcontractors responsible for implementing erosion and sedimentation controls and other best management practices for the Site that are part of the SWPPP. Such statement shall indicate that the Subcontractor understands the permit requirements. The certified statement forms shall be attached to and become part of the SWPPP.

   c. Fill out the TCEQ's "Construction Site Notice" form, which is Attachment 2 to the TPDES General Permit TXR150000 (form available from Owner or on the Internet at http://www.tceq.state.tx.us/assets/public/permitting/waterquality/attachments/stormwater/txr152d2.pdf ,and post it near the main entrance of the Site, or at multiple postings if the Work is linear. Submit a copy of the completed Construction Site Notice form to Owner and Engineer.

   d. Maintain erosion/sedimentation controls and other protective measures identified in the SWPPP in effective operating condition.

e. Perform inspections every 14 days and after every half-inch of rainfall, noting the following observations on an inspection form provided by Owner:

1) Locations of discharges of sediment or other pollutants from the Site.

2) Locations of stormwater, erosion, sedimentation controls that are in need of maintenance or repair.

3) Locations of stormwater, erosion, sedimentation controls that are not performing, failing to operate, or are inadequate.

4) Locations where additional stormwater, erosion, sedimentation controls are needed.

f. Continuously maintain at the Site a copy of the SWPPP (with updates, as described below) and inspection reports.

g. Update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion, and sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports.

h. Upon Substantial Completion or establishment of permanent cover over disturbed soil areas (if such cover is established after Substantial Completion), submit TPDES records to Owner.

SC-7.09.B *TPDES Permit and Related Permits and Requirements*

1. This Work is subject to the Texas Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls and stormwater pollution prevention measures throughout the construction period.

2. Owner has prepared a Storm Water Pollution Prevention Plan (SWPPP). Requirements are in the Specifications.

3. Owner will file Owner's “Notice of Intent” and “Notice of Termination” to the Texas Commission on Environmental Quality (TCEQ). Owner will pay the TPDES stormwater application fee.

4. Contractor’s responsibilities are as follows:

a. Prepare a Storm Water Pollution Prevention Plan (SWPPP) prior to filing the “Notice of Intent” form.

b. File a "Notice of Intent" form with the TCEQ not less than two days prior to starting construction activity at the Site and pay for the permit. Form is available from Owner or on the Internet at http://www.tceq.state.tx.us/assets/public/permitting/waterquality/forms/20022.pdf. The form shall be mailed or submitted online to the TCEQ. For online submittal, the web address is https://www.tceq.state.tx.us/steers/. If Contractor has not already registered to use the TCEQ online application submittal service, it typically takes approximately ten working days to receive a user name and password from TCEQ. No extension of the Contract Times will be granted for this activity. The mailing address is:

Texas Commission on Environmental Quality
Storm Water & General Permits Team; MC-228
P.O. Box 13087
Austin, TX 78711-3087

c. Submit to Owner a copy of the completed "Notice of Intent" form as submitted to TCEQ.

d. Obtain a signed certification statement from Subcontractors responsible for implementing erosion and sediment controls. Such statements shall indicate that Subcontractor understands the permit requirements. Such certified statement forms shall be attached to and become part of the SWPPP.

e. Post a notice near the main entrance of the Site with the following information.

1) TPDES permit number for the Work or a copy of the Notice of Intent if a permit number has not yet been assigned,

2) Name and telephone number of Contractor's local contact person,

3) Brief description of the Work, and

4) Location of the SWPPP if the Site is inactive or does not have an on-site location to store the SWPPP.

f. When posting this information near a main entrance is infeasible due to safety concerns, the notice shall be posted in a local public building. If the Work is linear (pipeline, highway, or other linear construction), the notice shall be placed in a publicly accessible location near where construction is actively underway and moved as necessary. For linear Work, multiple postings of the information may be required by Owner.

g. Maintain erosion and sediment controls and other protective measures identified in the SWPPP in effective operating condition.

h. Perform inspections every 14 days and after every half-inch of rainfall, noting the following observations on an inspection form furnished by Owner:

1) Locations of discharges of sediment or other pollutants from the Site.

2) Locations of storm water, erosion, sedimentation controls that require maintenance.

3) Locations of storm water, erosion, sedimentation controls that are not performing, failing to operate, or are inadequate.

4) Locations where additional storm water, erosion, sedimentation controls are needed.

i. Continuously maintain at the site a copy of the SWPPP (with all updates, as described below) and inspection reports.

Update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion and sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports.

File a "Notice of Termination" with TCEQ within 30 days of final stabilization of all areas of disturbed soil and disturbed soil cover. Form is available from Owner or on the Internet at http://www.tceq.state.tx.us/assets/public/permitting/waterquality/forms/20023.pdf.

j. "Notice of Termination" shall be mailed to:

Texas Commission on Environmental Quality
Storm Water & General Permits Team; MC-228
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-4671

k. Upon completion of the Work, submit to Owner TPDES records.

7.10 *Taxes*

SC-7.10.B Add the following new paragraph immediately after Paragraph 7.10.A:

SC-7.10.B Exemption from State of Texas sales tax may be obtained on materials and equipment incorporated into the Work and supplies required to perform the Work. Owner is an organization which qualifies for such exemption pursuant to provisions of Article 20.04(F) of the Texas Limited Sales, Excise and Use Tax Act. In accordance with Texas House Bill 11, Contractor may purchase, materials, equipment, and supplies consumed in the performance of the Work by issuing to Suppliers an exemption certificate in lieu of the tax, said exemption certificate complying with State of Texas Comptroller's Ruling No. 95-0.07. Such exemption certificate(s) issued by Contractor in lieu of the sales will be subject to the provisions of the State of Texas Comptroller's Ruling No. 95-0.09 as amended to be effective October 2, 1968. Exemption certificate may be obtained from Owner's Purchasing Agent.

7.11 *Laws and Regulations*

SC-7.11.C Remove last sentence on Paragraph 7.11.C. "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 written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim in its entirety."

SC-7.11.D Add the following new paragraph immediately after Paragraph 7.11.C:

SC-7.11.D *Minimum Prevailing Wage Rates*

1. Wage rates paid to workers employed in performing the Work at the Site, including Contractor and Subcontractor employees, shall not be less than the following:

   a. Minimum prevailing wage rates of the City of El Paso, Texas. The prevailing minimum wage rate determination, comprised of 5 pages, applicable to the Project is part of the Contract Documents.

   When a labor classification is included in both the City of El Paso and federal minimum prevailing wage rate determinations, Contractor shall pay the higher of the two minimum prevailing wage rates for that labor classification. Contractor shall be aware of changes in the minimum prevailing wage rates applicable to the Work and shall pay the minimum prevailing wages at no additional cost to Owner. Contractor shall post the schedule of classifications and wage rates at conspicuous locations at the Site. Such schedule shall also show deductions, if any, required by law to be made from wages earned by laborers and mechanics engaged on the Work.
2. Contractor shall give preference to hiring qualified local residents for work as laborers and mechanics on the Project. Employees shall be bona-fide residents of the United States of America.
3. Contractor and Subcontractors shall pay each of their employees, engaged in the Work in full, not less often than once per week, and without

deductions or subsequent rebates on any account, except for deductions mandated by law.

4. Contractor, and Subcontractors shall keep a complete payroll record indicating the name, address, and Social Security number of each employee engaged in the Work, together with the classification of work in which the employee is engaged, the hourly wage rate paid, number of deductions made from such wages and total amount paid to the employee. Submit to Owner one copy of each such payroll record, for the period for which payment is requested, with each Application for Payment. Each payroll record shall bear the affidavit of the employer certifying, under oath, that such payroll is a true, complete, and accurate report of the wages earned and paid to each employee engaged in the Work, that no deductions from any wages due each employee, except as set out on the payroll, have been directly or indirectly made, and that no rebates, either direct or indirect, have been nor will be required of an employee.

5. Certified payroll reports shall indicate for each worker whether the labor performed was performed under the Building, Heavy, Highway, or Water and Sewer Line Prevailing Wage Rate scale. Certified payroll reports shall be submitted for the complete Contract period and, for weeks where no Work was performed, negative reports shall be submitted, marked "No Work Performed". Clearly mark "FIRST PAYROLL" on the first payroll submitted, and clearly mark "FINAL PAYROLL" on the last payroll submitted for the Contract.

6. Apprentices will be work only under a bona fide apprenticeship program registered with the U.S. Department of Labor. A copy of such program shall be submitted to Owner, together with current certification or evidence of registration with the U.S. Department of Labor, Bureau of Apprenticeship and Training, for each apprentice engaged in the Work.

7. Contractor shall, when requested by Owner, submit additional certification and documentation (such as copy of cancelled check or an Employee Restitution Receipt Form) indicating that employee has received back compensation due.

8. Contractor and Subcontractors in violation of this provision are subject to a penalty of $60 per day for each worker that is paid less than the rate specified in the Project's applicable prevailing wage rates.

SC-7.11.E Add the following new paragraph immediately after Paragraph 7.11.D:

SC-7.11.E *Mandatory for Building Projects with Contract Price Over $100,000 – Apprentices*

1. In accordance with resolution adopted on November 9, 1999 by the El Paso City Council regarding apprenticeship programs on City projects, Contractor and Subcontractors shall:

a. Sponsor or participate in a U.S. Department of Labor (DOL) certified apprenticeship program for all job classifications utilized on the Project which are apprenticeable occupations as defined by DOL regulations and which appear on the "schedule of categories of apprentices" kept on file in the office of the City of El Paso's Capital Improvement Department;

b. Pay wage rates and benefits in accordance with the applicable apprenticeship program;

c. Comply with the DOL requirements for ratio of apprentices to journeymen;

d. Hire registered apprentices enrolled in a DOL-certified apprenticeship program in all job classifications utilized on the Project which are apprenticeable occupations as defined by DOL regulations and which are designated for City projects on the "schedule of categories of apprentices" kept on file in the office of the City of El Paso Director of Capital Improvement Department. Helpers, unregistered apprentices, and other substitutes shall not perform apprentice-level work in place of registered apprentices.

2. Contractor shall post the applicable prevailing wage rate schedules at the Site in a prominent location readily accessible to the workers throughout the Project. Contractor shall post a notice to be provided by the City of El Paso Director of Capital Improvement Department regarding prevailing wage rates and the City of El Paso's apprenticeship program, in English and in Spanish, which shall be posted at the Site with the prevailing wage rates.

3. Contractor shall submit to Owner the names of all apprentices employed on the Work; verification of their status as registered apprentices; documentation regarding apprentice's proper wage rates; and documentation regarding journeyman-to-apprentice ratios for each trade as determined by the apprenticeship program.

4. No worker shall be discharged by Contractor or Subcontractor, or in any other manner be discriminated against, because such worker has filed an inquiry or complaint, instituted legal or equitable proceeding, or has testified or is about to testify in such proceeding under, or relating to, the apprenticeship program.

5. Contractor and Subcontractors shall allow immediate entry into all areas of the Site by Owner or Owner's agents and representatives displaying or presenting proper identification to Contractor's Site superintendent or their representative. Owner or their representative may visit the Site to determine adherence to these requirements, Contractor and Subcontractors shall allow access to personnel and apprenticeship program books and records and access to employees to be interviewed at random, at any time

and for any reasonable duration to determine compliance with these provisions, including the apprenticeship programs.

6. Owner reserves the right to terminate for cause in accordance with Paragraph 16.02 if Contractor or Subcontractor breaches any of provisions of the Contract Documents regarding apprenticeship programs.

7. Apprentices shall be allowed to work at less than the predetermined rate for the work they performed when apprentice(s) are employed pursuant to, and individually-registered in, a bona-fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration Bureau; or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program but who has been certified by the Bureau of Apprenticeship & Training, or a state apprenticeship agency where appropriate, to be eligible for probationary employment as an apprentice.

8. The allowable ratio of apprentices to journeymen on the Work in any craft classification shall not be greater than the ratio permitted to the Contractor or Subcontractor as to the entire work force under the registered program. Any apprentice performing the Work in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the City Wage Scale for the work actually performed.

9. Contractor shall submit to Owner's Contract Administrator with sufficient information, which demonstrates that apprentices are employed pursuant to, and individually registered in, a bona-fide apprenticeship program. A copy of such program shall be submitted to Owner as well as the current certification for each individual assigned to the Work and appearing on the payrolls for that Contract. Every apprentice must be paid at not less than the rates specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the City wage determination. Workers not registered in a bona-fide apprenticeship program shall be paid not less than the applicable wage rate in the City Wage Scale for the classification of work actually performed. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the program does not specify fringe benefits, they must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Bureau of Apprenticeship & Training determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination.

10. If the Bureau of Apprenticeship & Training or a state apprenticeship agency recognized by the Bureau, withdraws approval of a program, Contractor shall not employ apprentices at less than the applicable City rate for the work performed until an acceptable program is approved and evidence provided.

7.13 *Safety and Protection*

SC-7.13.B.1 Add following new subparagraph immediately after Paragraph 7.13.B:

SC-7.13.B.1 Contractor's safety representative shall be identified in submittal to Owner and Engineer for acceptance prior to commencement of Work at the Site. Name and qualifications of proposed substitute, if any, shall be submitted to Owner for acceptance.

SC-7.13.G Replace the word "safety program" with "Health and Safety Plan."

SC-7-13.H Replace the word "safety program" with "Health and Safety Plan."

SC-7.13.K Add the following new subparagraphs immediately after Paragraph 6.13.J:

SC-7.13.K Within twenty-four hours of receiving a request from Owner, Contractor shall furnish to Owner documentation substantiating representations made in the Health and Safety Plan including, but not limited to, that each of the Contractor's employees has received training on the Health and Safety Plan as well as any other training necessary to competently effectuate the Health and Safety Plan. Select Contractor project management staff shall complete the El Paso Water Online Contractor Orientation, (Course 19ELPWC) available at www.hasc.com, before start of construction.

SC-7.13.L Owner maintains a drug and alcohol-free workplace in accordance with the Drug-free Workplace Act of 1988. Contractor shall publicize a statement notifying employees on the Work that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, including at the Site.

SC-7.13.M Owner maintains specific rules regarding smoking on Owner's properties. Contractor shall adhere to such rules at the Site.

SC-7.13.N Owner maintains specific rules regarding firearms and Contractor shall adhere to such rules at the Site.

SC-7.13.O Owner maintains specific rules regarding traffic safety on Owner's properties. Contractor shall adhere to such rules at the Site.

7.16 *Submittals*

SC-7.16.G Add the following new paragraphs immediately after Paragraph 7.16.F:

SC-7.16.G For each Contractor submittal required under the Contract Documents, Engineer will review one initial submittal and one resubmittal at no cost to Contractor. Engineer will record

Engineer's time for reviewing subsequent submittals of Shop Drawings, Samples, or other submittals requiring approval or acceptance, and Contractor shall reimburse Owner for Engineer's charges for labor and expenses for such time.

SC-7.16.H In the event that Contractor requests a change of a previously approved or previously accepted submittal, Contractor shall reimburse Owner for Engineer's charges for Engineer's review time unless the need for such change is beyond Contractor's control.

ARTICLE 9 - OWNER'S RESPONSIBILITIES

9.11 *Evidence of Financial Arrangements*

SC-9.11 Delete Paragraph 9.11 in its entirety and insert the following in its place:

SC-9.11 Not used

ARTICLE 10 - ENGINEER'S STATUS DURING CONSTRUCTION

SC-10.03 Add a new paragraph immediately after Paragraph 10.03.B that is to read as follows:

SC-10.03.C Resident Project Representative (RPR) will be Owner's and/or Engineer's employee or agent at the Site, will act as directed by and under the supervision of Owner and/or Engineer, and will confer with Owner and/or Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Owner and/or Engineer and Contractor keeping Owner advised as necessary. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.

1. Duties and Responsibilities to RPR:

    a. Schedules: Review the Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

    b. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

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

    d. Liaison:

1) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, and assist in providing understanding of the intent of the Contract Documents.

2) Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

3) Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

e. Shop Drawings and Samples:

1) Record date of receipt of Shop Drawings and Samples that are received at the Site.

2) Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

3) Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.

f. Review of Work, Rejection of Defective Work, Inspections, and Tests:

1) Conduct observations of the Work in progress on the Site to assist Engineer in determining if the Work is, in general, proceeding in accordance with the Contract Documents.

2) Report to Engineer when RPR believes that any Work is unsatisfactory, faulty, or defective or does not conform generally to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test, or approval required to be made; and advise Engineer of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

3) Verify that tests, equipment, and systems startups, and operating and maintenance training are conducted in the presence of appropriate Owner's personnel and that Contractor maintains adequate records thereof; and observe, record, and report to Engineer appropriate details relative to the test procedures and startups.

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

5) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.

g. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

h. Modifications: Consider and evaluate Contractor's suggestions for modifications to Drawings or Specifications and report with RPR's recommendations to Engineer. Transmit to Contractor decisions issued by Engineer.

Records:

1) Maintain at the Site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, and reproductions of original Contract Documents including all Addenda, Change Orders, Field Orders, work change directives, additional Drawings issued subsequent to the execution of the Agreement, Engineer's clarifications and interpretations of the Contract Documents, progress reports, and other Project-related documents.

2) Keep a record recording Contractor's hours on the Site, weather conditions, data relative to questions on Change Orders or changed conditions, list of visitors to the Site, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

3) Record names, addresses, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

4) The RPR shall prepare a daily report or keep a daily diary that records weather conditions, the contractor's daily work activities, and specific observations. The RPR shall regularly photograph the work. The RPR shall maintain orderly files of correspondence, reports of job conferences, change orders, field orders, work change directives, daily reports and/or diaries, photographs and other similar documents. These documents shall be filed in Consultant's project record file. They shall be made available to Owner upon receipt of request from Owner and, if available, uploaded to cloud-based construction management software applications (or any other construction management software applications made available).

j. Reports:

1) Furnish Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and Schedule of Submittals.

2) Consult with Engineer in advance of scheduled major tests, inspections, or start of important phases of the Work.

3) Prepare draft of proposed Change Orders, obtaining backup documents from Contractor, and provide recommendations to Engineer regarding Change Orders and Field Orders.

4) Report immediately to Engineer and Owner upon the occurrence of any Site accident, any Hazardous Environmental Condition, emergencies, or acts of God endangering the Work, or property damage by fire or other cause.

k. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission, and submit recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

l. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals, and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Engineer for review and forwarding to Owner prior to final payment for the Work.

m. Completion:

1) Before Engineer issues a certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.

2) Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public authorities having jurisdiction over the Work.

3) Conduct final inspection in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed or corrected.

4) Observe that all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance of the Work.

2. The RPR shall not:

a. Authorize any deviation from the Contract Documents or substitution of materials or equipment, including “or equal” items.

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

c. Undertake any of the responsibilities of Contractor, Subcontractors, or Contractor’s superintendent.

d. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction, unless such advice or directions are specifically required by the Contract Documents.

e. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.

f. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

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

h. Authorize the use of any Unmanned Aircraft System (UAS or drone) without prior consent and authorization from Owner.

i. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Engineer.

ARTICLE 11 - CHANGES TO THE CONTRACT

11.02 *Change Orders*

SC-11.02.C Add the following new paragraph immediately after Paragraph 11.02.B:

SC-11.02.C Change Order requests shall be accompanied by Contractor's time impact analysis for the Change Order request to be reviewed.

11.03 *Work Change Directives*

SC-11.03.A.1 Add the following new subparagraphs immediately after Paragraph 11.03.A:

SC-11.03.A.1 Without invalidating the Contract, OWNER may, by written Work Change Directive, using the Cost of the Work method, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted as necessary. "Cost of the Work" means a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 13.01, below. A Work Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order. Where practicable, any items of Work that may be agreed upon, prior to the performance of Work under this Section, will be included in a separate Change Order.

SC-11.03.A.2 If the Work Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided in paragraph 13.01. The estimated value of the work issued under each individual Work Change Directive shall not exceed five (5) percent of the original contract price.

SC-11.03.A.3 A Work Change Directive shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.

SC-11.03.A.4 Upon receipt of a Work Change Directive, CONTRACTOR shall promptly proceed with the change in the Work involved, provided, prior to the commencement of any Work under this section, the CONTRACTOR must submit its proposed Work plan, anticipated schedule, and a list of its work force and equipment proposed to be used in the Work for OWNER'S approval. Upon such approval, CONTRACTOR must promptly commence and make continuous progress in

the Work. The OWNER reserves the right to withhold payment for low production or lack of progress.

11.07 *Change of Contract Price*

SC-11.07.C.2.c Delete 27 percent and replace with 25 percent.

SC-11.11 Add the following new paragraph immediately after Paragraph 11.10:

SC-11.11 Liquidated Damages:

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

B. Liquidated Damages Relative to Substantial Completion and Readiness for Final Payment: Owner and Contractor recognize that time is of the essence as stated in Paragraph SC-11.11.A above and that Owner will suffer financial loss if the Work is not completed within the Contract Times for Substantial Completion, completion and readiness for final payment, plus any changes thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **$2,690.00** for each day that expires after the time specified in the Contract Documents for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **$1,660.00** for each day that expires after the time specified in the Contract Documents for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 12 - CLAIMS

SC-12.01.B Add the following immediately after Paragraph 12.01.B:

SC-12.01.B.1 In the event a delay Claim arises due to Standby Equipment Costs, Contractor must notify, through an RFI, Engineer and Owner no later than 72-hours in advance of such claim at which time Contractor, Engineer and Owner will evaluate the progress of the Work and determine if no other Work can be performed. Once that determination has been made, official response from Engineer and Owner acknowledging the delay at which point the Standby time will commence.

ARTICLE 13 - COST OF WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

SC-13.01 In Paragraph SC-13.01.A, delete the last sentence and replace with:

The provisions of this Paragraph 13.01 are used for **three** distinct purposes:

SC-13.01 Add the following new paragraph immediately after Paragraph 13.01.A.2:

SC-13.01.A.3 If neither of the methods defined in paragraphs 13.01.A.1 nor 13.01.A.2 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Work Change Directive, using the Cost of the Work method, and payment will be made as described below:

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

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of the US Army Corps of Engineers EP1110-1-8 Construction Equipment Ownership and Operating Expense Schedule for the Southwest Region (https://www.usace.army.mil/Cost-Engineering/EP1110-1-8/). Equipment or machinery with a value of less than $1,000 will be considered small tools.

SC-13.01 Add the following new subparagraphs immediately after Paragraph 13.01.B.5.i:

SC-13.01.B.5.j Standby Equipment Costs: Standby equipment time will not exceed more than eight (8) hours per twenty-four (24) hour day, forty (40) hours per week, and one hundred seventy-six (176) hours per month Payment for standby equipment will be made in accordance with 13.01.B.5.c except that:

SC-13.01.B.5.j.(1) Contractor-Owned Equipment. For Contractor-owned machinery, trucks, power tools, or other equipment, Standby will be paid at 50% (to account for the removal of operating costs) of the rate established under 13.01.B.5.c.(2). Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

SC-13.01.B.5.j.(2) Equipment Not Owned by the Contractor. For equipment rented from a third party not owned by the Contractor, Standby will be paid at the invoice daily rental rate, excluding operating cost, which includes fuel, lubricants, repairs, and servicing. The Owner reserves the right to limit the daily standby rate to comparable rates established under 13.01.B.5.c.(2). Standby will be paid for equipment operators when included on the invoice and equipment operators are actually on standby. Standby costs will not be allowed during periods when the equipment would have otherwise been idle.

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

a. For purposes of this paragraph, "small tools and hand tools" means any tool or equipment whose current price if it were purchased new at retail would be less than $1,000.

13.03 *Unit Price Work*

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

E. *Adjustments in Unit Price*

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

a. the extended price of a particular item of Unit Price Work amounts to 10 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than **25** percent from the estimated quantity of such item indicated in the Agreement; and

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

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

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

ARTICLE 14 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCCEPTANCE OF DEFECTIVE WORK

SC-14.02 Add the following new subparagraphs to Paragraph 14.02.B:

1. Re-Inspection Fees

a. Pay fees to the Owner to compensate the Owner's Representative as identified in Article 10 of the General Conditions for reinspection of the Work required by the failure of the Work to comply with the claims of status of completion made by the Contractor.

b. Owner may withhold the amount of these fees from the Contractor's final payment as stipulated in Article 15 of the General Conditions.

c. Cost for additional inspections will be billed to the Owner by the Owner's Representative for the actual hours required for the reinspection and preparation of related reports in accordance with the rates provided in 7.03.D of the Standard Supplementary Conditions**.**

2. Fees for Inspections Outside Normal Working Hours

a. If some or all of the Work has been determined to be required to be performed outside the normal working hours and or beyond the standard 40-hour work week as defined by Article 7 of the General Conditions, the Contractor is required to:

1) Notify the Owner in advance of their intent to work outside regular working hours or working days;

2) Determine if the work to be performed will require observation by the Owner's Representative or other agencies prior to covering the Work;

b. Pay fees to the Owner to compensate the Owner's Representative as identified in Article 10 of the General Conditions for inspection of the Work performed outside normal working hours;

c. Owner may withhold the amount of these fees from the Contractor's final payment as stipulated in Article 15 of the General Conditions.

d. Cost for inspections will be billed to the Owner by the Owner's Representative for the actual hours required for the inspection and or observation of the work and preparation of related reports in accordance with the rates provided in 7.03.D of the Standard Supplementary Conditions. [**Contractor shall pay for all inspections]**

ARTICLE 15 - PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.01 *Progress Payments*

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

SC-15.01.D.1 Thirty days after presentation of the Application for Payment to Owner by Contractor with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 15.01.E) become due, and when due will be paid by Owner to Contractor.

SC-15.01.D.1.(a) The thirty days' time will commence immediately after Owner acknowledges receipt of the Application for Payment from Contractor.

SC-15.01.D.1.(b) If upon review of the Application for Payment the Owner encounters any error (including, but not limited to, clerical, grammatical, informational, etc…) or lacks documentation as required by the Contract Documents, the Application for Payment will be deemed incomplete and the Owner will reject the Application for Payment. The Owner will immediately notify the Contractor and Engineer the reason for the rejection of the Application for Payment. The thirty days' time allotted will reset and recommence once a corrected Application for Payment is received by Owner from Contractor.

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

SC-15.01.F For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 *Substantial Completion*

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

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

15.06 *Final Payment*

SC-15.06.B Delete the first sentence and replace with the following:

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 10 days after receipt of the final Application for Payment, indicate in writing **to Owner** Engineer's recommendation of final payment and **inform Contractor Final Payment Application is ready to be submitted to Owner for payment**.

SC-15.06.E Delete Paragraph 15.06.E in its entirety and replace with the following:

E. Final Payment Becomes Due: Upon receipt from **Contractor of an approvable Application for Final Payment** and accompanying documentation, Owner shall set-off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including, but not limited to, set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Contractor. An approvable application for final payment shall include Contractor and Subcontractor payrolls for the period covered in the final Application for Payment; an update of progress against the accepted Progress Schedule; and such other items as the Engineer may reasonably require.

15.08 *Correction Period*

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

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

ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION

16.02 *Owner May Terminate for Cause*

SC-16.02.A.5 Add the following new paragraphs immediately after Paragraph 16.02.A.4:

SC-16.02.A.5 If the Contract or any part thereof is sublet or assigned to another party by Contractor, without the written consent of Owner and surety that issued the performance bond and payment bond.

ARTICLE 17 - FINAL RESOLUTIONS OF DISPUTES

SC-17.02 Add the following new paragraphs immediately after Paragraph 17.01:

17.02 *Arbitration*

A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of $100,000 or less will be settled in accordance with the American Arbitration

Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

17.03 *Attorneys' Fees*

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02:

17.03 *Attorneys' Fees*

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

ARTICLE 18 - MISCELLANEOUS

SC-18.11 Add the following new paragraph immediately after Paragraph 18.10:

SC-18.11 *Use of Unmanned Aerial/Aircraft Systems (UAS)*

A. The use of an UAS on all Owner property is strictly prohibited unless the following are met:

1. The proposed flight is solely for purposes of Utility operations
2. Authorization has been received from Owner to operate on or above Owner property
3. All of the necessary federal, state, and local approvals have been acquired
4. Compliance with federal, state, and local laws are met
5. The Contractor has filed a flight plan with AirMap or any other Owner-approved Unmanned Aircraft System Traffic Management (UTM) ecosystem for uncontrolled operations that is separate from, but complementary to, the FAA's Air Traffic Management (ATM) system prior to flight operations

6. The proposed flight does not photograph, video, or monitor in any way areas where members of the general public would have a reasonable expectation of privacy

B. Any person or vendor, including but not limited to third parties seeking to operate a UAS on or above Owner property or at an Owner-sponsored event must submit a completed UAS (Drone) Use Approval Form to the Owner at least 10 business days in advance.

C. The applicable Owner Representative (PM) who is an employee of the Owner will process the request for UAS use. After review and assessment of the request, the requestor will be notified of a decision or receive a request of additional information within five (5) business days.

1. If approved, the PM will email a copy of the approved form to the Owner's Utility Security and Emergency Response (USER) Coordinator.

D. The USER Coordinator will advise El Paso Police Department (EPPD) and Airport Operations (if the UAS will be near or entering restricted flight space) of UAS activity for situational awareness.

1. If approved, a copy of the UAS Approval Form must be in possession by the pilot in command at all times during flight activity and must be presented to any EPWater official or representative with control or jurisdiction over the activity, upon request.

E. The USER Coordinator will maintain a copy of the UAS (Drone) Use Approval Forms.

F. Exceptions and Deviations

1. Contractors will be limited to the collection, use, retention, or dissemination of images and videos of Owner's critical infrastructure acquired by UAS.

2. The Owner's Utility Chief Operations Officer may waive the 10-business day notification requirement as deemed necessary.

3. UAS operators must only conduct approved flights under favorable conditions. If unforeseen circumstances develop (e.g. adverse weather) under which operations cannot be conducted in a safe manner, the operation must postpone the flight and request an extension from the Project Manager within 3 business days of the original date. If the extension is not requested within three (3) business days, a new UAS Approval Form must then be completed and submitted.

4. The use of UAS for hobby or recreational use on all EPWater property is always strictly prohibited. Using a UAS to take

photographs or videos for personal use is considered recreational use and is prohibited.

SC-18.12 Add the following new paragraph immediately after Paragraph 18.10:

SC-18.12 *Working Near Utilities*

A. *Construction Adjacent to High Voltage Electric Lines:*

1. Contractor shall comply with Laws and Regulations, including U.S. Occupational Safety and Health Administration (OSHA) safety standards regarding construction adjacent to high-voltage electric lines and facilities, including trenching, crane operations, final grading, and other associated work which may result in impaired clearance to an existing electrical line or facility.

2. It is a violation of OSHA regulations to operate equipment in a manner that results in persons or equipment coming within ten feet of an energized electric line. Such Laws and Regulations are enforced by OSHA, and violators are subject to penalties imposed under federal Law.

3. Texas Law prohibits function or activity where it is possible for the person performing such activity to come within six feet of an overhead power line.

4. Contractor shall notify the El Paso Electric Company in writing of Contractor's anticipated dates and times when such work is scheduled. Written notification of El Paso Electric Company shall be at least six working days prior to each scheduled activity near El Paso Electric Company power lines and facilities, so that El Paso Electric Company personnel can coordinate with Contractor to provide proper clearance of energized electric lines. No other type of notice will be acceptable and work shall not be initiated until proper clearance and arrangements are confirmed by Contractor with the El Paso Electric Company.

5. Submit written notification to:

   Raul Guel, Distribution Engineering Design
   El Paso Electric Company
   P. O. Box 982
   El Paso, Texas 79960
   (915) 543-4015

6. Simultaneously submit one copy of the notification letter to Owner's Contracts Development Manager and retain copy in Contractor's file.

7. Below are selected El Paso Electric Company phone numbers:

Claims Director	(915) 543-4158
Trouble & Emergencies	(915) 543-5720
Field Services/Power Consultants	(915) 543-2255
Cable Locator	(915) 543-4051

B. Construction Adjacent to Gas Lines: Contractor shall comply with the One-Call Notification and System Protection Program developed by Southern Union Gas Company, and with State Damage Prevention Law, HB 2295:

☐ Contact Texas Gas Co. not less than two working days before commencing excavation activities

☐ Determine exact location of all underground utilities by safe and acceptable means

☐ Employ the two-foot safety rule

☐ Utilize "Professional Excavator's Manual" as revised

SC-18.13 Add the following new paragraph immediately after Paragraph 18.12:

SC-18.13 *EPCWID #1 Dewatering Permit Requirements*

A. A license agreement for "Discharge of Foreign Waters into District Drain Ditches" is required between Owner and the El Paso County Water Improvement District (EPCWID) #1 before Contractor may begin dewatering operations. Contractor shall be a co-licensee with Owner. Terms and conditions of the license agreement are applicable to Contractor, who will function, relative to the license EPCWID #1 agreement only, as an agent of Owner, by preparing an approvable plan and carrying out the terms of the plan and the EPCWID #1 license agreement. Contractor shall, to the extent permitted by law, defend and hold harmless Owner, its employees, insurers and agents; and the Engineer and Engineer's consultants, and their employees, officers, insurers, and agents from claims arising out of damages caused by actions, or inactions, of Contractor or as a result of EPCWID's exercise of any or all options given it under the license agreement.

B. Contractor shall prepare and submit to Engineer a "Dewatering Plan", a "Final Schedule for Dewatering", and an estimate of fees due EPCWID #1. Submit "Dewatering Plan" within 15 days of the date that the Contract Times commence running. "Dewatering Plan" shall include the estimated quantities of dewatering for each month of the Contract, the design capacity and number of pumps to be used by Contractor, and the point(s)

of dewatering pump discharge. Engineer will review for acceptability the "Dewatering Plan" and, when the submittal is acceptable to Engineer, Engineer will forward it, through Owner, to EPCWID #1. Prepare and submit the submittal and schedule the Work so that Owner receives the "Dewatering Plan" submittal not less than 14 days before the start of dewatering operations at the Site. Owner will pay the fees as estimated in the "Dewatering Plan".

C. Estimate the dewatering fees on the following basis:

1. Drain maintenance fee of $1,000 for each six months a discharge occurs. Fee for maintenance is non-refundable. Subsequent semi-annual fee payments are payable to Owner by Contractor in advance of each respective six-month period.

2. Dewatering fee at the rate of $150 per acre-foot of water discharged. For a month in which the discharge exceeds the amount estimated under the "Dewatering Plan", Contractor shall advise Owner and Engineer in writing, that such excess fees may be due so that the Owner may consider its liability for, and take action to make payment of, such excess fees to EPCWID #1. Owner will pay such excess fees only to the extent that such fees are incurred through no fault of Contractor.

D. Samples of the discharge water shall be tested by a qualified testing laboratory hired by Contractor. Submit to Engineer results of total dissolved solids (TDS) tests, which Engineer will transmit to EPCWID #1. Submit to Engineer and Owner monthly reports of discharge quantities and quality (TDS and sulfates), which specific requirements may be more particularly indicated in the Specifications and in the associated discharge permit; Engineer will transmit monthly reports to EPCWID #1.

E. Contractor will not be eligible for final payment by Owner until final dewatering fees based upon actual quantities and damages (if any) due EPCWID # 1 have been paid and payment due from Contractor has been made. A "Final Release" from EPCWID # 1 shall be received by Owner as a condition precedent to Contractor applies for final payment.

SC-18.14 Add the following new paragraph(s) immediately after Paragraph 18.12:

SC-18.14 *Railroads*

A. *Union Pacific Railroad Company Contractor's Right of Entry*: Contractor shall acquire and pay all associated expenses (including railroad company inspection fees), Contractor's right-of-entry from, the Union Pacific Railroad Company. Refer to Union Pacific Railroad's "Contractor's Right of Entry" form and its exhibits, included in the Project Manual following these Supplementary Conditions. Right-of-entry requirements are

interrelated with the railroad liability insurance requirements and both are Contractor's cost responsibility. Contractor shall acquire railroad company's authorization prior to commencing work in the railroad right-of-way. Submit to Owner and Engineer executed copies of Contractor's "Right of Entry" form prior to commencing work on railroad property.

B. *Railroad Liability Insurance*: Contractor shall obtain Railroad Liability Insurance in the form and amount required by the Union Pacific Railroad Company. Such insurance shall be in effect and cover all necessary work and operations required of Contractor within the railroad right-of-way. Refer to the railroad's "Contractor's Right of Entry" form and its exhibits. Insurance requirements of this paragraph are interrelated with the right-of-entry requirements in Paragraph SC-18.14.A and is Contractor's responsibility.

C. For clarification of the requirements and costs of railroad permits and insurance, contact:

Manager Utilities Work
Union Pacific Railroad Company
Contracts and Real Estate Department
1400 Douglas Street STOP 1690
Omaha, Nebraska 68179-1690
Phone: (402) 544-8620
Fax: (402) 501-1519

SC-18.15 Add the following new paragraph immediately after Paragraph 18.14:

SC-18.15 Texas Water Development Board (TWDB) contracts require that all Contractors and subcontractors maintain project costs in a manner consistent with generally accepted accounting principles. All records are to be maintained for a minimum period of three years and beyond that minimum period if litigation, a claim, or an audit is in process, or if audit findings are not resolved. The three-year period will begin upon completion of final payment.

***** END OF SUPPLEMENTARY CONDITIONS *****

REQUIRED WORKERS' COMPENSATION COVERAGE

(Title must be 30 point font & bold lettering)

(19 point font from here on)

The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirements for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

* The above sign to be provided in both English and Spanish without any additional words or changes and shall be posted at the Project Site. Refer to Paragraph SC-6.03.D.1 of the Supplementary Conditions (Document 00800 in the Contract Documents).

Contractor Insurance Check List

Project	**HASKELL R. STREET WWTP FOG RECEIVING STATION IMPROVEMENTS**			
Bid Number	**93-22**			
Job Description	Construction of the FOG Receiving Station, which consists of all piping, equipment and connections necessary to receive pre-screened FOG material from LES, temporarily store and mix within the existing storage tank, and transfer to the facility's sludge mixing well at a determinable rate. Work includes all necessary augmentation and modifications to boost the production of digester gas and optimize the performance of the existing cogeneration system. New equipment to be installed will include an offloading nozzle, rock trap with grinder, metering pumps, offloading pumps, carbon filter, control panel, valves, and instruments shown in the drawings. New installations include stainless steel and PVC piping, electrical, I&C, water and drainage connections. Site construction will include new foundation and concrete knee wall. Work will include modifications to existing 18,000-gallon tank, tie-in to mixed sludge well and pumping station. Work will include all necessary equipment training and functional testing of all equipment and processes.			
Contract Cost				
Final Completion				
Contractor				
Engineer	Arcadis, U.S., Inc.			
Insurance Agent				
Performance & Payment Bonds	**Bond Limit :**			
	Surety:			
	Certified copy of Authority to Act		☐ Yes	☐ No
	Countersigned by Agent		☐ Yes	☐ No
Workers' Compensation	**Insurance Company / A.M. Best Rating**			
	Policy Period	From:	To:	
	Employers Liability Limits required			
	Employers Liability Limits provided			
	Waiver of Subrogation		☐ Yes	☐ No
	30 Days Notice of Cancellation		☐ Yes	☐ No
	If Employees Leased:			
	– Employee Leasing Company		☐ Yes	☐ No
	– Texas State License		☐ Yes	☐ No
	– Copy of Workers' Compensation Policy		☐ Yes	☐ No
Commercial General Liability	**Insurance Company / A.M. Best Rating**			
	Policy Period	From:	To:	
	Limits required			
	Limits provided			
	Products/Completed Operations – 2 Years after completion		☐ Yes	☐ No
	Personal Injury – Employment Exclusion deleted		☐ Yes	☐ No
	Contractual		☐ Yes	☐ No
	Broad Form Property Damage		☐ Yes	☐ No
	XCU		☐ Yes	☐ No
	Additional Insured		☐ Yes	☐ No
	30 Days Notice of Cancellation		☐ Yes	☐ No
Business Auto	**Insurance Company / A.M. Best Rating**			
	Policy Period	From:	To:	
	Limits required			
	Limits provided			
	Symbol 1		☐ Yes	☐ No

Contractor Insurance Check List

	Additional Insured		☐ Yes	☐ No
	30 Days Notice of Cancellation		☐ Yes	☐ No
Umbrella	**Insurance Company / A.M. Best Rating**			
	Policy Period	From:	To:	
	Limits required			
	Limits provided			
	Follow Form – Additional Insureds and Waivers of Subrogation		☐ Yes	☐ No
	30 Days Notice of Cancellation		☐ Yes	☐ No
Builder's Risk/Installation Floater	**Insurance Company / A.M. Best Rating**			
	Policy Period	From:	To:	
	Limits required			
	Limits provided			
	Deductible			
	– All Risk		☐ Yes	☐ No
	– Flood		☐ Yes	☐ No
	– Earthquake		☐ Yes	☐ No
	– Testing		☐ Yes	☐ No
	– Offsite Storage		☐ Yes	☐ No
	– Transit		☐ Yes	☐ No
	– Additional Interests		☐ Yes	☐ No
	– Waiver of Subrogation		☐ Yes	☐ No
Boiler & Machinery	– **If required**			
Certificates of Insurance	– **All coverages**			
Certified Copies of Policies	– **All policies**			
Requirements	**Additional Insureds – Owner, Engineer and Engineer's Consultants on:**			
	– CGL		☐ Yes	☐ No
	– Auto		☐ Yes	☐ No
	– Umbrella		☐ Yes	☐ No
	Waiver of Subrogation (Workers' Compensation) – Owner, Engineer and Engineer's Consultants		☐ Yes	☐ No
	30 Days Notice of Cancellation to Owner & Engineer by Certified Mail on:			
	– WC		☐ Yes	☐ No
	– CGL		☐ Yes	☐ No
	– Auto		☐ Yes	☐ No
	– Umbrella		☐ Yes	☐ No
	– Builder's Risk		☐ Yes	☐ No
	– B&M (If required)		☐ Yes	☐ No
	Builder's Risk/Installation Floater – Include Additional Insured interests & Waiver of Subrogation in favor of :			
	– Owner		☐ Yes	☐ No
	– Contactor		☐ Yes	☐ No
	– Subcontractor		☐ Yes	☐ No
	– Engineer		☐ Yes	☐ No
	– Engineer's Consultants		☐ Yes	☐ No

Contractor Insurance Check List

Other	

Notice: This checklist is provided as a guide only and is not a substitute for the insurance requirements included in the EPWU contract. EPWU strongly advises contractors provide a copy of the contract insurance requirements to their insurance agents, consultants and providers to ensure their insurance coverages meet the contract insurance requirements.

APPLICATION FOR PAYMENT NO. ___

Check One: PARTIAL ____ FINAL ____

OWNER: El Paso Water Utilities
Public Service Board
1154 Hawkins Blvd.
El Paso, Texas 79925

PROJECT: _____

BID NO.: _____

PURCHASE ORDER: _____

ORIGINAL CONTRACT AMOUNT: $_____

NET CHANGE BY CHANGE ORDERS: $_____

CONTRACT SUM TO DATE: $_____

THROUGH CHANGE ORDER NO. _____

NOTICE TO PROCEED: _____

CONTRACT TIME: _____ Calendar Days

REVISED: _____ Calendar Days

ELAPSED TIME: _____ Calendar Days

CONTRACT COMPLETION DATE: _____

REVISED COMPLETION DATE: _____

SUBSTANTIAL COMPLETION DATE: _____

FINAL COMPLETION DATE: _____

WORK COMPLETED: $ _____ *See Attached Pay Item Schedule*

MATERIALS STORED: $ _____ *Attach Invoices, Documentation*

TOTAL EARNED: $_____

LESS RETAINED: ____ % - $ _____

LESS PREVIOUS PAYMENTS: - $ _____

NET DUE THIS ESTIMATE: $ _____ *Attach Certified Payroll LCP Tracker Report this Period*

CONTRACTOR'S CERTIFICATION:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of work done under the contract referred to above have been applied to discharge in full all obligations of CONTRACTOR incurred in connection with work covered by prior applications for payment; and (2) title to all materials and equipment incorporated in said work or otherwise listed in or covered by this application for payment will pass to Owner at time of payment free and clear of all liens, claims, security interests and encumbrances (except such as covered by bond acceptable to OWNER).

CONTRACTOR: _____ By: _____

Title: _____

Date: _____

RECOMMENDED:

CONSTRUCTION MANAGER: _____

By: _____

Date: _____

APPROVED:

By: _____

Title: _____

Date: _____

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G÷C)	BALANCE TO FINISH (C-G)	RETAINAGE
			FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD					

PAY APPLICATION CHECK LIST

REQUIRED ITEM/PROCESS	INCLUDED
1. Three original Pay Applications are included/submitted and are on the standard EPWU form (CM 11343A in the bid document).	
2. Substantial and Final Completion due dates listed match the bid document.	
3. Project adjustments (e.g., price, quantity, time, etc.) reflected in Work Directives or unexecuted Change Orders are NOT included in the Pay Application.	
4. If charges for paid materials are included in the Pay Application, include paid invoices for the stored material.	
5. Updated Construction Schedule is included	
6. Payrolls to be entered in the Utility Automated Payroll Software program, which include the following:	
a. For 'Negative Payrolls' during week(s) of no work performed, state, "No Work Performed" on those payrolls.	
b. If apprentices are used, submit DOL certification, apprenticeship programs and training periods for each apprentice. (Note: The DOL certificates expire every 90 days and must be renewed and current. If a current DOL certificate is not submitted for each apprentice, the employee must be paid the Journeyman's rate).	

If all requirements are not met or included in the Pay Application package, the Pay Application will be returned for revisions, and payment will not be made until EPW's receipt of 'approvable' Pay Application.

SECTION 00840

GENERAL WAGE REQUIREMENTS

The following Wage Decision(s) will be utilized for this project. **A Wage Rate for one or both Wage Decisions for a construction type(s) included in the Contract Document, the Contractor is required to indicate on his Certified Payroll Reports, the Wage Decision description/construction type under which the works being reported.**

CONSTRUCTION TYPE / WAGE DECISION	PORTION OF PROJECT FOR WHICH THE WAGE DECISION IS APPLICABLE
El Paso Water Utilities – Public Service Board 2020 Building Construction Trades Wage Rates Adopted by Public Service Board January 12, 2022	Applicable to work on mixed sludge building.
City of El Paso 2016 Paving and Street Construction, Dirt Work, Heavy Construction, Pipeline Work, Highway Wage Rates Adopted by El Paso City Council February 28, 2017	Applicable to all work.

EL PASO WATER
2020 Building Construction Trades Wage Rates

CLASSIFICATION	BASE WAGE	BENEFITS	HOURLY PREVAILING WAGE RATE	(8 HOURS) PER DIEM WAGE RATE
Asbestos/Lead Abatement/Mold Remediation	31.51	12.06	43.57	348.56
Automatic Fire Sprinkler Fitter, Certified	30.64	21.68	52.32	418.56
Block, Brick, and Stone Mason	17.97	0.00	17.97	143.76
Carpenters – Acoustical Ceiling Installation	17.36	0.00	17.36	138.88
Carpenter – Rough	17.64	0.00	17.64	141.12
Carpenter – All Other Work	17.40	0.00	17.40	139.20
Caulker / Sealers	11.29	0.00	11.29	90.32
Cement and Concrete Finishers	16.30	0.00	16.30	130.40
Commercial Truck Driver	14.75	0.00	14.75	118.00
Communication/Security Technician	16.50	2.12	18.62	148.96
Crane and Heavy Equipment Operator	31.05	0.00	31.05	248.40
Door & Hardware Specialist	12.00	1.35	13.35	106.80
Drywall and Ceiling Tile Installers	14.40	0.00	14.40	115.20
Drywall Finishers & Tapers	15.55	0.00	15.55	124.40
Electrician	22.70	7.32	30.02	240.16
Elevator Installers and Repairers	31.35	15.10	46.45	371.60
Fence Erectors – Include with Skilled Labor	10.00	0.00	10.00	80.00
Floor Layers- Carpet and Resilient	12.87	0.00	12.87	102.96
Floor Layers- Specialty	13.00	0.00	13.00	104.00
Floor Layers - Wood	11.50	0.00	11.50	92.00
Glaziers	15.86	1.00	16.86	134.88
Hazardous Materials Removal Workers	10.00	0.00	10.00	80.00
Heating, Air Conditioning and Refrigeration Service Technician	31.14	12.43	43.57	348.56
Insulation Workers – Mechanical	31.26	11.96	43.22	345.76
Irrigator – Landscape, Certified	15.28	0.00	15.28	122.24
Laborer	13.13	0.58	13.71	109.68
Locksmith	12.00	1.35	13.35	106.80
Mechanic	17.00	0.00	17.00	136.00
Painters - Building	13.86	0.00	13.86	110.88
Paper Hanger	14.00	0.00	14.00	112.00
Pipe Layer (Utility)	18.00	0.00	18.00	144.00
Pipe Fitters and Steamfitters	23.53	9.02	32.55	260.40
Plaster, Stucco, Lather and EIFS Applicator	16.82	0.00	16.82	134.56
Plumber/ Medical Gas Installer	31.39	10.77	42.16	337.28
Reinforcing Iron and Rebar Workers	22.69	0.00	22.69	181.52
Roofers	16.00	0.00	16.00	128.00
Scaffolding Erector	13.69	0.00	13.69	109.52
Sheet Metal Workers	27.16	0.00	27.16	217.28
Structural Iron and Steel Workers / Metal Building Erector	25.57	13.24	38.81	310.48
Tile Setters	13.86	0.00	13.86	110.88

2020 BUILDING DEFINITIONS

1	**Asbestos/Lead Abatement/Mold Remediation**	Assembles work platform and seals off work area, using plastic sheeting and duct tape. Positions mobile decontamination unit or portable showers at entrance of work area. Positions portable air evacuation and filtration system inside work area. Cuts and scrapes asbestos, mold or paint from surfaces, using knife and scraper. Assists in demolition and deconstruction activities of buildings. Shovels asbestos, mold or paint into plastic disposal bags and seals bags, using duct tape. Cleans work area of loose asbestos, mold or paint, using vacuum, broom, and dust pan. Places asbestos, mold or paint in disposal bags and seals bags, using duct tape, loads bags into truck. Cleans and maintains tools, sampling equipment and lab equipment. Responsible for keeping site and grounds clean and neat. Performs daily equipment checks. Picks up necessary supplies and tools from warehouse as directed. Loads and unloads scrap materials into trucks and roll off boxes. Performs work safely in accordance with departmental safety procedures and operates equipment safely. Reports any unsafe work condition or practice to supervisor. Performs other related and non-related duties as assigned.
2	**Automatic Fire Sprinkler Fitter, Certified**	Sprinkler Fitters specialize in piping associated with fire sprinkler systems. These types of systems are required to be installed and maintained in accordance with strict guidelines, usually National Fire Protection Association (NFPA) standards, in order to maintain compliance with building and fire codes. Sprinkler Fitters work with a variety of pipe and materials including: plastic, copper, steel, cast iron, and ductile iron. The fire suppression piping may contain: water, air, antifreeze, fire retardant foam, gas, or chemicals for hood systems. Sprinkler systems installed by Sprinkler Fitters can include but not limited: to underground supply, standpipes, fire pumps as well as overhead piping systems.
3	**Block, Brick, and Stone Mason**	Lay and bind building materials, such as: brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, with mortar and other substances to construct, or repair walls, partitions, arches, sewers, and other structures. Classify installers of mortarless segmental concrete masonry wall units. Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, et cetera using stone, marble, granite, slate. Cutting, grouting, and pointing of materials listed above which is necessary shall be part of this classification.
4	**Carpenters – Acoustical Ceiling Installation**	Construct, erect, install or repair acoustical ceiling grid, ceiling tile, and other items laid in acoustical grid.
5	**Carpenter – Rough**	Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms; building frameworks, including partitions, joists, studding, and rafters; wood stairways, window and door frames. May also install cabinets, and siding. Include brattice builders who build doors or brattices (ventilation walls or partitions) in underground passageways to control the proper circulation of air through the passageways.

6	**Carpenter – All Other Work**	Construct, erect, install or repair cabinets and other fixtures or structures requiring a high level of workmanship. Includes Cabinetmakers and Bench Carpenters – cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut or shape lumber or to fabricate parts for wood products**.** Perform related duties such as trim work.
7	**Caulker/Sealers**	Applies water proofing agents or caulk to a variety of structures and materials.
8	**Cement and Concrete Finishers**	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, roads, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs, or gutters; patch voids; use saws to cut expansion joints. Classify installers of mortarless segmental concrete wall units.
9	**Commercial Truck Driver**	Drive a truck, van or tractor-trailer combination to transport and deliver goods, or materials in liquid, loose, or packaged form. May be required to unload truck.
10	**Communication/Security Technician**	Set-up, re-arrange, or remove switching and dialing equipment used in central offices. Service or repair telephones and other communication equipment on customers' property. May install equipment in new locations or install wiring and telephone jacks in buildings under construction. Install, program, maintain, and repair security and fire alarm wiring and equipment. Ensure that work is in accordance with relevant codes. Exclude "Electricians" who do a broad range of electrical wiring.
11	**Crane and Heavy Equipment Operator**	A worker who operates a crane or other types of heavy equipment to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber-tired. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
12	**Door and Hardware Specialist**	Installs or repairs doors, hardware and accessories. Are responsible for the installation of contract commercial hardware and custom architectural grade wood doors, steel doors and frames for all Prevailing Wage jobs. Shall be trained by their employer's, employer's apprenticeship, or in factory training classes in the proper methods and techniques and requirements for the installation of Architectural Grade commercial wood and metal doors, frames and hardware in conformance with all local, state, and federal code.
13	**Drywall and Ceiling Tile Installers**	Apply plasterboard, or other wallboard to ceilings, or interior walls of buildings. Apply or mount acoustical tiles or blocks, strips, or sheets of sound-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. Materials may be of decorative quality. Includes metal stud framing. Exclude "Carpet Installers", "Carpenters – Acoustical Ceiling Installation", and "Tile and Marble Setters".
14	**Drywall Finishers and Tapers**	Seal joints between plasterboard or other wallboard, including bedding and texturing, to prepare wall surface for painting or papering.

15	**Electrician**	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete electrical installation. To include the installation of cabling, wire, conduits and end devices for Temperature Control, Building Automation, and Energy Management Systems, et cetera. Includes installation of photovoltaic solar panels.
16	**Elevator Installers and Repairers**	Assemble, install, repair, or maintain electric or hydraulic freight or passenger conveyances including but not limited to elevators, escalators, dumbwaiters, moving walks and wheelchair lifts.
17	**Fence Erectors - Include with Skilled Labor**	Erect and repair metal and wooden fences and fence gates around highways, industrial establishments, residences, or farms, using hand and power tools. Excludes rock and stone fences.
18	**Floor Layers – Carpet and Resilient**	Apply blocks, strips, or sheets of shock-absorbing, sound-deadening, or decorative coverings to floors. Lay and install carpet from rolls, tiles or blocks on floors. Install padding and trim flooring materials. Installs variety of soft floor materials including vinyl and VCT. Exclude wood floors and specialty floors.
19	**Floor Layers - Specialty**	Prepares surface, installs and finishes specialty floor material such as manufactured or engineered and laminated wood.
20	**Floor Layers - Wood**	Install, scrape and sand wooden floors to smooth surfaces using floor scraper and floor sanding machine, and apply coats of finish to include gymnasium and bowling alleys.
21	**Glaziers**	Installs glass in windows skylights, store fronts and display cases, or on surfaces such as: building fronts, interior walls, ceilings and table tops. The installation, setting, cutting, preparing, fabricating, distributing, handling or removal of the following: glass and glass substitutes used in place of glass, pre-glazed windows, retrofit window systems, mirrors, curtain wall systems, window wall systems, cable net systems, canopy systems, structural glazing systems, unitized systems, interior glazing systems, photovoltaic panels and systems, suspended glazing systems, louvers, skylights, entranceway systems including doors and hardware, revolving and automatic door systems, patio doors, store front systems including the installation of all metals, column covers, panels and panel systems, glass hand rail systems, decorative metals as part of the glazing system, and the sealing of all architectural metal and glass systems for weatherproofing and structural reasons, vinyl, molding, rubber, lead, sealants, silicone and all types of mastics in wood, iron, aluminum, sheet metal or vinyl sash, doors, frames, stone wall cases, show cases, book cases, sideboards, partitions and fixtures. Performs other related duties.

22	**Hazardous Materials Removal Workers**	Identify, remove, pack, transport, or dispose of hazardous materials, including asbestos, lead-based paint, waste oil, fuel, transmission fluid, radioactive materials, contaminated soil, mold, et cetera. Specialized training and certification in hazardous materials handling or a confined entry permit are generally required. May operate earth-moving equipment or trucks.
23	**Heating, Air Conditioning and Refrigeration Service Technician**	Repair and service heating, central air conditioning, or refrigeration systems, including oil burners, hot-air furnaces, heating stoves, and air handlers. (Installation of systems is performed by sheet metal worker). Includes HVAC mechanic.
24	**Insulation Workers – Mechanical**	This work includes the preparation, alteration, application, removal, hauling, erection, assembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, dismantling, reconditioning, maintenance, finishing, and/or weatherproofing of cold or hot thermal insulations with such materials as may be specified when those materials are to be installed for thermal purposes in voids, or to create voids, or on either piping, fittings, valves, boilers, ducts, flues, tanks, vats and equipment, or on any hot or cold surfaces for the purpose of thermal control or to be installed for sound control purposes mechanical devices, equipment, piping, surfaces related in an integral way to the insulation of such mechanical devices, equipment and piping. This work also includes all labor connected with insulation for; temperature control, personnel protection, safety and/or prevention of condensation. This work also includes all labor connected with hauling, distribution and cleanup of materials on the job premises. All thermal tape, pads, metered fittings (insulation, metal or plastic), batts and lags.
25	**Irrigator- Landscape, Certified**	Certified by TCEQ to install watering systems in various sizes and grades of lawn in order to maintain sufficient pressure and to insure even dispersal of water.
26	**Laborer**	Performs manual duties in all phases of construction. Demolition (interior and exterior), Flagging and Traffic Control, General Clean-Up, Air and Power Tool Operators (Including chipping guns, jackhammers and tampers), all material handling and clean-up, except refractory, chute/hose operator, raking, shoveling and vibrating, raking, shoveling, luting, ironing, dumping and spreading, trenching, material handling, back filling (*Equipment Operators Incidental to Laborers' scope of work). Landscape or maintain grounds of property using equipment as needed. Workers typically perform a variety of tasks, which may include any combination of the following: sod laying, mowing, trimming, planting, watering, fertilizing, digging, raking, sprinkler repair, and installation of mortarless segmental concrete masonry wall units. Does not ordinarily perform work permitting exercise of independent judgment or without close direction by other workers.
27	**Locksmith**	Self-explanatory.

28	**Mechanic**	Maintains and repairs construction tools and equipment.
29	**Painters - Building**	Paint walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns. May remove old paint to prepare surface prior to painting. May mix colors or oils to obtain desired color or consistency. Exclude "Paperhangers."
30	**Paper Hanger**	Measures, cuts, and hangs wallpaper and Fiber Reinforced Paneling.
31	**Pipe Layer (Utility)**	Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.
32	**Pipe Fitters and Steamfitters**	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Includes pressurized lines and flow lines for gas, air, and oil found in industrial settings.
33	**Plaster, Stucco, Lather, and EIFS Applicator**	Apply interior or exterior plaster, stucco, or similar materials. May also set ornamental plaster**.** Applies acoustical plaster, interior and exterior plastering of stone imitation or any patented materials when cast. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding.
34	**Plumbers/ Medical Gas Installer**	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Assemble, install, alter, and repair pipelines or pipe systems that carry medical gases or liquids. Specialized training and certification required.
35	**Reinforcing Iron and Rebar Workers**	Position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Includes post-tensioning. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools.
36	**Roofers**	Cover roofs of structures with shingles, tile, slate, asphalt, aluminum, wood, metal and related materials. May spray roofs, sidings, and walls with material to bind or seal sections of structures. Includes metal and membrane roofs.

37	**Sheet Metal Workers**	Fabricate, assemble, install, and repair sheet metal products and equipment, such as ducts, seal the system, pressure test and test and balance , control boxes, drainpipes, architectural sheet metal, hangers, brackets, used in the installation of sheet metal, and installs grills, registers, and furnace casings. Work may involve any of the following: setting-up and operating fabricating machines to cut, bend, and straighten sheet metal, operating soldering equipment to join sheet metal parts; inspecting, assembling, and smoothing seams and joints of burred surfaces, including metal flashings, gutters, canopies, soffit's, louvers, skylights and custom metal roofs. Installs warm air furnaces except where necessary piping for gas, or oil is performed under the plumbing and pipefitting classification. Include sheet metal duct installers who install prefabricated sheet metal ducts used for heating, air conditioning, or other purposes. Fire life safety, damper inspection, stairwell pressurization. May install other heating and cooling devices which are in connection with duct systems.
38	**Structural Iron and Steel Workers/Metal Building Erector**	Rigging, raise, place, and unite iron or steel, prefabricated metal buildings precast concrete, precast "tilt-up" panels, concrete and steel bridge members, concrete decking, ornamental iron, hand rails, stairs, curtain wall/glass framework, girders, columns, beams, and other structural members to form completed structures or structural frameworks using hand tools, power tools, and hoisting equipment. Erects frame of building, using hoist. Bolts steel frame members together. Attaches wire and insulating materials to framework. Attaches sheet metal panels to framework including standing seam sheets. Installs and trims sheet metal on prefabricated metal buildings, using cutting torch, power saw, and tin snips. Rigging of heavy equipment, assembly and disassembly of cranes. May erect metal storage tanks. Exclude "Reinforcing Iron and Rebar Workers".
39	**Tile Setters**	Apply hard tile, terrazzo tile and veneer to walls, floors, and ceilings. Includes surface preparation as necessary.
40	**Scaffolding Erector**	Erection of a temporary elevated platform (both supported and suspended) and its supporting structure (including points of anchorage) to be used for supporting employees or material or both.

- **Welder -** Receives rate prescribed for craft performing operation to which welding is incidental.
- **Fork Lift and Man Lift (boom and scissor) -** Receives rate prescribed for craft performing operation to which operation of this equipment is incidental.

CITY OF EL PASO, TEXAS

2016 Paving and Street Construction, Dirt Work, Heavy Construction, Pipeline Work, Highway Wage Rates

CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	(8 HOURS) PER DIEM WAGE RATE
Asphalt Distributor Operator	14.64	0.00	14.64	117.12
Asphalt Paving Machine Operator / Spreader Box Operator	14.20	0.00	14.20	113.60
Asphalt Raker	12.99	0.00	12.99	103.92
Backhoe Operator	15.95	0.00	15.95	127.60
Concrete Finishers (Paving and Structures)	13.88	0.00	13.88	111.04
Crane Operator, Lattice Boom	17.50	0.00	17.50	140.00
Crane Operator, Hydraulic	17.50	0.00	17.50	140.00
Electrician	23.09	0.00	23.09	184.72
Excavator Operator	16.10	0.00	16.10	128.80
Form Builder/Setter	15.02	0.00	15.02	120.16
Form Setter (Paving and Curb)	12.86	0.00	12.86	102.88
Front End Loader	14.82	0.00	14.82	118.56
Laborer	11.89	0.00	11.89	95.12
Laborer (Skilled)(Utility)	13.65	0.00	13.65	109.20
Mechanic	17.50	0.00	17.50	140.00
Motor Grader Operator (Fine)	17.54	0.00	17.54	140.32
Pipe Layer	12.94	0.00	12.94	103.52
Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker	17.00	0.00	17.00	136.00
Rock Mason	12.00	0.00	12.00	96.00
Roller Operator	13.70	0.00	13.70	109.60
Servicer	14.33	0.00	14.33	114.64
Truck Driver, Single Axle	13.19	0.00	13.19	105.52
Truck Driver, Tandem Axle	15.32	0.02	15.34	122.72
Utility Operator Grade 1	12.00	0.00	12.00	96.00
Utility Operator Grade 2	13.95	0.00	13.95	111.60
Welder, Certified/ Structural Steel Welder	13.83	0.00	13.83	110.64

All persons required to be licensed or certified must meet those qualifications to be paid the associated rate.

February 28, 2017

2016 HEAVY / HIGHWAY DEFINITIONS

1	**Asphalt Distributor Operator**	Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and make adjustments to equipment as needed. Performs other related duties.
2	**Asphalt Paving Machine Operator/Spreader Box Operator**	Operates paving machine that spreads and levels asphaltic concrete on highway. Controls movement of machine, raises and lowers screed, regulates width of screed. Operates spreader box by adjusting hopper and strike-off blade so that gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease, service and make adjustments to equipment as needed. Performs other related duties.
3	**Asphalt Raker**	Distributes asphaltic materials evenly over road surface by hand-raking and brushing material to correct thickness; may control screed to regulate width and depth of materials; directs Laborers (skilled and unskilled) when to add or take away material to fill low spots or to reduce high spots.
4	**Backhoe Operator**	Operates a rubber-tired machine mounted with a backhoe bucket on one end and a loader bucket on the other end. Used for excavating ditches and structures, laying pipe and precast concrete structures, carrying material in the loader bucket, and general excavation and backfill. May also be equipped with hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
5	**Concrete Finisher (Paving and Structures)**	Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures. Operates bridge deck finishing machine. Forms and finishes edges and joints. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.
6	**Crane Operator, Lattice Boom**	A worker who operates a lattice boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
7	**Crane Operator, Hydraulic**	A worker who operates a hydraulic telescoping boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber-tired. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

8	**Electrician**	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems, works on overhead distribution systems and underground distribution systems. Includes installation of photovoltaic solar panels.
9	**Excavator Operator**	Operates a crawler or rubber-tired machine mounted with an excavator bucket. Used for excavating ditches and structures, laying pipe and precast concrete structures, loading trucks and placing rock riprap. May also be equipped with various hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
10	**Form Builder/Setter**	Works from plans to build, assemble, fit together, align, plumb, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is being placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slipforming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties. Includes guardrail installation.
11	**Form Setter (Paving and Curb)**	Fits together, aligns and sets to grade metal and wooden forms for placement for concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter and curb. Performs other related duties.
12	**Front End Loader**	Operates a rubber-tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
13	**Laborer**	A general term used on construction work covering many unskilled classifications requiring work of a physical nature. Performs a variety of work ranging from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, under the supervision of qualified personnel. Cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, assists pipelayers, works with dirt crew keeping construction layout stakes out of the way of dirt-moving equipment. May fine grade excavation and ditches, shovels hot asphalt material. May use power tools and other necessary equipment in demolition work under the supervision of qualified personnel. Does not ordinarily perform work permitting exercise of independent judgment or without close direction by other workers. Installs and maintains erosion control. Performs other related duties.

14	**Laborer (Skilled) (Utility)**	Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. Directs laborers in pouring concrete. Erects trench shoring and bracing. Installs, operates, and maintains watering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. Is more or less a general utility construction worker. May be a second step in learning a skill. Includes Concrete/Granite Pump Operator, Concrete Saw Operator, Fence Erector, Flagger, and Sign Erector. Performs other related duties.
15	**Mechanic**	Assembles, assist set up, adjusts and maintains and repairs all types of construction equipment and trucks. May perform the duties of a welder in repair of equipment. Performs other related duties.
16	**Motor Grader Operator (Fine)**	Operates motor grader. Performs many of the same duties of Motor Grader, Rough, but in addition performs finish grade work to bluetops or other close specification control. This work is subject to strict inspection and must conform closely to specifications. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
17	**Pipe Layer**	Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.
18	**Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker**	Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. Erects and places reinforcing steel and fabricated structural steel members, such as girders, plates, diaphragms, lateral bracing, and unites them permanently to form a completed structural steel unit, including reinforcing members. Fastens steel members together by welding or bolting. May include dismantling and erecting large units of equipment. Gives direction to reinforcing steel worker apprentice or utility laborers. Performs other related duties.
19	**Rock Mason**	Constructs partitions, fences, walls, using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls, cutting or placing of rock in mortar or other similar material.
20	**Roller Operator**	Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact and smooth bituminous and flexible base materials and compact earth fills, subgrade, and all other types of materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

21	**Servicer**	Drives a truck which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service for preventive maintenance records. . May require a Commercial Driver's License if driving truck on public highways. Performs other related duties.
22	**Truck Driver, Single Axle**	Drives a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
23	**Truck Driver, Tandem Axle**	Drives a tandem axle powered vehicle. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
24	**Utility Operator Grade 1**	Clam, ditching machine, side booms (except those in Grade 2), operator on dredges, cleaning machine, coating machine, , blending machine, water-kote machine, equipment welder, track tractor, derrick, dragline, shovel, motor grader rough grade, Crawler tractor, foundation drill operator, crawler and truck mounted, and piledriver.
25	**Utility Operator Grade 2**	Pipe, gin truck or winch truck with poles when used for hoisting, side boom (cradling rock drill), tow tractor, farm tractor road boring machine, fork lift **(industrial type)**, pot fireman (power agitated), straightening machine, boring machine, bombardier (track or tow rig), , hydrostatic testing operator, scraper, stalking machine, plant mix pavement roller operator, plant mix pavement, pneumatic motor operator. Concrete paving curing, float, texturing machine, subgrade trimmer, slip-form machine, milling machine, self-propelled sweeping machine, trenching machine, directional drill, , trenching, screening plant, and joint sealer. Off Road Hauler, Pavement Marking Machine Operator Reclaimer/Pulverizer Operator, Slurry Seal or Micro-Surfacing Machine Operator.
26	**Welder, Certified/ Structural Steel Welder**	Certified by the American Welding Society to perform structural steel welding. Operates welding equipment. Welds structural steel girders and diaphragms. May weld permanent metal deck forms. Cuts, lays-out, fits and welds metals or alloyed metal parts to fabricate or repair equipment. Welds the joints between lengths of pipe for oil, gas or other types of pipelines. May assist in welding of permanent metal deck forms. Performs other related duties.

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

AGREEMENT BETWEEN GENERAL CONTRACTOR AND SUBCONTRACTOR
TO PROVIDE WORKERS' COMPENSATION INSURANCE

Notice of Agreement

The undersigned General Contractor and the undersigned Subcontractor hereby agree that the General Contractor ☐ will withhold ☐ will not withhold the cost of workers' compensation insurance coverage from the Subcontractor's contract price and that, for the purpose of providing workers' compensation insurance coverage, the General Contractor will be the employer of the Subcontractor and the Subcontractor's employees. This agreement makes the General Contractor the employer of the Subcontractor and the Subcontractor's employees only for the purposes of workers' compensation laws of Texas and for no other purpose.

TERM (DATES) OF AGREEMENT: FROM: _____

TO: _____

LOCATION OF EACH AFFECTED JOB SITE (OR STATE WHETHER THIS IS A BLANKET AGREEMENT):

_____

_____

_____

ESTIMATED NUMBER OF EMPLOYEES AFFECTED: _____

THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.
Texas Labor Code, Texas Workers' Compensation Act, Section 406.123

General Contractor's Affirmation

_____
Federal Tax I.D. Number

If the General Contractor's workers' compensation carrier changes during the effective period of coverage, it is advisable for the General Contractor to file this form with the new insurance carrier.

_____ _____ _____
Signature of General Contractor Date Address (Street)

_____ _____
Printed Name of General Contractor Address (City, State, Zip)

Subcontractor's Affirmation

_____
Federal Tax I.D. Number

_____ _____ _____
Signature of Subcontractor Date Address (Street)

_____ _____
Printed Name of Subcontractor Address (City, State, Zip)

The General Contractor should retain the original. Legible copies of this agreement should be filed with the general contractor's workers' compensation insurance carrier and the Division within 10 days of the date of execution. If the General Contractor is certified self-insured, a copy should be filed with the Division's Self-Insurance Regulation service area. An agreement is not considered filed if it is illegible or incomplete. Filing may be accomplished by mail or facsimile transmission. The Subcontractor must also retain a copy of the agreement.

Division Date Stamp Here

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

CHECK ☐ BOX OF STATEMENT THAT APPLIES

☐ AGREEMENT BETWEEN MOTOR CARRIER AND OWNER OPERATOR TO PROVIDE WORKERS' COMPENSATION INSURANCE COVERAGE

Notice of Declaration

The undersigned Motor Carrier and the undersigned Owner Operator agree that the Motor Carrier will provide workers' compensation insurance coverage to the Owner Operator and the Owner Operator's employees. The Motor Carrier ☐ will deduct ☐ will not deduct the actual premiums, based on payroll, that are paid or incurred by the Motor Carrier for coverage from the contract price or any other amount owed to the Owner Operator by the Motor Carrier.

TERM (DATES) OF AGREEMENT: FROM: _____

TO: _____

ESTIMATED NUMBER OF WORKERS AFFECTED: _____
Texas Labor Code, Texas Workers' Compensation Act, Section 406.123.

☐ AGREEMENT TO REQUIRE OWNER OPERATOR TO ACT AS EMPLOYER

Notice of Agreement

The undersigned Motor Carrier and the undersigned Owner Operator agree that the Owner Operator assumes the responsibilities of an employer for the performance of work.

TERM (DATES) OF AGREEMENT: FROM: _____

TO: _____

ESTIMATED NUMBER OF WORKERS AFFECTED: _____
Texas Labor Code, Texas Workers' Compensation Act, Section 406.122.

THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.

MOTOR CARRIER'S AFFIRMATION

If the Motor Carrier's workers' compensation carrier changes during the effective period of coverage, it is advisable for the Motor Carrier to file this form with the new insurance carrier.

_____
Federal Tax I.D. Number

_____ _____ _____
Signature of Motor Carrier | Date | Address (Street)

_____ _____
Printed Name of Motor Carrier | Address (City, State, Zip)

OWNER OPERATOR'S AFFIRMATION

_____
Federal Tax I.D. Number

_____ _____ _____
Signature of Motor Owner Operator | Date | Address (Street)

_____ _____
Printed Name of Owner Operator | Address (City, State, Zip)

The Motor Carrier should retain the original. Legible copies of this agreement must be filed with the Motor Carrier's workers' compensation insurance carrier and the Division within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. Filing may be accomplished by mail or facsimile transmission. The Owner Operator must also retain a copy of the agreement.

Division Date Stamp Here

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

Texas Workers' Compensation Act, Texas Labor Code, Section 406.141(2) defines "independent contractor" as follows: (2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who: (A) is paid by the job, not by the hour or some other time-measured basis; (B) is free to hire as many helpers as he desires and to determine what each helper will be paid; and (C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

CHECK ☐ BOX OF STATEMENT THAT APPLIES

☐ JOINT AGREEMENT TO AFFIRM INDEPENDENT RELATIONSHIP FOR CERTAIN BUILDING AND CONSTRUCTION WORKERS

Notice of Declaration

The undersigned Hiring Contractor and the undersigned Independent Contractor hereby declare that the Independent Contractor meets the qualifications of an Independent Contractor under Texas Workers' Compensation Act, Texas Labor Code, Section 406.141, that the Independent Contractor is not an employee of the Hiring Contractor, and that:

(A) the Independent Contractor and the Independent Contractor's employees shall not be entitled to workers' compensation coverage from the Hiring Contractor; and
(B) the Hiring Contractor's workers' compensation insurance carrier shall not require premiums to be paid by the Hiring Contractor for coverage of the Independent Contractor or the Independent Contractor's employees, helpers, or subcontractors.

THIS DECLARATION TAKES EFFECT UPON RECEIPT BY THE TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION. THIS DECLARATION APPLIES TO ALL HIRING AGREEMENTS EXECUTED BY THE HIRING CONTRACTOR AND THE INDEPENDENT CONTRACTOR DURING THE YEAR AFTER THIS DECLARATION IS FILED UNLESS A SUBSEQUENT HIRING AGREEMENT IS MADE TO WHICH THE DECLARATION DOES NOT APPLY. IN THE EVENT THAT A HIRING AGREEMENT TO WHICH THIS DECLARATION DOES NOT APPLY IS MADE, THE HIRING CONTRACTOR AND INDEPENDENT CONTRACTOR SHALL SO NOTIFY THE TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION AND THE HIRING CONTRACTOR'S WORKERS' COMPENSATION INSURANCE CARRIER (IF ANY) IN WRITING WITHIN 10 DAYS AFTER THE NON-APPLYING AGREEMENT IS MADE. ONCE THIS AGREEMENT IS SIGNED, THE SUBCONTRACTOR AND THE SUBCONTRACTOR'S EMPLOYEES SHALL NOT BE ENTITLED TO WORKERS' COMPENSATION COVERAGE FROM THE HIRING CONTRACTOR UNLESS A SUBSEQUENT WRITTEN AGREEMENT IS EXECUTED, AND FILED ACCORDING TO WORKERS' COMPENSATION RULES, EXPRESSLY STATING THAT THIS AGREEMENT DOES NOT APPLY.

Texas Labor Code, Texas Workers' Compensation Act, Section 406.145.

☐ AGREEMENT TO ESTABLISH EMPLOYER-EMPLOYEE RELATIONSHIP FOR CERTAIN BUILDING AND CONSTRUCTION WORKERS

Notice of Agreement

The undersigned Hiring Contractor and the undersigned Independent Contractor hereby agree that the Hiring Contractor ☐ will withhold ☐ will not withhold the cost of workers' compensation insurance coverage from the Independent Contractor's contract price and that the Hiring Contractor will purchase workers' compensation insurance coverage for the Independent Contractor and the Independent Contractor's employees. Once this agreement is signed, for the purpose of providing workers' compensation insurance coverage, the Hiring Contractor will be the employer of the Independent Contractor and the Independent Contractor's employees. This agreement makes the Hiring Contractor the employer of the Independent Contractor and the Independent Contractor's employees only for the purposes of workers' compensation laws of Texas and for no other purpose.

TERM (DATES) OF AGREEMENT: FROM: _____

TO: _____

LOCATION OF EACH AFFECTED JOB SITE (OR STATE WHETHER THIS IS A BLANKET AGREEMENT):

_____

_____

_____

ESTIMATED NUMBER OF EMPLOYEES AFFECTED: _____

THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.

Texas Labor Code, Texas Workers' Compensation Act, Section 406.144.

Hiring Contractor's Affirmation

If the Hiring Contractor's workers' compensation carrier change during the effective period of coverage, it is advisable for the Hiring Contractor to file this form with the new insurance carrier.

_____ Federal Tax I.D. Number

_____ Signature of Hiring Contractor

_____ Date

_____ Address (Street)

_____ Printed Name of the Hiring Contractor

_____ Address (City, State, Zip)

Independent Contractor's Affirmation

_____ Federal Tax I.D. Number

_____ Signature of Independent Contractor

_____ Date

_____ Address (Street)

_____ Printed Name of the Independent Contractor

_____ Address (City, State, Zip)

The Hiring Contractor should retain the original. Legible copies of this agreement should be filed with the hiring contractor's workers' compensation insurance carrier and the Division within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. Filing may be accomplished by mail or facsimile transmission. The Independent Contractor should also retain a copy of the agreement.

Division Date Stamp Here

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

EXCEPTION TO APPLICATION OF JOINT AGREEMENT TO AFFIRM INDEPENDENT RELATIONSHIP FOR CERTAIN BUILDING AND CONSTRUCTION WORKERS

NOTICE OF DECLARATION

The undersigned Hiring Contractor and the undersigned Independent Contractor declare that the Joint Agreement to Affirm Independent Relationship for Certain Building and Construction Workers (as recorded on DWC FORM-83) does not apply to the subsequent hiring agreement between the Hiring Contractor and Independent Contractor. Nothing in this declaration otherwise nullifies the Joint Agreement to Affirm Independent Relationship for Certain Building and Construction Workers as it applies to other hiring agreements made during the term of the joint agreement.

DATE OF JOINT AGREEMENT TO AFFIRM INDEPENDENT RELATIONSHIP FOR CERTAIN BUILDING AND CONSTRUCTION WORKERS

DATE OF SUBSEQUENT HIRING AGREEMENT TO WHICH THIS FORM APPLIES

LOCATION OF SPECIFIC JOB SITES NOT AFFECTED BY JOINT AGREEMENT: _____

NAME OF HIRING CONTRACTOR

NAME OF INDEPENDENT CONTRACTOR

Texas Labor Code, Texas Workers' Compensation Act, Section 406.145.

Hiring Contractor's Affirmation

If the Hiring Contractor's workers' compensation carrier changes during the effective period of coverage, it is advisable for the Hiring Contractor to file this form with the new insurance carrier.

Federal Tax I.D. Number

Signature of Hiring Contractor

Date

Address (Street)

Printed Name of Hiring Contractor

Address (City, State, Zip)

Independent Contractor's Affirmation

Federal Tax I.D. Number

Signature of Independent Contractor

Date

Address (Street)

Printed Name of Independent Contractor

Address (City, State, Zip)

The Hiring Contractor should retain the original. Legible copies of this agreement should be filed with the hiring contractor's workers' compensation insurance carrier and the Division within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. Filing may be accomplished by mail or facsimile transmission. The Independent Contractor should also retain a copy of the agreement.

Division Date Stamp Here

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

If you are not certain whether all parties meet the requirements for entering into this agreement, you may wish to consult an attorney.

Texas Workers' Compensation Act, Texas Labor Code, Section 406.121(2) defines "independent contractor" as follows: (1) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily: (A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship; (B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee; (C) is required to furnish or have his employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and (D) possesses the skills required for the specific work or service.

AGREEMENT BETWEEN GENERAL CONTRACTOR AND SUBCONTRACTOR TO ESTABLISH INDEPENDENT RELATIONSHIP

Notice of Agreement

The undersigned General Contractor and the undersigned Subcontractor hereby declare that:

(A) the Subcontractor meets the qualifications of an Independent Contractor under Texas Workers' Compensation Act, Texas Labor Code, Section 406.121;
(B) the Subcontractor is operating as an independent contractor as that term is defined under Section 406.121 of the Act;
(C) the Subcontractor assumes the responsibilities of an employer for the performance of work; and
(D) the Subcontractor and the Subcontractor's employees are not employees of the General Contractor for purposes of the Act.

TERM (DATES) OF AGREEMENT: FROM: _____

TO: _____

_____ Name of General Contractor

_____ Name of Subcontractor

LOCATION OF EACH AFFECTED JOB SITE (OR STATE WHETHER THIS IS A BLANKET AGREEMENT):

_____

_____

_____

Estimated number of employees affected: _____

THIS AGREEMENT SHALL TAKE EFFECT NO SOONER THAN THE DATE IT IS SIGNED.

Texas Labor Code, Texas Workers' Compensation Act, Section 406.122 .

General Contractor's Affirmation

If the General Contractor's workers' compensation carrier changes during the effective period of coverage, it is advisable for the General Contractor to file this form with the new insurance carrier.

_____ Federal Tax I. D. Number

_____ Signature of General Contractor _____ Date _____ Address (Street)

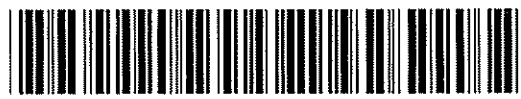
_____ Printed Name of General Contractor _____ Address (City, State, Zip)

Subcontractor's Affirmation

_____ Federal Tax I. D. Number

_____ Signature of Subcontractor _____ Date _____ Address (Street)

_____ Printed Name of Subcontractor _____ Address (City, State, Zip)

The General Contractor should retain the original. The Subcontractor should also retain a copy of the agreement. This form is not required to be filed with the Division, and may be provided to the insurance carrier.

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