

Kendall County Water Control and Improvement District No. 4

Contract Documents and Specifications

for Construction of

**Construction of Turn Lane, Acceleration Lane, and
Subdivision Entry Corridor Improvements for George's
Ranch Highway 46 Improvements**



February 2023

Prepared by Cude Engineers

TBPE Registration No. 455

TBPLS No. 10048500

4122 Pond Hill Road, STE 101

San Antonio, Texas 78231

210-681-2951

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INVITATION TO BIDDERS

Sealed bids, in duplicate, addressed to **Lookout Development Group, L.P. on behalf of Kendall County Water Control and Improvement District No. 4**, will be received in the office of Cude Engineers, LLC., 4122 Pond Hill Road, Suite 101, San Antonio, Texas 78231 until **3 P.M., Wednesday, March 8th, 2023**, at which time all bids will be opened and publicly read for the furnishing of all material, equipment, labor and supervision necessary or incidental to the **“Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor Improvements for George’s Ranch Highway 46 Improvements”**.

Scope of Project:

Right turn deceleration lane, right turn acceleration lane, left turn lane, subdivision entry, grading, drainage, and traffic signalization improvements.

A **Non-mandatory** pre-bid conference will be held on **Thursday, February 22nd, at 3:30 P.M.** at the office of Cude Engineers, LLC.

Plans, specifications, and bidding documents may be purchased in the office of the engineer, Cude Engineers, LLC., 4122 Pond Hill Road, Suite 101, San Antonio, Texas 78231 for the price of Two Hundred Dollars (\$200) per set. No refunds will be made. PDFs and CAD files will be available for download free of charge. Please e-mail Patrick Murphy at wmurphy@cudeengineers.com or call (210) 681-2951 for download instructions.

A cashier’s check or a bid bond in the amount of 5% of the total bid amount must accompany each bid. The successful bidder will be required to provide a performance bond, a payment bond, and a maintenance bond, as provided for in the bid documents, for the full amount of the contract.

The Owner reserves the right to reject any or all Bids and to waive all defects and irregularities in bidding or bidding process except time of submitting a Bid. The Successful Bidder, if any, will be the responsible Bidder which in the Board’s judgment will be most advantageous to the District and result in the best and most economical completion of the project.

INSTRUCTIONS TO BIDDERS

1. Defined Terms.

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (EJCDC C-700) (2007 Edition) have the meanings assigned to them in the General Conditions.

Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

1.1. Bidder - one who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.

1.2. Issuing Office - the office from which the Bidding Documents are prepared and where the bidding procedures are to be administered. For this project the issuing office is Cude Engineers, LLC., 4122 Pond Hill Road Suite 101, San Antonio, Texas 78231 (phone 210-681-2951).

1.3. Successful Bidder - the most qualified, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

1.4. Owner - the Owner is understood to be **Kendall County Water Control and Improvement District No. 4**. Funding for the project will be provided in accordance with the terms and conditions described in the Special Conditions of Agreement.

2. Copies of Bidding Documents.

2.1. Complete sets of the Bidding Documents are available for the purchase price, if any, as indicated in the Invitation to Bidders.

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

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

3. Qualifications of Bidders.

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening, upon Owner's request, detailed written evidence such as financial data, proposed sub-contractors, present commitments, previous experience, equipment lists, evidence of authority to conduct business in the State of Texas and other such data as required to evaluate the Bidder's capability to perform the Work described in the Bidding Documents.

The District will select the most qualified contractor to perform the Work. The low bidder must demonstrate to the District that the low bidder has successfully completed four (4) similar projects under the direction of the same firm over the last twelve (12) months. Successfully completed projects shall be located within the limits of Kendall County, Texas, completed within the last five (5) years and shall be similar to this Work in scope and in magnitude of cost. The low bidder must present to the District a list

of all subcontractors and their scope of work. The District retains the right to waive this requirement at the Board's discretion.

4. Examination of Contract Documents and Site.

4.1. It is the responsibility of each Bidder before submitting a Bid:

4.1.1. To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);

4.1.2. To visit the site to become familiar with and satisfy Bidder as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;

4.1.3. To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;

4.1.4. To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and

4.1.5. To promptly notify Engineer of all conflicts, errors, ambiguities, or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.

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

4.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may not rely upon the data, interpretations, opinions, or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

4.2.2. Copies of such subsurface reports will be made available by Owner to any Bidder on request. Those reports are not part of the Contract Documents and are not a warranty of surface or subsurface conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" contained therein. Bidder acknowledges that Owner and Engineer disclaim any responsibility for the accuracy, true location, and extent of the soils, surface, and subsurface investigations that have been prepared by others and disclaim responsibility for Bidder's interpretation of or conclusions or opinions drawn from such reports, e.g., without limitations, projecting soil-bearing values, rock profiles, soil stability and the presence, level, and extent of underground water. Bidder is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

4.3. Information and data shown or indicated in the Contract Documents with respect to existing 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 and Engineer do not assume responsibility for the accuracy or completeness thereof or for Bidder's interpretation of or conclusions or opinions drawn from such information and data. The Contractor is advised to coordinate closely with Engineer and Operator prior to the commencement of any underground construction activities. Such information and data is not a part of the Contract Documents and is not a warranty of subsurface conditions.

4.4 Before submitting a Bid, each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning 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 or which relate to any aspect of the means, methods,

techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or 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.

4.5 On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests, and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests, and studies.

4.6 Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the site by the Owner or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide, to each Bidder for examination, access to or copies of Contract Documents (other than portions thereof related to price) for such work.

4.7 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 applying the specific means, method, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work. Once bid sheet are received, it will be understood that the contractor agrees that no change order requests will be allowed to be submitted to the owner unless a plan revision is issued.

5. Availability of Lands for Work, etc.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands, including staging areas, designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents. Contractor will be responsible for security of construction facilities, construction equipment and construction material stored on-site and is to be paid by Contractor. Contractor shall maintain and keep clean any construction areas occupied by Contractor to perform Work and is to be paid by Contractor. Contractor is to leave any areas used for construction facilities, construction equipment or storage of materials and equipment at or better condition than prior to the start of Work.

6. Interpretations and Addenda.

6.1. All questions about the meaning or intent of the Bidding Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda. All parties recorded by the Engineer as having received the Bidding Documents will be called and the addendum will be mailed or transmitted by electronic facsimile. The eligible party has the option to pick up the addendum at the Engineer's Office and sign required documentation list. Questions received less than 72 hours prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

7. Bid Security.

7.1. Each Bid must be accompanied by Bid security made payable to the Owner in the amount of five percent of the total bid amount and shall be in the form of a cashier's check or bid bond.

7.2. The Bid security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security (as approved by Owner's attorney) and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within 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 sixty-first 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.

8. Contract Times.

The number of days (calendar days) within which, or the dates by which, the Work is to be completed and ready for final payment are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

9. Liquidated Damages.

Provisions for liquidated damages, if any, are set forth in the Agreement.

10. Substitutes and "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 Substitutes or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions and may be supplemented in the Special Specifications.

11. Subcontractors, Suppliers and Others.

11.1. If the Supplementary Conditions require or if the Owner requests the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening submit to Owner a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by Owner. An Owner or Engineer who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of

Award is given request apparent Successful Bidder to submit an acceptable substitute without an increase in price.

If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next most qualified, responsible, and responsive Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.8.2 of the General Conditions.

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

12. Soils Report.

If soils report and log of borings are provided, they are available for Bidders' information only. The report if it is provided, is not a warranty of surface or subsurface conditions, nor it is a part of the Contract Documents. Bidders are expected to examine the site and such reports and then decide for themselves the character of the materials to be encountered. Contractor shall not be entitled to an adjustment to the Contract Price or Contract Time for unanticipated surface or subsurface conditions.

OWNER and ENGINEER disclaim any responsibility for the accuracy, true location and extent of the surface and subsurface investigations that have been prepared by others. OWNER and ENGINEER further disclaim responsibility for interpretation of that data by Bidders, e.g., without limitation, projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water.

13. Bid Form.

13.1. The Bid Form is included with the Bidding Documents; additional copies may be obtained from the office of Cude Engineers, LLC.

13.2. All blanks on the Bid Form must be completed in ink or by typewriter.

13.3. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

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

13.5. All names must be typed or printed in ink below the signature.

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

13.7. The address and telephone number for communications regarding the Bid must be shown.

13.8. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph 3 above. State contractor license number, if any, must also be shown.

13.9. The bid price shall include such amount as the Bidder deems proper for overhead and profit.

14. Submission of Bids.

Bids shall be submitted at the time and place indicated in the Invitation to Bidders and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Bids not received by the time or at the location specified will be returned unopened to the Bidder.

15. Modification and Withdrawal of Bids.

15.1. 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.

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

16. Opening of Bids.

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where Bids are to be submitted. 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.

17. Bids to Remain Subject to Acceptance.

All Bids will remain subject to acceptance for sixty 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.

18. Award of Contract.

18.1. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids and 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 that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

18.2. In evaluating Bids, Owner will consider the qualifications of Bidders, compliance 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.

18.3. 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 Conditions. Owner may also 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.

18.4. 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.

18.5. If the contract is to be awarded, it will be awarded to the most qualified, responsible, and responsive Bidder whose evaluation by Owner indicates to Owner that the award will be most advantageous to Owner and result in the best and most economical completion of the Project.

18.6. If the contract is to be awarded, Owner will give Successful Bidder a Notice of Award within sixty days after the day of the Bid opening.

19. Contract Security.

Paragraph 5.1 of the General Conditions and the Supplementary 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.

20. 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 thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. Within ten days thereafter Owner shall deliver one fully signed counterpart to Contractor.

21. Pre-bid Conference.

A pre-bid conference will be held at the time and place indicated in the Invitation to Bidders. Representatives of Owner and Engineer will be present to discuss the project. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

22. Retainage.

An amount equal to ten percent of the amount of each monthly estimate (in accordance with current state laws) will be retained by the Owner until final payment under the Contract is approved.

23. Permits.

The successful bidder shall be responsible for obtaining all required permits, including, but not limited, to the following:

Regulations of Kendall County, Texas for Flood Plain Management regarding placement of fill.

Permit for construction within existing Kendall County street right-of-way, as applicable.

Permit for construction within existing Texas Department of Transportation right-of-way, as applicable.

24. Locations for Examining Contract Documents.

Bidders may examine the contract documents for these contracts at the office of Cude Engineers, LLC.

25. Workers' Compensation Insurance Coverage.

(A) Definitions

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

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

Persons providing services on the project ("subcontractor" in Section 706.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- (B)** The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, §401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.
- (C)** The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- (D)** If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner, showing that the coverage has been extended.
- (E)** The Contractor shall obtain from each person providing services on the project, and provide to the Owner:

- (1) a certificate of coverage, prior to that person beginning work on the project, so that the Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (F) The Contractor shall retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (H) The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
- (I) The Contractor shall contractually require each person with whom it contracts to provide service on a project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011 (44) for all its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should know, of any change that materially affects the provision of coverage of any person providing service on the project; and
 - (7) contractually require each other person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificate of coverage to be provided to the person for whom they are providing services.
- (J) By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the

project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- (K) The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

26. Sales Tax Exemption.

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

27. Labor Classification and Minimum Wage Scale.

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

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

- B. The minimum wage rates that apply to this Contract are those in effect at the time the bids are received. Contractor agrees to review and ascertain such wage rates and to pay at least such minimum rates.

28. Conflict of Interest.

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

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

Board of Directors

Nova Stephenson, President

Dennis Guerra, Vice President

Mike Pena, Secretary

Lulu Bishop, Assistant Secretary

Cindy Bachicha, Assistant Secretary

29. House Bill 1295

The Texas Legislature passed House Bill 1295 during the 84th Legislative Session, which enacted Section 2252.908, Government Code, imposing new requirements for contracts entered into by governmental entities. More specifically, a business entity must disclose certain interested parties, intermediaries, and controlling interests when seeking any contract that is in excess of \$1 million or requires an action or vote by the governing body before a governmental entity may enter into the contract. Business entities are required to fill out and notarize disclosure forms promulgated by the Texas Ethics Commission (TEC). A governmental entity cannot enter into a contract until proper disclosure forms are received. HB 1295 potentially affects all contracts entered into by water districts, including construction contracts, consultant and service contracts and bond-related contracts.

- A *governmental entity* is a municipality, county, public school district or special purpose district or authority.
- A *business entity* is any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.
- An *interested party* is (i) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (ii) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser, or attorney for the business entity.
- A *controlling interest* is defined as: (i) an ownership interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent, (ii) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members, or (iii) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
- An *intermediary* is a person who actively participates in the facilitation of a contract or negotiating a contract, including a broker, adviser, attorney or representative of or agent for the business entity who: (i) receives compensation from the business entity for the person’s participation; (ii) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and (iii) is not an employee of the business entity.

Compliance with HB 1295 fundamentally changes the process of how business entities and water districts enter into contracts. The TEC has formulated rules and the attached FORM 1295, resulting in the following prescribed process:

1. The business entity accesses the TEC website and completes an online FORM 1295, making all necessary disclosures required by HB 1295. (Some of the information needed for the business entity to complete FORM 1295 will need to be provided by the governmental entity.)
2. The TEC website then generates a “confirmation number” and a PDF version of FORM 1295.
3. The business entity then executes and notarizes a hard copy of FORM 1295 and submits it, along with the “confirmation number,” to the governmental entity on or before the award of the contract.
4. The governmental entity then has 30 days to access the TEC website and confirm receipt of FORM 1295 by entering the confirmation number.

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

BID

Bid for “Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor Improvements for George’s Ranch Highway 46 Improvements”

Kendall County Water Control and Improvement District No. 4

c/o Cude Engineers, LLC.
4122 Pond Hill Road, Suite 101
San Antonio, Texas 78231

CONTRACTOR: _____
ADDRESS: _____

COUNTY: _____
TELEPHONE: _____
EMAIL: _____

Gentlemen:

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 Bid Price and within the Bid Times indicated in this Bid and in accordance with the terms and conditions of the contract Documents.

BIDDER accepts all of the terms and conditions of the Invitation to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of 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.

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

BIDDER has examined and carefully studied the Bidding Documents and the following Addenda receipt of all which are hereby acknowledged:

<u>Addendum No.</u>	<u>Date Received</u>	<u>Acknowledgement</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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.

BIDDER will complete the Work in accordance with the Contract Documents for the following prices (see attached bid form).

INSERT BID FORM

BID FORM
CONSTRUCTION OF PAVING, GRADING & UTILITIES
FOR
George's Ranch TxDot HWY 46 Improvements

Bidders:

Pursuant to the foregoing Sec I - INVITATION TO BID and Sec II - INSTRUCTIONS TO BIDDERS, the undersigned bidder hereby proposed to do all Work for the unit prices bid to furnish all necessary superintendence, labor and miscellaneous items, to complete all work according to the bids, as provided in the construction plan and contract documents for the Construction of Paving, Grading and Utilities to the satisfaction of the owner/engineer, and bind themselves on acceptance of this proposal to machine, equipment, tools, materials, and insurance to execute a contract and bonds for completing said project within the time slated for the following prices to wit:

ROADWAY ITEMS (KCWCID No. 4)					
ITEM	DESCRIPTION	QUANTITY		UNIT PRICE	SUM
1	Clearing and Grubbing of ROW and lots for roadway, utilities, and drainage, Disposal as directed by Owner within George's Ranch, Complete in Place	AC.	3.03		\$ -
2	Roadway Excavation within the Right-of-Way, Complete In Place	C.Y.	487		\$ -
3	Roadway Embankment within the Right-of-Way, per TxDOT specifications, Complete In Place	C.Y.	375		\$ -
4	Roadway & Drainage Hauloff, to be hauled as directed by Owner within George's Ranch, Complete In Place	C.Y.	3,909		\$ -
5	Hot Mix Asphaltic Pavement, (2.5" Compacted Depth, per TxDOT Item 340, Type D)	S.Y.	4,818		\$ -
6	Prime Coat, MC-30 (0.16 gal/SY per TxDOT Item 310)	GAL.	771		\$ -
7	Tack Coat(0.08 gal/SY per TxDOT Item 340)	S.Y.	386		\$ -
8	Crushed Limestone Asphalt Treated Base Material, 5.5" Compacted Depth, per TxDOT Item 247 & 292 Type A; Grade 2)	S.Y.	4,818		\$ -
9	Concrete Header Curb Install	L.F.	160		\$ -
10	Traffic Control, Striping, Raised Pavement Markers & Street Signage, Complete in Place	LS.	1		\$ -
11	Drill Shaft (Traffic Signal Pole) (36")	L.F.	60.8		\$ -
12	Conduit (PVC) (SCH 80) (2")	L.F.	20		\$ -
13	Conduit (PVC) (SCH 80) (3")	L.F.	20		\$ -
14	Electric Conductor (No. 6) Bare	L.F.	40		\$ -
15	Electric Conductor (No. 6) Insulated	L.F.	90		\$ -
16	Tray Cable (4 Conductor) (12 AWG)	L.F.	315		\$ -
17	Ground Box TY D (162922) W/ Apron	EA.	1		\$ -
18	Zinc-Coat STL Wire Strand (3/16")	L.F.	420		\$ -
19	Zinc-Coat STL Wire Strand (5/16")	L.F.	420		\$ -
20	Electrical Service TY D 120/240 070(NS)AL(E)TP(O)	EA.	1		\$ -
21	Install Highway Traffic Signal (Flashing Beacon)	EA.	1		\$ -
22	Traffic Signal Controller Assembly	EA.	1		\$ -
23	ROD. 5/8" x 10' Copper Ground	EA.	1		\$ -
24	Vehicle Signal Sec (12")LED(YEL)	EA.	16		\$ -
25	Vehicle Signal Sec (12")LED(RED)	EA.	4		\$ -
26	Traffic Signal Cable (TY A)(12 AWG)(5 CONDR)	L.F.	11.4		\$ -
27	Install Roadside Flashing Beacon Assembly (Solar Powered)	EA.	2		\$ -
28	Drill Shaft (Traffic Signal Pole) (24")	L.F.	11.4		\$ -
29	Install Traffic Signal Pole AM (S)STR(TY D)	EA.	2		\$ -
30	Install Traffic Signal Pole AM (S)STR(TY D)LUM	EA.	2		\$ -
31	Portable Changeable Message Sign	DAY	21		\$ -
32	Truck Mounted Attenuator (Stationary)	DAY	5		\$ -
BID SUBTOTAL - ROADWAY ITEMS (KCWCID No. 4)					\$ -

DRAINAGE ITEMS (KCWCID No. 4A)					
ITEM	DESCRIPTION	QUANTITY		UNIT PRICE	SUM
1	Drainage Channel Excavation, Complete in Place	C.Y.	4585		\$ -
2	Drainage Channel Embankment, per TxDOT specifications, Complete in Place	C.Y.	788		\$ -
3	Concrete Rip-Rap, Weathered Finish, Complete in Place	S.Y.	3097		\$ -
3	30" RCP, Storm Sewer, ASTM C-76, Class III, With Rubber Gasket Joints, All Depths, Complete in Place	L.F.	355.24		\$ -
4	Bermuda Hydromulch, Complete in Place	S.Y.	7070		\$ -
5	Design of Trench Excavation and Shoring Plan for Storm Sewer Construction, Complete	LS.	1		\$ -
6	Trench Safety System, All Depths, for Storm Sewer Construction, Complete	L.F.	355.24		\$ -
BID SUBTOTAL - DRAINAGE ITEMS (KCWCID No. 4A)					\$ -

MISCELLANEOUS AND SWPPP ITEMS (KCWCID No. 4A)					
ITEM	DESCRIPTION	QUANTITY		UNIT PRICE	SUM
1	Concrete Washout Pit	EA.	1		\$ -
2	Staging Area	EA.	1		\$ -
3	Filter Fabric Fence (When Authorized by Owner), Complete in Place	L.F.	688		\$ -
4	Type 2 Rock Filter Berm (When Authorized by Owner), Complete in Place	L.F.	118		\$ -
5	Demolition of Existing Improvements within limits of Project, to be disposed of at an offsite location outside George's Ranch	LS.	1		\$ -
6	Storm Water Pollution Prevention Plan, including Implementation, Permitting, Inspections, and Reporting, Complete in Place	LS.	1		\$ -
7	Remove Miscellaneous Concrete	S.F.	14,963		\$ -
8	8" x 12" Rock-Rubble	S.Y.	30		\$ -
9	Obliterating Abandoned Street	S.Y.	74		\$ -
10	Saw Cut and Match Existing Pavement	L.F.	3,836		\$ -
11	Finish and Place 4" Top Soil	S.Y.	7,070		\$ -
BID SUBTOTAL - MISCELLANEOUS AND SWPPP ITEMS (KCWCID No. 4A)					\$ -

ALTERNATE ITEMS (KCWCID No. 4A)					
ITEM	DESCRIPTION	QUANTITY		UNIT PRICE	SUM
1	Roadway & Drainage Hauloff, to be hauled to offsite location outside George's Ranch	C.Y.	3,909		\$ -
2	Dewatering System when Required, (When Authorized by Owner), Complete in Place	L.F.	100		\$ -
3	Additional Cost Bedding & Backfill for Unsatisfactory Soil Conditions in Utility Trench (When Authorized by Owner), Complete in Place	L.F.	100		\$ -
4	Extra Cement Stabilized Sand in ROW (When Authorized by Owner), All Depths, Compete in Place	L.F.	100		\$ -
5	French Drain, all 4" PVC pipe, filter sock, gravel and filter fabric wrapping (When Authorized by Owner), Complete in Place	L.F.	100		\$ -
6	Clearing and Grubbing of ROW and lots for roadway, utilities, and drainage, Disposal Offsite, Complete in Place	AC.	3.03		\$ -
BID SUBTOTAL - ALTERNATE ITEMS (KCWCID No. 4A)					\$ -

BIDDER hereby agrees to begin Work within **7 calendar days** after written notice to commence Work has been given him by ENGINEER. BIDDER hereby agrees to substantially complete all construction within **120 calendar days** after the date of the written notice to commence Work. BIDDER hereby agrees to achieve Final Completion of all Work within **30 calendar days** after Substantial Completion has been achieved to meet all requirements for final payment.

The prescribed Bid Security is attached to and made a condition of this Bid.

It is understood that in the event the successful bidder fails to enter into the Contract and to furnish a Performance Bond and Payment Bond in the amount of 100 percent of the Contract and for all parts of the Work, as specified in Sec II - INSTRUCTIONS TO BIDDERS, the Bidder will forfeit the bid surety, as provided in the Contract Documents. The undersigned proposes, if awarded the contract, to begin Work as stipulated in the written Notice to Proceed issued by the Engineer, and to substantially complete the Work as stipulated in Sec IV - AGREEMENT.

Terms used in this Bid which are defined in the General Conditions or Instructions to Bidders will have the meanings indicated in the General Conditions or Instructions to Bidders.

SUBMITTED on _____, 20__.

State Contractor License No. _____

INDIVIDUAL:

(individual) _____ (Seal)

doing business as _____

Business Address _____

Business Phone _____

PARTNERSHIP:

By (firm) _____ (Seal)

(General Partner) _____

Business Address _____

Business Phone _____

CORPORATION:

By (corp.) _____ (Seal)

State of Incorporation _____

By (person authorized) _____

Title _____

Attest (Secretary) _____

Business Address _____

Business Phone _____

Date of Qualification to do business is _____

JOINT VENTURE:

By (name) _____ (Seal)

Address: _____

By (name) _____ (Seal)

Address: _____

Address & Phone No. for official communications:

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

THIS AGREEMENT is dated as of _____, 20__ by and between **Lookout Development Group, LP on behalf of Kendall County Water Control and Improvement District No. 4** (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 for:

Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor Improvements for George's Ranch Highway 46 Improvements

Contract Amount: \$ _____ The Contract Amount is to include the Base Bid

Article 2. ENGINEER.

The project has been designed by Cude Engineers, LLC., 4122 Pond Hill Road, Suite 101, San Antonio Texas 78231 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 TIMES.

CONTRACTOR hereby agrees to begin Work within **7 calendar days** after written notice to commence Work has been given him by ENGINEER. CONTRACTOR hereby agrees to substantially complete all construction within **120 calendar days**. CONTRACTOR hereby agrees to achieve Final Completion of all Work within **30 calendar days** after Substantial Completion has been achieved to meet all requirements for final payment.

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to the Bid Proposal and any subsequent change orders thereto.

OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in the above paragraph, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in ascertaining and proving 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 Two Hundred Dollars (\$200.00) for each day that expires after the time specified in the above paragraph for completion and readiness for final payment. OWNER and CONTRACTOR agree that such amount is a reasonable forecast of the damages OWNER will sustain per day that the work remains uncompleted. OWNER shall have the option of deducting the amount of any

liquidated damages from any monies that may be owed to CONTRACTOR or to recover such amount from the CONTRACTOR or its Sureties, at CONTRACTOR'S expense.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions and Supplemental Conditions.

OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER and in conformance with the procedures described in the General Conditions. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions (and on the number of units of each bid item completed). Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

Article 6. CONTRACTOR'S REPRESENTATIONS.

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

CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 7) and the other related data identified in the Bidding Documents including "technical data".

CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance or furnishing of the Work.

CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents, are not a warranty of surface or subsurface conditions, and may not be complete for CONTRACTOR'S purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of the information and data relating to surface or subsurface conditions or with respect to Underground Facilities at or contiguous to the site or CONTRACTOR'S interpretation of such information and data. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning 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 or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS.

1. This Agreement and Special Conditions of Agreement
2. Exhibits to this Agreement
3. Performance, Payment, and other Bonds identified
4. Invitation to Bidders
5. Instructions to Bidders
6. Notice to Proceed
7. General Conditions
8. Supplementary Conditions
9. Standard and Technical Specifications
10. Construction Drawings
11. Addenda
12. CONTRACTOR'S Bid
13. Documentation submitted by CONTRACTOR prior to Notice of Award
14. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached thereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

There are no Contract Documents other than those listed in this Article. The Contract Documents may only be amended, modified, or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 8. INDEMNITY PROVISIONS.

THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS ATTACHED TO THIS AGREEMENT CONTAIN PROVISIONS THAT MAY RELIEVE ONE PARTY FOR RESPONSIBILITY IT WOULD OTHERWISE HAVE UNDER THE LAW FOR DAMAGES OR OTHER LIABILITY ARISING OUT OF THE WORK.

EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, AND ALL OTHER ATTACHMENTS TO THIS AGREEMENT AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO; THAT IT HAS IN FACT READ THIS AGREEMENT AND ALL ATTACHMENTS HERETO AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE PRECEDING ITS EXECUTION OF THIS AGREEMENT AND HAS RECEIVED OR VOLUNTARILY CHOSEN NOT TO RECEIVE THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT; AND THAT IT RECOGNIZES THAT CERTAIN TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME

ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEMENT OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT, THE GENERAL, SPECIAL, AND SUPPLEMENTARY CONDITIONS, OR ANY OTHER ATTACHMENTS TO THIS AGREEMENT ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS".

Article 9. MISCELLANEOUS.

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

No assignment by a party hereto of any rights 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.

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

Any provision of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 20____ (which is the effective date of the Agreement).

OWNER: Lookout Development Group, LP on behalf of Kendall County Water Control and Improvement District No. 4

By:_____

Attest:_____

Address for giving notices:

c/o Sanford Kuhl Hagan Kugle Parker Kahn, LLP

1980 Post Oak Blvd., Suite 1380

Houston, TX 77056

CONTRACTOR:

By: _____

(CORPORATE SEAL)

Attest: _____

Address for giving notices: _____

License No. _____

Agent for service of process: _____

SPECIAL CONDITIONS OF AGREEMENT

Notwithstanding anything else contained in the General or Supplementary Conditions or any other provisions of the Contract Documents to the contrary, Kendall County Water Control and Improvement District No. 4 ("District") shall be deemed and considered as Owner for all purposes under the Contract Documents, except that Lookout Development Group, L.P. ("Developer") shall be considered the "Owner" for purposes of approving requests for and making payments to the Contractor of all or any portion of the Contract Price and for paying all or any damages caused by Developer's failure to make payments to the Contractor of all or any portion of the Contract Price as required in the Contract, including any costs associated with any change orders to the Contract to which Developer has consented. After submission to and approval by the District and by the Developer of the invoices, certificates and supporting documentation in connection with a request for payment, the Contractor agrees to and shall look solely to Developer for payment of such invoices. Developer agrees to pay Contractor's invoices for Work performed, subject to the terms of the Contract, in an aggregate amount not to exceed the Contract Price, plus change orders and extras approved by the District and by Developer. Failure by Developer to make such payments to the Contractor shall constitute a default by Owner and shall entitle the Contractor to all rights and remedies arising under the Contract Documents for a default in payment of sums due the Contractor pursuant to the Contract Documents; provided, however, the District shall have no obligation for payment of sums due or to become due under the approved invoices or any part of the Contract Price.

Developer will not be liable for any increase to the Contract Price to which Developer has not consented in writing, or for any breach of the Contract by the District in its capacity as "Owner" not caused by Developer's failure to make payments of the Contract Price as required in the Contract. Neither the Contract nor the Work (including any occurrences arising out of the Work) give Contractor any rights against Developer, other than Contractor's right to hold Developer responsible for its failures to make payments of the Contract Price to Contractor as required by the Contract. Developer is entitled to enforce the rights, and receive the benefits, of "Owner" under the Contract, both with respect to provisions relating to the Contract Price and with respect to other provisions. Without limitation, (i) Developer is an indemnitee (to the same extent as "Owner") under all of Contractor's indemnity and defense obligations in the Contract, (ii) all waivers Contractor makes anywhere in the Contract in favor of "Owner" are deemed to also be made in favor of Developer, and (iii) Contractor shall include Developer as an additional insured on a primary and noncontributing basis, to the same extent Contractor is obligated in the Contract to include Owner as an additional insured.

Developer reserves the right to assign its obligations hereunder to District, subject to written acceptance thereof by the District. A copy of any such assignment and the acceptance thereof by the District shall be provided to the Contractor, and thereafter the District shall be obligated to make all payments thereafter becoming due to the Contractor pursuant to this Contract and the obligations of Developer contained in the first paragraph of these Special Conditions shall terminate.

For purposes of convenient administration of this Contract, District may from time to time make payments due the Contractor pursuant to this Contract from funds advanced to the District by Developer; provided, however, no such payment by District will obligate District to make further payments due the Contractor pursuant to this Contract unless and until District has accepted an assignment of Developer's obligations hereunder and a copy of the assignment and the District's acceptance is delivered to the Contractor, whereupon the District shall become liable for payment to the extent of the assignment.

If Owner breaches its obligations in any respect under the Contract, before exercising any remedy the Contractor shall give written notice to Developer at the address below specifying the breach and the steps necessary to cure the breach and Developer shall have the right and power, within thirty (30) days after receipt of such notice, to cure or cause the breach to be cured, if it so elects, before Contractor exercises any of its remedies under the Contract.

The Special Conditions will prevail over any provisions in the General or Supplementary Conditions or any other provisions of the Contract Documents to the contrary.

The District, Developer, and Contractor hereby acknowledge that these Special Conditions to the Agreement are acceptable.

CONTRACTOR:

Address:

City, State, Zip:

By: _____

ATTEST: _____

OWNER

**Lookout Development Group, LP on behalf of
Kendall County Water Control and
Improvement District No. 4**

By: _____

ATTEST: _____

CONTRACT NO. CS-22-DON-46551
COUNTY Kendall
BOND NO. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: That we, Lookout Development Group, L.P., as principal, and the other undersigned, as surety are held and firmly bound unto the State of Texas, in the penal sum of _____ Dollars (_____), lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the above bounden principal has entered into a foregoing contract with the State of Texas attached hereto, and whereas, under the law said principal is required before commencing the work provided for in said contract to execute a bond in the amount of said contract.

Now, therefore, the condition of this obligation is such that if the above bounden principal, his or its heirs, successors, executors, and administrators shall well and faithfully do and perform each and every, all and singular, the work in accordance with the plans, specifications, and contract documents as provided in said contract aforesaid, and shall fully indemnify and save harmless the State of Texas from all costs and damage which the State of Texas may suffer by reason of the **PRINCIPAL'S** default or failure to do so and shall fully reimburse and repay the State of Texas all outlay and expense which the State of Texas may incur in making good any such default, then obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anywise affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the Contract or to the work or to the Specifications, unless otherwise specified in the contract.

WITNESS our hand this, _____ day of _____, 2022.

SURETY (Print Firm Name and Seal)

Lookout Development Group, L.P.
PRINCIPAL

By: _____

By: _____

Type or Print Name and Title

Type or Print Name and Title

NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Performance Bond.

This form has been approved by the ATTORNEY GENERAL OF TEXAS.

CONTRACT NO. CS-22-DON-46551
COUNTY Kendall
BOND NO. _____

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: That we, Lookout Development Group, L.P., as principal, and the other undersigned, as surety are held and firmly bound unto the State of Texas, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the above bounden principal has entered into a foregoing contract with the State of Texas attached hereto, and whereas, under the law said **PRINCIPAL** is required before commencing the work provided for in said contract to execute a bond in the amount of said contract solely for the protection of all claimants, as defined by the Texas Government Code Title 10, Chapter 2253, or successor statutes, in the prosecution of the work provided for in said contract supplying labor and materials as defined by law, in the prosecution of the work provided for in said contract, for the use of each claimant.

The condition of this obligation is such that if the above bounden principal, his or its heirs, successors, executors, and administrators shall well and faithfully make payment to each and every claimant as defined by law, supplying labor and materials as defined by law, in the prosecution of the work provided for in said contract and any and all duly authorized changes to said contract that may hereafter be made, notice of such changes to the **SURETY(S)** being hereby waived, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

WITNESS our hand this, _____ day of _____, 20____.

_____	<u>Lookout Development Group, L.P.</u>
SURETY (Print Firm Name and Seal)	PRINCIPAL
By: _____	By: _____
_____	_____
Type or Print Name and Title	Type or Print Name and Title

NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond.

This form has been approved by the ATTORNEY GENERAL OF TEXAS.

STATUTORY WARRANTY BOND

STATE OF TEXAS
COUNTY OF KENDALL

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ as Principal, and _____, as Surety, are hereby and firmly bound unto the Texas Department of Transportation and/or Kendall County Water Control and Improvement District No. 4 in the penal sum of _____ Dollars (\$_____), and duly authorized normal and usual extras there to (not to exceed 15% of said sum) for the payment whereof the said PRINCIPAL and SURETY(s) bind themselves, their heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

This obligation is given as security for the correction and repair of any defects in materials or workmanship of the improvements installed for George's Ranch State Highway 46 Improvements and will be in effect until (Date: Two years from date of issue).

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall guaranty the correction and repair of any defects in materials or workmanship of the improvements installed for George's Ranch State Highway 46 Improvements in Kendall County, Texas, in accordance with the approved Plans and Specifications, and fully indemnify and save harmless the Texas Department of Transportation and/or Kendall County Water Control and Improvement District No. 4 from all costs and damages which the Texas Department of Transportation and/or Kendall County Water Control and Improvement District No. 4 may suffer the reason of PRINCIPAL's default or failure so to do and fully reimburse and repay the Texas Department of Transportation and/or Kendall County Water Control and Improvement District No. 4 all outlay and expense which the Texas Department of Transportation and/or Kendall County Water Control and Improvement District No. 4 may incur in making good any such default, then this obligation shall be null and void, otherwise it shall remain in full force and effect until (Date: Two years from date of issuance).

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

PRINCIPAL_____

(SEAL IF REQUIRED)

BY_____

TITLE_____

SURETY_____

(SEAL)

BY_____

TITLE_____

STANDARD GENERAL CONDITIONS

The Standard General Conditions of the Construction Contract (EJCDC C-700)(2007 Edition) of the Engineers Joint Contract Documents Committee with all current revisions are made a part of these Contract Documents with the same force and effect as though bound herein.

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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.
 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. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *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.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *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.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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 at the Site.
44. *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.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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 Subcontractor.
48. *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 those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F 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 Paragraph 9.09 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 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- 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. 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 Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *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 Agreement 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 Agreement. 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 Agreement, whichever date is earlier.

2.04 *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 the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *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 2.05.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 component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, 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, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, 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 Contract Documents. 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 Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier 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
2. 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.

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.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- 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 the Work is to be performed 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.

4.02 *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 contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed 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 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; 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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.A; and
 - 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 Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final 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
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to 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 shall not be responsible for 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 such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *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.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. 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, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. 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: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- 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 of 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 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, 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 requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which 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:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 5. 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; and
 6. 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.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and 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;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, 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 identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, 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.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full 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 interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 - 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 coverage, theft, vandalism and malicious mischief, earthquake, collapse, 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.
 - 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 startup; 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 loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 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 loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, 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 any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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 as trustee 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 utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.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, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *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. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- 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.

6.02 *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. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *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.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "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 specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion 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, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, 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; and
 - 3) it has a proven record of performance and availability of responsive service.
- 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.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. 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:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) 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

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. 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 any right of Owner or Engineer to reject defective Work.
- C. 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. 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 moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. 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.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *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.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *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 knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *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.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. 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 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 by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other 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 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 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 property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, 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 owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- 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 6.13.A.2 or 6.13.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 (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 for protection of the Work 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 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *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.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *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.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. 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 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each 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 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 and approval of that 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 both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval 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 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

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.

6.18 *Continuing the Work*

- A. 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, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *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 representation of 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 or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. 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 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 6.20.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 6.20.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.

6.21 *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 law.
- 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, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, 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 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *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.

8.12 *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *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 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. 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.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with 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, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. 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 Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. 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; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs 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 11.01.B, 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, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
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 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which 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 Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work 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 or when a Claim for an 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 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, 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.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
 1. Contractor agrees that:
 - a. 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
 - b. 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:*
 1. 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.

11.03 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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- 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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 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; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee*: 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - 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 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 Price or the Contract Times, or both. 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.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is 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 described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests 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.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- 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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. 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.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *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, 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.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. 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 removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *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 land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 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 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. 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) will be paid by Contractor.
- 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 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. 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) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *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 in accordance with Paragraph 13.06.A, 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, 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 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A 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.

14.02 *Progress Payments*

A. 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 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.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, 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 Documents; 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 moneys 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. 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;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
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 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. 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 tentative list.

14.05 *Partial Utilization*

- 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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

14.06 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) 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.

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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. 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 14.09. 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. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. 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
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *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;
 - 3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) 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 15.03.

- 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *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 to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *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 Documents. 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.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

SUPPLEMENTARY CONDITIONS

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PART I – AMENDMENTS TO GENERAL CONDITIONS

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4	AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HARARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS
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PART II – LOCAL GOVERNMENT PROVISIONS

1.0. LOCAL GOVERNMENT PROVISIONS

PART I – AMENDMENTS TO GENERAL CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC Document No. C-700, 2007 edition) and other provision of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01A.42

Delete paragraph 1.01A.42 in its entirety and replace with the following:

- 42. Specifications – Sections included under Standard Specifications and Special Specifications of the Project Manual.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.01B

Delete paragraph 2.01B.of the General Conditions in its entirety and replace with the following:

- B. Before any Work at the site is started, Contractor shall deliver to Owner, with copies to Engineer and each additional insured identified in Article 5 of the Supplementary Conditions, certificates of insurance (and other evidence of insurance with Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with the requirements or Article 5.

SC-2.02A

Delete paragraph 2.02A of the General Conditions in its entirety and replace with the following:

- A. OWNER shall furnish to CONTRACTOR one electronic copy of the Contract Documents in printable document format.

SC-2.03A

Delete paragraph 2.03A. of the General Conditions in its entirety and replace with the following:

- A. The Contract Time will commence to run on the first business day following the Effective Date of the Agreement.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01C

Add a new paragraph immediately after Paragraph 3.01C of the General Conditions which is to read as follows:

- D. Each and every provision of law and clause required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if

not correctly inserted, then upon the request of either party, the Contract Documents shall forthwith be physically amended to make such insertion.

ARTICLE 4 – AVAILABILITY OF LANDS

SC-4.01.B

Section 4.01.B of the General Conditions is hereby deleted.

SC-4.02A

Delete paragraphs 4.02A.1 and 4.02A.2 of the General Conditions in their entirety and replace them with the following:

1. those reports, if any, of explorations and test of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and
2. those drawings, if any, of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

If provided, these reports are available for CONTRACTOR's information only. These reports are not a warranty of subsurface conditions, nor are they a part of the Contract Documents. CONTRACTOR is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

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

SC-4.05A

Add the following new paragraph immediately after paragraph 4.05A of the General Conditions which is to read as follows:

- B. Engineer may check the lines, elevations, reference marks, batter boards, etc., set by Contractor, and Contractor shall correct any errors disclosed by such check. Such a check shall not be considered as approval of Contractor's work and shall not relieve Contractor or the responsibility for accurate construction of the entire Work. Contractor shall furnish personnel to assist Engineer in checking lines and grades.

SC-4.06

Delete paragraphs 4.06G and 4.06H of the General Conditions in their entirety and replace them with the following paragraph:

- G. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, PARTNER, 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 ARBITRATIONS OR OTHER DISPUTE RESOLUTIONS COSTS) ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE OR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 4.06H SHALL OBLIGATE CONTRACTOR TO INDEMNIFY AND INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.

ARTICLE 5 – BONDS AND INSURANCE

SC-5.01

Section 5.01.C of the General Conditions is hereby amended to read as follows:

5.01.C If at any time a surety on any bond is declared a bankrupt or loses any of its qualifications as stated herein, CONTRACTOR shall within ten days, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to OWNER. The premiums on such bond shall be paid by CONTRACTOR. No further payments to Contractor shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable replacement bond to OWNER.

SC-5.03

Add the following five new paragraphs immediately after paragraph 5.03E of the General Conditions which are to read as follows:

- F. Contractor shall provide evidence of its insurance coverage on the Texas Department of Transportation (TxDOT) certificate of insurance form (1560-CS) and shall maintain the insurance in full force and effect during the period that Contractor is performing work on TxDOT right of way.
- G. The OWNER and ENGINEER and their respective officers, directors, shareholders, partners, employees and other consultants and subcontractors shall be named as additional insureds with respect to the Commercial General Liability Insurance Policies. All insurers must waive all rights of subrogation against the OWNER and ENGINEER and, their respective officers, directors, shareholders, partners, employees and other consultants and subcontractor. All insurance is primary for all claims covered thereby. Commercial General Liability Insurance includes contractual liability coverage.
- H. Payment, performance, and maintenance bonds provided by CONTRACTOR shall be in an amount at least equal to the Contract price and shall be from a corporate surety company holding a permit from the state in which the Work is being performed to act as surety. The surety company must have a minimum Ambest Rating of B+. If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. For contracts over \$100,000, the surety also must:
 - (1) hold a Certificate of Authority role the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or

(2) have obtained reinsurance for any liability in excess \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in this state and is a holder of a Certificate of Authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

- I. The surety company and the agency or agent issuing and executing the payment, performance and maintenance bonds must be authorized to issue such bonds in an amount equal to or greater than the Contract price and such authorization must be on file with that State Board of Insurance. The agency or agent executing the payment, performance and maintenance bonds must have an appointment from the surety company to issue bonds on its behalf and such appointment must be on file with the State Board of Insurance. If the agency, but not the agent executing the bonds, has an appointment from the surety company, the agent executing the bonds must be an officer or director of the agency. The name, address, and toll-free number of the surety company must be listed on or attached to the bonds with the notation that claims are to be submitted to such address.
- J. The Contract shall not be in effect until the payment and performance bonds have been provided by CONTRACTOR and accepted by OWNER. The payment and performance bonds shall remain in effect until at least one year after the date when final payment becomes due under the Contract.

SC-5.04.A

Add the following new paragraphs immediately after paragraph 5.04B of the General Conditions which are to read as follows:

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

5.04A.1 and 5.04A.2 Workers' Compensation

- | | |
|---------------------------|-------------|
| (1) Worker's Compensation | Statutory |
| (2) Employer's Liability | \$1,000,000 |

5.04A.3, 5.04A.4, and 5.04A.5 Commercial General Liability including Premise/Operations; Explosion, Collapse and Underground Property Damage; Products/Completed Operations, Broad Form Contractual, and Personal Injury liabilities:

- | | |
|---|---|
| (1) Bodily Injury: | \$1,000,000 Each Occurrence
\$1,000,000 Annual Aggregate |
| (2) Property Damage: | \$1,000,000 Each Occurrence
\$1,000,000 Annual Aggregate |
| (3) Personal Injury, with
Employment exclusion
deleted. | \$1,000,000 Annual Aggregate |

5.04A.6 Comprehensive Automobile Liability including all owned (private and others), hired and non-owned vehicles:

(1) Bodily Injury	\$1,000,000 Each Person \$1,000,000 Each Accident
(2) Property Damage	\$1,000,000 Each Occurrence

5.04B.1a Include OWNER, and ENGINEER as additional insureds on the insurance required by paragraph 5.04A.6

SC – 5.04B.6.a

Add the following two new paragraphs immediately after paragraph 5.04B.6.a of the General Conditions which are to read as follows:

7. Contractor may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the minimum amounts required for the insurance to be purchased and maintained in accordance with paragraph 5.04. Evidence of such excess liability insurance shall be delivered to Owner in accordance with paragraph 2.01 in the form of a certificate indicating the policy numbers and minimum coverage amounts of all underlying insurance. The umbrella liability insurance shall have a combined single limit of not less than \$2,000,000.
8. All policies required by this paragraph 5.04 shall contain provisions to the effect that the insurer(s) waive all right of subrogation against the OWNER, ENGINEER and their respective officers, directors, shareholders, partners, employees and other consultants and subcontractors of each and any of them.
9. Deductibles or self-insured retentions shall not exceed \$10,000 for any of the policies required under 5.04A. 5.04A1 through 5.04A.6. The risk of loss within such deductible or self-insured retention shall be the responsibility of the Contractor.

SC 5.04.B

The following provisions shall be added to the end of Section 5.04.B of the General Conditions:

5.04.C Notwithstanding any other provision in the CONTRACT DOCUMENTS, OWNER shall not be required to provide any insurance whatsoever regarding the WORK or the PROJECT.

5.04.D Each insurance policy provided by Contractor shall provide that each underwriter shall waive its right of subrogation against the additional insureds. All of the aforesaid policies shall be further endorsed to provide that they are primary coverages and not in excess of any other insurance available to OWNER, and without rights of contribution or recovery against any of the insureds or from any such other insurance available to OWNER. Evidence of such specific endorsements shall be furnished with CONTRACTOR's Certificate of Insurance.

5.04.E Irrespective of the requirements as to insurance to be carried, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for CONTRACTOR, or any subcontractor of any tier, or failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of the CONTRACT DOCUMENTS.

5.04.F CONTRACTOR's compliance with these provisions and the limits of liability shown for each of the insurance coverages to be provided by CONTRACTOR shall not be deemed to constitute a limitation of CONTRACTOR's liability for any claims, suits or actions or in any way limit, modify or otherwise affect CONTRACTOR's indemnification obligations.

5.04.G Provision of the required insurance coverages and the actual certificates is a condition precedent to the obligations of OWNER under the CONTRACT DOCUMENTS, and if CONTRACTOR shall at any time fail to provide the required insurance coverages, such failure shall constitute a material breach of CONTRACTOR's obligations under the CONTRACT DOCUMENTS. If CONTRACTOR does not purchase or maintain all of the bond and insurance required of CONTRACTOR by the CONTRACT DOCUMENTS, OWNER shall have the right (but not the obligation) to obtain such, at CONTRACTOR's expense.

5.04.H In the event OWNER elects to pursue a claim under any applicable builder's risk policy, CONTRACTOR shall cooperate with OWNER, OWNER's insurance carriers, and their agents and representatives in asserting, substantiating or investigating any insurance claim, whether potential or actual, that OWNER may have in connection with Builder's Risk insurance.

SC-5.05A

Delete paragraph 5.05A of the General Conditions in its entirety and replace with the following:

- A. Contractor shall purchase and maintain a separate Owner's Protective Liability policy, issued to Owner at the expense of Contractor, including OWNER and ENGINEER as named insureds. This insurance shall provide coverage for not less than the following amounts:

5.05A.1 Bodily Injury	\$1,000,000 Each Occurrence
5.05A.2 Property Damage	\$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate

SC-5.06.A

Amend the first sentence of Paragraph 5.06.A of the General Conditions to read as follows:

CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full 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:

SC-5.06.A.1

Paragraph 5.06.A.1 of the General Conditions is amended to read as follows:

Include the interests of OWNER, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

SC-5.06.A.2

Delete Paragraph 5.06.A.2 of the General Conditions in its entirety.

SC-5.06.B

Paragraph 5.06.B of the General Conditions is amended to read as follows:

CONTRACTOR shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

SC-5.06.E

Delete Paragraph 5.06.E of the General Conditions in its entirety.

SC-5.07.A

Paragraph 5.07.A of the General Conditions is amended to read as follows:

All policies purchased in accordance with Paragraph 5.06 will protect OWNER, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insured or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils thereby. All such policies 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 of the insureds or additional insureds thereunder. CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants, and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance; and, in addition, waives all such rights against ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused.

SC-5.07.B

Amend the first sentence of Paragraph 5.07.B of the General Conditions to read as follows:

In addition, CONTRACTOR waives all rights against OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them for:

SC-5.07.B.1

Paragraph 5.07.B.1 of the General Conditions is amended to read as follows:

loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to any property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured; and

SC-5.07.C

Paragraph 5.07.C of the General Conditions is amended to read as follows:

Any insurance policy maintained by CONTRACTOR covering any loss, damage or consequential loss referred to in this paragraph 5.07 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 any of OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

SC-5.09A

Delete paragraph 5.09A of the General Conditions in its entirety and replace with the following:

- A. If Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor in accordance with this Article 5 on the basis of its not complying with the Contract Documents, Owner will notify Contractor in writing thereof within ten days of the date of delivery of such certificates to Owner in accordance with paragraph 2.01. Contractor will provide such additional information in respect of insurance provided by Contractor as Owner may reasonably request.

SC-5.10

Delete Paragraph 5.10 of the General Conditions in its entirety.

Add the following new paragraphs immediately after paragraph 5.10 of the General Conditions which are to read as follows:

5.11 Workers' Compensation Insurance Coverage

A. Definitions

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

Duration of the project – Included the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

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

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, §401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the OWNER prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER, showing that the coverage has been extended.
- E. The Contractor shall obtain from each person providing services on the project, and provide to the OWNER:
 - 1. A certificate of coverage, prior to that person beginning work on the project, so that the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage period shown on the current certificate of coverage ends during the duration of the project;
- F. The Contractor shall retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - G. The Contractor shall notify the OWNER in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project;
 - H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
 - I. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:
 1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011 (44) for all its employees providing services on the project, for the duration of the project;
 2. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. Obtain from each other person with whom it contract, and provide to the Contractor:
 - a. A certificate of coverage, prior to the other person beginning work on the project; and
 - b. A new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. Notify the OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. Contractually required each other person with whom it contracts to perform as required by paragraphs (1) – (7), with the certificate of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to provide a certificate of coverage, the Contractor is representing to the OWNER that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classifications codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the OWNER to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the OWNER.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

SC-6.08

Amend Paragraph 6.08 of the General Conditions by adding the following language:

The CONTRACTOR shall, without any additional expense to the OWNER, be responsible for obtaining any necessary licenses and permits and for complying with any federal, state, county, and municipal laws, code and regulations applicable to the performance of the work, including, but not limited to, any laws or regulations concerning storm water permitting and management. Specifically, without limitation, the CONTRACTOR will comply with all aspects of the Texas Pollutant Discharge Elimination System ("TPDES") General Permit for Storm Water Discharges From Construction Activities in Texas and with the Storm Water Pollution Prevention Plan (SWPPP) that has been developed for the Project. The baseline SWPPP for the Project will be prepared by the Engineer, at OWNER's expense, and provided to CONTRACTOR. The CONTRACTOR will implement the baseline SWPPP and advise the Engineer in writing prior to implementing any changes required to the SWPPP due to changes in construction activities. The Engineer may update SWPPP due to changes in construction activities. The CONTRACTOR will file the Notice of Intent ("NOI") for permit coverage with the Texas Commission on Environmental Quality and will maintain a copy thereof, file stamped by such governmental authority, at the Project site. Weekly inspection to ensure compliance with the SWPPP and other permit requirements will be performed by the CONTRACTOR. The CONTRACTOR shall be responsible for any and all monetary fines or damages assessed by any governing agency resulting from the failure to comply with the requirements of the SWPPP. OWNER shall not be responsible for any such monetary fines or damages for non-compliance with the SWPPP by CONTRACTOR.

SC-6.20.A

Delete Paragraph 6.20.A of the General Conditions in its entirety and insert the following in its place:

TO THE FULLEST EXTENT PERMITTED BY ALL APPLICABLE LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, DEVELOPER, ENGINEER, ENGINEER'S CONSULTANTS AND THE OFFICERS, DIRECTORS, EMPLOYEES, AND OTHER CONSULTANTS OF EACH AND ANY OF THEM (THE "INDEMNIFIED PARTIES") FROM AND AGAINST EVERY CLAIM, LOSS, DAMAGE, INJURY, COST, EXPENSE, JUDGMENT OR LIABILITY OF EVERY KIND OF CHARACTER WHATSOEVER, IN CONTRACT, TORT OR OTHERWISE, DIRECT OR INDIRECT, INCLUDING INCIDENTAL, SPECIAL AND CONSEQUENTIAL 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) FOR BODILY INJURY, DEATH, PROPERTY DAMAGE OR ECONOMIC LOSS (INCLUDING LOSS OF USE) CAUSED BY, ARISING OUT OF OR RESULTING FROM ANY ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (THE "CONTRACTOR PARTIES"), TAKEN IN CONNECTION WITH THE PERFORMANCE OF THE WORK, REGARDLESS OF WHETHER OR NOT CAUSED IN WHOLE OR IN PART BY THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER GROSS, ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (THIRD) OF TORTS, OF ALL OR ANY OF THE INDEMNIFIED PARTIES AND REGARDLESS OF WHETHER LIABILITY IS IMPOSED UPON ALL OR ANY OF THE INDEMNIFIED PARTIES BY LAWS AND REGULATIONS REGARDLESS OF THE NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER (WHETHER SOLE, JOINT, CONCURRENT, GROSS, ACTIVE OR PASSIVE) OF ALL OR ANY OF THE INDEMNIFIED PARTIES. THIS INDEMNIFICATION OBLIGATION OF THE CONTRACTOR PARTIES SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR PARTIES UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS ACTS.

CONTRACTOR SHALL AND DOES HEREBY WAIVE ITS CAUSES OF ACTION FOR AND RELEASES AND FOREVER DISCHARGES THE INDEMNIFIED PARTIES FROM CLAIMS FOR INJURIES (INCLUDING DEATH) TO ANY PERSON OR DAMAGE TO OR DESTRUCTION OF ANY PROPERTY SUSTAINED OR ALLEGED TO HAVE BEEN SUSTAINED IN CONNECTION WITH OR ARISING OUT OF OR INCIDENTAL TO THE WORK.

CONTRACTOR shall promptly settle or cause the settlement of all Claims for which it is responsible pursuant to the CONTRACT DOCUMENTS. Upon receipt of any Claim, CONTRACTOR shall immediately notify the OWNER of the full particulars thereof, and the OWNER may elect, by notice to CONTRACTOR, to have its representative accompany CONTRACTOR's representative in making settlement of the same.

In the event that any arrangement is made whereby CONTRACTOR or any of its subcontractors of any tier use any employees of OWNER, any tools, equipment, apparatus, improvements or other property of OWNER or any utilities (such as electricity, gas, water, compressed air and toilet facilities) furnished by or through OWNER, irrespective of who pays the employees and regardless of whether any consideration is paid for the use of the tools or the utilities, then the employees while engaged in the use of the tools or the utilities shall be conclusively considered the agents, servants, and employees of CONTRACTOR, and the acceptance and/or use of the tools or the utilities by CONTRACTOR or its subcontractors of every tier shall mean the CONTRACTOR has inspected and determined the tools and utilities satisfactory for CONTRACTOR's intended purposes and uses, and accepted full responsibility for the tools and utilities. **CONTRACTOR SHALL, UNDER THE TERMS OF THE INDEMNITY AGREEMENTS SET FORTH ELSEWHERE, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST CLAIMS IN CONNECTION WITH, ARISING OUT OF, OR INCIDENT OR PERTAINING TO THE USE OF THE EMPLOYEES, THE TOOLS, OR THE UTILITIES OF THE INDEMNIFIED PARTIES, REGARDLESS OF WHETHER THE CLAIMS ARE FORESEEABLE OR UNFORESEEABLE OR ARE FOUNDED IN WHOLE OR IN PART ON BREACH OF CONTRACT, OR THE SOLE, JOINT, CONCURRENT, CONTRIBUTORY, OR COMPARATIVE BREACH OF LEGAL DUTY, FAULT OR NEGLIGENCE OF ANY DEGREE (INCLUDING GROSS NEGLIGENCE) OF ONE OR MORE OF THE INDEMNIFIED PARTIES.**

CONTRACTOR shall return the tools at the conclusion of CONTRACTOR's use thereof in the same condition as when received, ordinary wear and tear excepted.

In the event that any statute or rule of law should be held applicable to any indemnity clause in favor of one or more of the Indemnified Parties which would render void, voidable, or unenforceable any such indemnity clause as to any party by reason of any provisions contained therein, then and in only such event, such indemnity clause shall be deemed modified and read, construed and enforced as to such party with respect to the provisions held to violate the statute or rule of law to require indemnity by CONTRACTOR of the Indemnified Parties to the fullest extent required by such indemnity provision modified and limited only to the degree or extent necessary to bring such indemnity into compliance with such statute or rule of law, but otherwise, the indemnity shall remain in full force and effect and binding upon the parties hereto.

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

If other Provisions contain any indemnities or limitations, such indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided herein to the end that all indemnities provided in the CONTRACT DOCUMENTS shall be construed to grant indemnity to the Indemnified Parties to the fullest extent of each such indemnity.

CONTRACTOR shall include in each of its subcontracts with its subcontractors of every tier the same indemnity provisions in all material respects as those contained herein. Such provisions shall be for the benefit of and in favor of the Indemnified Parties and such other parties on whom CONTRACTOR and such subcontractors may agree.

NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, OWNER SHALL NOT BE REQUIRED TO INDEMNIFY CONTRACTOR OR ANY OTHER PARTY TO ANY EXTENT WHATSOEVER.

ARTICLE 7 – OTHER WORK AT THE SITE

No change.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

SC-8.02.A

Section 8.02.A of the General Conditions is hereby amended to read as follows:

In case of termination of the employment of Engineer, Owner shall appoint an engineer whose status under the Contract Documents shall be that of the former Engineer.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

No change.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

SC-10.05.E

Section 10.05.E of the of the General Conditions is hereby deleted and replaced by the following:

Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Contractor unless Contractor indicates its rejection of the Engineer's decision within 30 days of such action or denial.

SC-10.05.F

The following paragraph shall be added at the end of Section 10.05.F of the General Conditions:

10.05.G *Claims and Dispute Resolution:*

Notwithstanding any other provision of the CONTRACT DOCUMENTS, (i) OWNER shall not be prohibited from bringing any claim or dispute more than 30 days after the start of the occurrence or event giving rise to the claim or dispute; and (ii) any formal decision by ENGINEER regarding a claim or dispute between OWNER and CONTRACTOR shall never be final and binding upon OWNER. OWNER reserves all rights at law and in equity against CONTRACTOR at all times.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

No change.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

SC-12.03.B

Section 12.03.B of the General Conditions is hereby amended to read as follows:

If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.B.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.07.A

Section 13.07.A of the General Conditions is hereby amended to read as follows:

- A. A two year warranty period begins on the date of Substantial Completion, determined by the Texas Department of Transportation for the Work provided under the Contract Documents. If within two years 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 land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or
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 other land or areas resulting therefrom.

SC-13.07.E

The following paragraph shall be added at the end of Section 13.07.E of the General Conditions:

13.07.F *Maintenance Bond:*

CONTRACTOR shall deliver Maintenance Bond to Owner on the date of Substantial Completion.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.09.A.1

Section 14.09.A.1 of the General Conditions is hereby deleted.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

SC-15.02.A.4

The following provision shall be added at the end of Section 15.02.A.4:

15.02.A.5 Contractor's failure to make prompt payment when due to subcontractors or for materials, equipment or labor.

SC-15.02.B.3

The following provision shall be added at the end of Section 15.02.B.3:

15.02.B.4 Should OWNER deem it desirable, OWNER shall have the right to and CONTRACTOR hereby consents to the appointment of a receiver by any court with jurisdiction, without bond (or, if local rules require, a bond of nominal amount), to take charge of the Work, the Work Site, and all of CONTRACTOR's equipment, material, tools and other appliances on or near the Work Site and associated with the Work, at any time when CONTRACTOR is in default and such default has not been remedied or cured to the satisfaction of OWNER. OWNER may employ such receiver to continue the Work, receive any payments due to CONTRACTOR hereunder, pay all bills and invoices to subcontractors and material men due from CONTRACTOR, and otherwise perform CONTRACTOR's obligations hereunder, without discharging or limiting the liability of CONTRACTOR to OWNER or of any surety on any bond.

SC-15.02.F

Section 15.02.F is amended to read as follows:

15.02.F If a petition in bankruptcy is filed by or against CONTRACTOR, or if CONTRACTOR makes a general assignment for the benefit of creditors, or if a receiver is appointed on

account of the insolvency of CONTRACTOR or to take charge of the Work or any part thereof, then CONTRACTOR shall be in default under the CONTRACT DOCUMENTS.

15.02.G Nothing contained herein shall be interpreted as enlarging OWNER's legal duty to CONTRACTOR or to CONTRACTOR's agents, employees, subcontractors, or third parties, or altering the status of CONTRACTOR as an independent CONTRACTOR.

15.02.H CONTRACTOR shall submit and does hereby submit to the personal jurisdiction of the state or federal courts having subject matter jurisdiction and sitting in the county where the contract is executed, for the adjudication of any suit brought to enforce OWNER's rights and remedies under the Contract.

15.02.I In no event (including, without limitation, default by OWNER), shall OWNER's liabilities to CONTRACTOR ever exceed the total Contract Price, less all sums previously paid to CONTRACTOR.

15.02.J The remedies provided herein shall be cumulative of and not in lieu of all other remedies available to OWNER hereunder, or at law or in equity. Should OWNER elect to terminate the performance of CONTRACTOR hereunder, then such termination shall not waive, extinguish or otherwise affect the obligations and liabilities of the parties existing as of termination. “

SC-15.03.B

The following provisions shall be added at the end of Section 15.03.B:

15.03.C From the total of the items enumerated in Section 15.03.A above inclusive, there shall be deducted all claims of OWNER against CONTRACTOR, including, without limitation, claims on account of delay or defects in materials and/or workmanship.

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

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

15.03.F If and as OWNER so directs or authorizes, CONTRACTOR shall sell at a price approved by OWNER, or retain at a price mutually agreeable, any such materials, supplies, work in progress or other things as referred to above. The proceeds of any such sale or the agreed price shall be paid or credited to OWNER in such manner as OWNER may direct to reduce the amount payable by OWNER.

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

15.03.H Upon the performance of the obligations of the respective parties described herein, all obligations of the respective parties under the Contract shall be discharged, except such obligations as by their terms, express or implied, contemplate continued obligations after acceptance of the Work.

15.03.I The remedies provided herein shall be cumulative of and not in lieu of all other remedies available to OWNER hereunder, or at law or in equity. Should OWNER elect to terminate the performance of CONTRACTOR hereunder, then such termination shall not waive, extinguish or otherwise affect the obligations and liabilities of the parties existing as of termination.”

ARTICLE 16 – DISPUTE RESOLUTION

SC-16 Article 16 of the General Conditions is hereby deleted.

ARTICLE 17 – MISCELLANEOUS

SC-17.06

Add the following new paragraphs immediately after paragraph 17.06 of the General Conditions:

17.07 *Addresses*

- A. Both the address given in the Bid Form upon which this Agreement is founded, and Contractor's Office at or near the site of the Work are hereby designated as places to either of which notices, letters, and other communications to Contractor shall be certified, mailed, or delivered. The delivering at the above named place, or depositing in a postpaid wrapper directed to the first-named place, in any post office box regularly maintained by the post office department, of any notice, letter or other communication to Contractor shall be deemed sufficient service thereof upon Contractor; and the date of said service shall be the date of such delivery or mailing. The first-named address may be changed at any time by an instrument in writing, executed and acknowledged by Contractor, and delivered to Owner and Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon Contractor personally.

17.08 *Wage Rates*

- A. The requirements and provisions of all applicable laws and any amendments thereof or additions thereto as to the employment of labor, and to the schedule of minimum wage rates established in compliance with laws shall be a part of these Contract Documents. Copies of the wage schedules are included in PART II of these Supplementary Conditions. If, after the Notice of Award, it becomes necessary to employ any person in a trade or occupation not classified in the wage determinations, such person shall be paid at not less than such rates as shall be determined by the officials administering the laws mentioned above. Such approved minimum rate shall be retroactive to the time of the initial employment of such person in such trade or occupation. Contractor shall notify Owner of Contractor's intention to employ persons in trades or occupations not classified in sufficient time for Owner to obtain approved rates for such trades or occupations.
- B. The schedules of wages referred to above are minimum rates only and Owner will not consider any claims of additional compensation made by Contractor because of payment by Contractor of any wage rate in excess of the applicable rate contained in these Contract Documents. All disputes in regard to the payment of wages in excess of these specified in the schedules shall be resolved by Contractor.
- C. The said schedules of wages shall continue to be the minimum rates to be paid during the life of this Agreement and a legible copy of said schedules shall be kept posted in a conspicuous place at the site of the Work.

SC-19 ECONOMIC DISINCENTIVE FOR LATE COMPLETION OF WORK.

The CONTRACTOR and the OWNER agree that time is of the essence of this Contract. The CONTRACTOR and the OWNER agree that the Contract is based on completion of the Work by

CONTRACTOR in the time specified in the Contract. CONTRACTOR and the OWNER agree that for each and every calendar day the work or any portion thereof shall remain uncompleted after the expiration of the time limit set in the Contract, or as extended under the provisions for extension of time in this Contract, CONTRACTOR shall be liable to OWNER for an economic disincentive pursuant to Section 49.271(e) of the Texas Water Code, in the amount of **\$500** for such calendar day. The OWNER shall have the option to deduct and withhold said amount from any monies that the OWNER owes the CONTRACTOR or to recover such amount from the CONTRACTOR or the Sureties on the CONTRACTOR's bond.

SC-20 NON-WAIVER OF RIGHTS.

Any failure by the OWNER at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the CONTRACT DOCUMENTS shall not constitute a waiver of the right to enforce or require the strict keeping of such terms or conditions and shall not affect or impair such terms or conditions in any way or the right of OWNER at any time to avail itself of such remedies as it may have for any subsequent breach or breaches of any such term or condition or of any other term or condition of the CONTRACT DOCUMENTS, including, without limitation, the right to suspend and the right to terminate. Notwithstanding any provision hereof, neither OWNER's receipt of non-compliant bonds or non-compliant insurance certificates nor OWNER's allowance of CONTRACTOR to proceed with the work, shall be construed to relieve CONTRACTOR of its obligation to provide bonds and insurance in favor of OWNER according to the requirements of these CONTRACT DOCUMENTS.

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

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

SC-21 RIGHT OF SET-OFF.

For all purposes and at all times, OWNER shall have the right to deduct and withhold the amount of money, if any, that may ever be due from CONTRACTOR to OWNER (pursuant to this Contract or otherwise) from any monies that OWNER owes CONTRACTOR.

SC-22 NO THIRD PARTY BENEFICIARIES.

The CONTRACT DOCUMENTS shall not create any rights in third parties and no provision of the CONTRACT DOCUMENTS shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the parties hereto. Without limiting the foregoing, the OWNER shall have no obligation to pay or to see to the payment of any monies due to any CONTRACTOR's subcontractors of every tier or to any other party.

SC-23 SEVERABILITY.

If any term or provision of the CONTRACT DOCUMENTS is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof

shall be stricken, and such provision shall not affect the legality, enforceability, or validity of the remainder of the CONTRACT DOCUMENTS. If any provision or part thereof is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

SC-24 INTERPRETATION.

The parties hereto agree that these CONTRACT DOCUMENTS shall not be construed against any party hereto on the basis that such party did or did not draft the CONTRACT DOCUMENTS. The language shall be interpreted as to its fair meaning and not strictly for or against any party.

SC-25 NO ASSIGNMENT.

CONTRACTOR shall not be allowed to assign or otherwise convey all or any portion of this Contract without the express written consent of OWNER.

SC-26 COORDINATION OF DOCUMENTS.

The CONTRACT DOCUMENTS are intended to be complimentary and to describe and provide for the proposed project. In the case of any discrepancy between provisions of the CONTRACT DOCUMENTS, the priority of interpretation shall be as follows: Agreement, Special Conditions to the Agreement, Supplementary Conditions, Special Specifications, Standard Specifications, Instructions to Bidders, and General Conditions.

PART II – LOCAL GOVERNMENT PROVISIONS

State and Local Government Provisions included herein, have been selected from those to which specific references have been made elsewhere in the Contract Documents. Each and every other provision of law or clause required by law to be inserted in this Contract shall be deemed to be also inserted herein in accordance with paragraph 3.01D of the Supplementary Conditions.

1.0 Local Government Provisions

1.1 Prevailing Wage Rate Scale (Exhibit IX.PART II.A)

EXHIBIT IX.PART II.A

PREVAILING WAGE RATE SCALE

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

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

- B. The minimum wage rates that apply to this contract are specified in the attachment hereto as Exhibit IX.Part II.B. Contractor agrees to review and ascertain such wage rates and to pay at least such minimum rates.

**RESOLUTION ADOPTING PREVAILING WAGE RATE SCALE
FOR CONSTRUCTION PROJECTS**

WHEREAS, Kendall County Water Control and Improvement District No. 2A of Kendall County, Texas (the "District") has been heretofore duly created and organized; and

WHEREAS, Chapter 2258, Texas Government Code ("Chapter 2258") requires the District to determine the general prevailing rate of per diem wages for each craft or type of worker in the locality in which a construction project for the District is to be performed and the general prevailing rate of per diem wages for legal holiday and overtime work; and

WHEREAS, Chapter 2258 provides that a worker employed on a construction project by or on behalf of the District shall be paid not less than said general prevailing rates, as applicable; and

WHEREAS, Chapter 2258 provides that a contractor which is awarded a construction contract for the District, or a subcontractor of the contractor, shall pay not less than the rates determined as set forth above to a worker employed in the execution of such contract for a construction project; and

WHEREAS, Chapter 2258 applies to construction projects paid for in whole or in part from funds of the District, regardless of whether the work is done under the District's supervision or direction; and

WHEREAS, the Board of Directors for the District (the "Board") has conducted a survey of wages received by classes of workers employed on projects similar to the construction projects of the District to determine the general prevailing rate of per diem wages in the District and has determined to adopt a Prevailing Wage Rate Scale for Construction Projects for the District; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2A OF KENDALL COUNTY, TEXAS, THAT:

Section 1: The Board has conducted a survey of the wages received by classes of workers employed on public works projects of the City of Boerne, Kendall County, and United States government, said projects being similar to the construction projects by or on behalf of the District and, based on said survey, the Board has determined that the wage rates in the Prevailing Wage Rate Scale for Construction Projects attached hereto as Exhibit "A" are the general prevailing wage rates for construction projects by or on behalf of the District, being an average of the rates of the City of Boerne, Kendall County, and United States government.

Section 2: The District hereby adopts the Prevailing Wage Rate Scale for Construction Projects attached hereto as Exhibit 'A' which establishes minimum rates that shall be used by all contractors and their subcontractors on construction projects by or on behalf of the District.

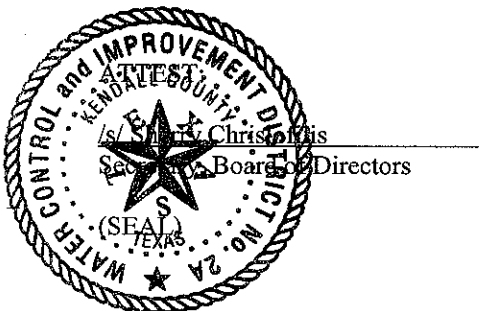
Section 3: A contractor or subcontractor on a construction project by or on behalf of the District shall maintain records as required by Chapter 2258 and shall be subject to the penalties, forfeitures, and withholding of money for failure to comply with this Resolution and/or pending a final determination of an alleged violation, as provide din Chapter 2258.

Section 4: The District engineer is hereby directed and authorized to specify the wage rates adopted hereunder in all specifications for bids and contracts for construction projects by or on behalf of the District.

PASSED AND APPROVED this 29th day of July, 2014.

/s/ Carlin R. Friar

President, Board of Directors



General Decision Number: TX140016 01/03/2014 TX16

Superseded General Decision Number: TX20130016

State: Texas

Construction Types: Heavy and Highway

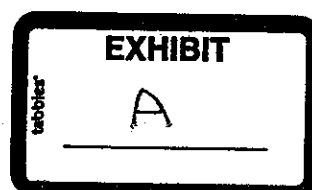
Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos,
Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall,
Lampasas, McLennan, Medina, Robertson, Travis, Williamson and
Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on
Sewage or Water Treatment Plants or Lift / Pump Stations in
Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY
Construction Projects

Modification Number Publication Date

0 01/03/2014

* SUTX2011-006 08/03/2011



Rates Fringes

CEMENT MASON/CONCRETE

FINISHER (Paving and

Structures).....\$ 12.56

ELECTRICIAN.....\$ 26.35

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 12.94

Structures.....\$ 12.87

LABORER

Asphalt Raker.....\$ 12.12

Flagger.....\$ 9.45

Laborer, Common.....\$ 10.50

Laborer, Utility.....\$ 12.27

Pipelaye.....\$ 12.79

Work Zone Barricade

Servicer.....\$ 11.85

PAINTER (Structures).....\$ 18.34

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....\$ 12.69

Asphalt Distributor.....\$ 15.55
 Asphalt Paving Machine.....\$ 14.36
 Boom Truck.....\$ 18.36
 Broom or Sweeper.....\$ 11.04
 Concrete Pavement
 Finishing Machine.....\$ 15.48
 Crane, Hydraulic 80 tons
 or less.....\$ 18.36
 Crane, Lattice Boom 80
 tons or less.....\$ 15.87
 Crane, Lattice Boom over
 80 tons.....\$ 19.38
 Crawler Tractor.....\$ 15.67
 Directional Drilling
 Locator.....\$ 11.67
 Directional Drilling
 Operator.....\$ 17.24
 Excavator 50,000 lbs or
 Less.....\$ 12.88
 Excavator over 50,000 lbs...\$ 17.71
 Foundation Drill, Truck
 Mounted.....\$ 16.93
 Front End Loader, 3 CY or
 Less.....\$ 13.04
 Front End Loader, Over 3 CY.\$ 13.21

Loader/Backhoe.....\$ 14.12
Mechanic.....\$ 17.10
Milling Machine.....\$ 14.18
Motor Grader, Fine Grade....\$ 18.51
Motor Grader, Rough.....\$ 14.63
Pavement Marking Machine....\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88
Roller, Asphalt.....\$ 12.78
Roller, Other.....\$ 10.50
Scraper.....\$ 12.27
Spreader Box.....\$ 14.04
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51

Steel Worker

Reinforcing.....\$ 14.00
Structural.....\$ 19.29

TRAFFIC SIGNAL INSTALLER

Traffic Signal/Light Pole
Worker.....\$ 16.00

TRUCK DRIVER

Lowboy-Float.....\$ 15.66

Off Road Hauler.....\$ 11.88

Single Axle.....\$ 11.79

Single or Tandem Axle Dump

Truck.....\$ 11.68

Tandem Axle Tractor w/Semi

Trailer.....\$ 12.81

WELDER.....\$ 15.97

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

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

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any

changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

Branch of Construction Wage Determinations

Wage and Hour Division

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

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

Wage and Hour Administrator

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

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

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

Administrative Review Board

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, DC 20210

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

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END OF GENERAL DECISION

**EXHIBIT IX-A TO
SUPPLEMENTARY CONDITIONS

SPECIAL CONDITIONS**

ADDITIONAL INSUREDS

Supplementary Conditions 2.01 B shall be modified as follows.

CONTRACTOR shall list the following as Additional Insureds for all required policies except Worker's Compensation:

Lookout Development Group, L.P., Kendall County Water Control and Improvement District No. 4, Cude Engineers, LLC, Legacy Engineering Group, LLC, Texas Department of Transportation and Kendall County.

CONTRACTOR shall obtain the Additional Insured endorsement.

CONTRACT TIME

Standard General Conditions 2.03 and 2.04 shall be modified as follows.

Commencement of Contract Time: The Contract Time begins to run on the earlier of the date indicated in the Notice to Proceed or **30 calendar days** after the effective Agreement. CONTRACTOR is required to begin Work within **7 calendar days** of the date indicated on the Notice to Proceed.

The CONTRACTOR will be allowed **120 calendar days** to achieve Substantial Completion. The CONTRACTOR will be allowed **30 calendar days** to achieve Final Completion of all Work to meet all requirements for final payment.

ENGINEER and OWNER shall determine when CONTRACTOR has met all requirements for both Substantial and Final Completion in accordance with the Contract Documents.

NOTICE TO PROCEED

Standard General Condition 2.04 shall be modified as follows.

CONTRACTOR shall mobilize and begin Work in earnest within **7 calendar days** of the date indicated in the Notice to Proceed. Failure of CONTRACTOR to begin work in earnest decreases the ability of CONTRACTOR to complete in time and for OWNER to take possession. OWNER may assess **\$200/day** in damages for each day the CONTRACTOR fails to pursue the work. If CONTRACTOR completes on time, such amounts shall be refunded at Final Completion.

AVAILABILITY OF LANDS

Standard General Condition 4.01 shall be modified as follows.

CONTRACTOR will limit work extents to areas designated for use in the Contract Document. CONTRACTOR will not encroach Work to be performed on residential lots and/or greenbelt lands unless designated for use in the Contract Documents. CONTRACTOR to take necessary precautions to protect root systems of shrubs, plants and trees along adjacent lands upon which the Work is to be performed. CONTRACTOR will remediate damage to areas not designated in the Contract Documents to as good as or better than prior to starting work and will be paid for by the CONTRACTOR.

OWNER shall furnish designated lands and access thereto for CONTRACTOR'S temporary construction facilities or storage of materials and equipment. CONTRACTOR will fence, secure, and maintain designated lands for temporary construction facilities or storage of materials and equipment and will be paid for by the CONTRACTOR.

SUBSURFACE REPORTS AND PHYSICAL CONDITIONS

Standard General Condition 4.02 shall be modified as follows.

The following reports and investigations are available for CONTRACTOR's information at the office of Cude Engineers, LLC. 4122 Pond Hill Road, Suite 101, San Antonio, Texas 78231. Such data is limited and such data is not warranted as stated in Standard General and Supplemental Conditions 4.02.

Geotechnical Report for George's Ranch is located at the office of the Engineer for review and examination.

REFERENCE POINTS

Amend the first sentence of Paragraph 4.05.A of the General Conditions to read as follows:.

OWNER shall provide engineering survey of four (4) control points as established reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work.

BONDS

Standard General Conditions 5.01 and 5.02 are modified as follows.

Payment, Performance and Maintenance Bonds

CONTRACTOR shall provide performance, payment and maintenance bonds meeting the following requirements. The surety company issuing payment, performance and maintenance bonds for such construction Projects must (a) be authorized to do business in the State of Texas as evidenced by licensing through the State Board of Insurance; (b) be authorized to issue payment, performance and maintenance bonds in the amount required for the Contract as indicated by the records of the State Board of Insurance; and (c) have a rating of at least "B+" in the current Ambest Rating Guide, or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such payment, performance and maintenance bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to payment, performance and maintenance bonds for federal jobs, including specifically the rules related to the underwriting limitation.

The person executing a payment, performance and maintenance bonds must: (a) be licensed as a Texas Local Recording Agent through the State Board of insurance as required by the laws of the State of Texas and such licensing must be recorded in the files of the State Board of Insurance; and (b) hold an appointment from the surety company to execute payment, performance and maintenance bonds and bind such surety, and such appointment must be recorded in the office of the State Board of Insurance.

Neither OWNER's receipt of non-compliant bonds or non-compliant insurance certificates nor OWNER's allowance of CONTRACTOR to proceed with the Work, shall be construed to relieve CONTRACTOR of its obligation to provide bonds and insurance according to the requirements of these CONTRACT

DOCUMENTS. Additionally, failure to provide compliant bonds shall be a material breach justifying immediate termination for cause.

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

INDEMNIFIED PARTIES

Standard General Conditions 6.07, 6.09, 6.11, 5.20, 7.01, 7.02, and 7.03 shall be modified as follows.

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

Lookout Development Group, L.P., Kendall County Water Control and Improvement District No. 4, Cude Engineers, LLC., Legacy Engineering Group, PLLC, the Texas Department of Transportation and Kendall County.

SALES TAX

Standard General Condition 6.10 shall be modified as follows.

The CONTRACTOR shall obtain the necessary documentation so that any taxes exempted by law due to the nature of the Work shall be obtained, and cost savings due to the Project's tax exempt status shall be passed on to the OWNER, CONTRACTOR must obtain a Texas sales tax permit. CONTRACTOR shall pay taxes for all non-exempt items, and shall include such taxes in its proposal price.

TESTING

Standard General Condition 13.03 shall be modified as follows.

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

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

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

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

Paving: The OWNER may hire a competent testing laboratory to perform the necessary testing which will be paid for by the OWNER. The following material tests may be performed: Sub-grade Preparation

(Densities); Embankment (Densities); Proof Rolling; Base and Asphalt (Densities); and Concrete design mix (curbs and pavement)

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

Storm Drainage:

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

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

PAYMENT

Standard General Conditions 14.02 and 14.07 shall be modified as follows.

CONTRACTOR shall submit its pay application by the 20th day of each month. CONTRACTOR is notified that its late submission will delay any payment due for that draw period, and may delay payment until the next scheduled draw payment.

RETAINAGE

Standard General Conditions 14.02 and 14.07 shall be modified as follows.

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

DISPUTE RESOLUTION – ARBITRATION APPLIES TO THIS CONTRACT

Standard General Condition 16.01 shall be modified as follows.

CONTRACTOR is notified that this Contract requires that any dispute not resolved by mediation, as provided in the Supplementary Conditions, shall be resolved by binding Arbitration subject to the provisions below and to the Texas General Arbitration Act, Chapter 171, Texas Civil Practice and Remedies Code.

Arbitration: All questions of dispute under this Agreement shall be submitted to arbitration at the request of either party to the dispute. The parties may agree upon one arbiter otherwise, there shall be three, one named in writing by each party, and the third chosen by the two arbiters so selected; or if the arbiters fail to select a third within ten (10) days, he shall be chosen by a District Judge serving the County in which the major portion of the project is located, unless otherwise specified. Should the party demanding arbitration fail to name an arbiter within ten (10) days of the demand, his right to arbitrate shall lapse, and the decision of the ENGINEER shall be final and binding on him. Should the other party fail to choose an arbiter within ten (10) days, the ENGINEER shall appoint such arbiter. Should either party refuse or neglect to supply the arbiters with a any paper or information demanded in writing, the arbiters are empowered by both parties to take ex parte proceedings.

The arbiters shall act with promptness. The decision of any two shall be binding on both parties to the contract. The decision of the arbiters upon any question submitted to arbitration under this contract shall be a condition precedent to any right of legal action. The decision of the arbiter or arbiters may be filed in court to carry into effect.

The arbiters, if they deem the case demands it, are authorized to award the party whose contention is sustained, such sums as they deem proper for the time, expense and trouble incident to the appeal, and if the appeal was taken with reasonable cause, they may award damages for any delay occasioned thereby. The arbiters shall fix their own compensation, unless otherwise provided by agreement, and shall assess the cost and charges of the arbitration upon either or both parties. The award of the arbiters must be made in writing.

Limitation on Discovery: It is the express intent of both Parties to incur only costs as reasonably necessary to resolve the dispute. The Parties agree that unlimited discovery and discovery disputes unnecessarily inflate the cost of dispute resolution. The Parties also agree that full exchange of information promotes fair and just decisions. Accordingly, the Parties agree to abide by the following restrictions on discovery.

Documents: Within 30 days of selection of the Arbitrator(s), the Parties shall make available for copying, documents requested by other Parties which would be discoverable under the Texas Rules of Civil Procedure, subject to any statutory restrictions controlling document production for public entities. Failure to make such documents available shall; (1) preclude the non-producing party from entering those documents at arbitration; (2) preclude the non-producing party from entering testimony as to any information that would be reasonably expected to be contained in such documents; (3) require the arbitrator to presume such documents would, if produced, be favorable to the opposing party; (4) be automatic grounds for appeal of any award by the Party who requested, but did not receive the documents.

Depositions: The number of depositions shall be limited by the amount in controversy.

Disputes of \$75,000 or less: If the amount in controversy claimed by each Party is less than \$75,000, then the Arbitration shall be based on written documents and affidavits. Each Party shall provide the other Party a copy of all of the affidavits 30 days before submission of the affidavits to the Arbitrator.

Depositions will be allowed only if, and to the extent that, the Party desiring the deposition can demonstrate, to the Arbitrator's reasonable satisfaction that the proposed deponent possesses documents subject to discovery request or from persons who will provide such information by affidavit.

Disputes between \$75,000 and \$400,000: If the amount in controversy claimed by any Party is over \$75,000 and less than \$400,000 each Party shall be limited to 3 depositions. Additional depositions will be allowed only if the Party desiring the deposition(s) can reasonably demonstrate to the Arbitrator that the individual possesses information important to the dispute which is not available by documents of from the persons who will provide such information without necessary of a deposition.

Disputes over \$400,000: If any Party claims more than \$400,000 then discovery shall be conducted per mutual agreement, or, if no agreement per the Arbitrator(s) ruling.

Experts: Each Party's expert(s) shall be required to write a full report of any opinions that expert will testify to, including any rebuttal opinions, along with the basis for those opinions, documents and investigations made including persons with whom the expert consulted, and qualifications and credentials to opine on the matters. It is the express intent that this report fully discloses the opinions, grounds, and qualifications so that deposition shall not be necessary. Opinions, qualifications, and factual bases not disclosed in the report shall not be allowed at any hearing.

The experts' reports will be produced no later than 60 days prior to any hearing. If a Party can reasonably demonstrate to the Arbitrator that the other Party's expert state opinion, qualifications or bases, which could not have been reasonably anticipated, then the Party shall be allowed to amend its report with a rebuttal, but is shall be strictly limited to the direct rebuttal of the unanticipated opinions, qualifications or bases.

Notwithstanding the above, if a Party elects to depose an expert, whether retained or unretained, the request must be made before any report. After such request, that expert is not required to produce a report. The Party taking the deposition shall be responsible for fully investigating the opinions, bases, and qualifications in deposition, and failure to do so will not preclude the expert from stating opinions not asked about in deposition.

Interrogatories: Each Party may submit Interrogatories which would be allowed under the Texas Rules of Procedure, and each Party has the duty to respond fully and completely to any interrogatories. Parties who respond with evasive and incomplete answers will not be allowed to present evidence at hearings which was within the scope of interrogatories but was not provided in response.

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

CONTRACTOR's sureties shall be bound by any Arbitration award.

BID SECURITY

Bid security shall be in the form of Cashier's Check or Bid Bond in the amount of five percent (5%) of the bid.

BURNING

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

STORM WATER POLLUTION PREVENTION PLAN

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

EXCESS UTILITY SPOILS

CONTRACTOR shall haul and compact all utility spoils generated from Work as directed by Owner within George's Ranch, no separate pay.

**EXHIBIT IX-B TO
SUPPLEMENTARY CONDITIONS**

**A LISTING OF THE DUTIES, RESPONSIBILITIES AND
LIMITATIONS OF AUTHORITY OF THE PROJECT REPRESENTATIVE.**

OWNER shall furnish a Project Representative (PR) to assist ENGINEER in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the PR, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the PR are limited to those of ENGINEER in the construction Contract Documents, and are further limited and described as follows:

A. General

PR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding PR's actions. PR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. PR's dealings with subcontractors shall be only through or with the full knowledge and approval of CONTRACTOR. PR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of PR

1. *Conferences and Meetings:* Attend meetings with CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings.
2. *Liaison:*
 - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information when directed by Engineer and when required for proper execution of the Work.
3. *Shop Drawings and Samples:* 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.

4. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever PR believes that any Work is unsatisfactory, faulty or defective or does not conform 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 PR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
5. *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.
6. *Modifications:* Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with PR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
7. *Records:* Maintain a diary or log book that reflects project data required to evaluate change order requests, time extension requests, and changed project conditions. The documentations shall include any significant on-site project meetings, and daily observations to ensure construction conformance with contract documents.
8. *Reports:*
 - a. Furnish ENGINEER periodic reports as required of progress of the Work.
 - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - c. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
9. *Payment Requests:* Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with 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.
10. *Completion:*
 - a. Before ENGINEER issues a Certificate of Final Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
 - b. Conduct final inspection in the company of OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.

- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of the CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not 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.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not authorize OWNER to occupy the Project in whole or in part.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

CONTRACTOR AFFIDAVIT FOR PARTIAL PAYMENT

STATE OF TEXAS §

COUNTY OF KENDALL §

BEFORE ME, the undersigned authority, on this day personally appeared _____ the _____ of _____ (“CONTRACTOR”). CONTRACTOR has performed labor and furnished materials pursuant to that certain Contract entered into on the _____ day of _____, 20____, by and between CONTRACTOR and **Kendall County Water Control and Improvement District No. 4** (Owner) and **Lookout Development Group, L.P.** (“Developer”), for the erection, construction, and completion of certain improvements and/or additions upon the following described premises, to wit:

**“Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor
Improvements for George’s Ranch Highway 46 Improvements”**

The undersigned, being by me duly sworn, states upon oath that the materials supplied in connection with CONTRACTOR’s Application for Partial Payment No. _____, dated _____ (the “Application Date”), represents the actual cost of sound materials that have been or will be fabricated into the Work in compliance with the agreed to plans and specifications (and all authorized changes thereto).

The undersigned further states that as of the Application Date, CONTRACTOR has paid all bills and claims for materials supplied in connection with the aforesaid Partial Payment, and that there are no outstanding unpaid bills or claims for labor performed or materials furnished.

CONTRACTOR acknowledges complete satisfaction of, and forever waives and releases, all claims of every kind against OWNER or the property where the labor and/or materials were installed, including, without limitation, any liens or potential liens, which CONTRACTOR may have as a result of, or in connection with, the labor and/or materials supplied in connection with the aforesaid Partial payment.

CONTRACTOR represents that the person executing this affidavit on behalf of CONTRACTOR is duly authorized to sign this affidavit and to legally bind CONTRACTOR hereto. All of the provisions of this affidavit shall bind CONTRACTOR, its heirs, representatives, successors and assigns and shall inure to the benefit of OWNER, and its legal representatives, successors, assigns.

This affidavit is being made by the undersigned realizing that it is in reliance upon the truthfulness of the statements contained herein that a partial payment under said Contract is being made, and in consideration of the disbursement of said partial payment by OWNER.

CONTRACTOR HEREBY AGREES TO DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER SAFE AND HARMLESS FROM AND AGAINST ALL LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY CHARACTER WHATSOEVER SPECIFICALLY INCLUDING COURT COSTS, BONDING FEES, AND ATTORNEY FEES ARISING OUT OF OR IN ANY WAY RELATING TO CLAIMS FOR UNPAID LABOR OR MATERIALS FURNISHED AS OF THE APPLICATION DATE.

Executed this ____ day of _____, 20____.

<CONTRACTOR>

By: _____

Name Printed: _____

Title: _____

STATE OF TEXAS §

COUNTY OF _____ §

Subscribed and sworn to before me, the undersigned authority, on this the _____ day of _____, 20____, to certify which, witness my hand and seal of office.

Notary Public, State of Texas
Notary's Name Printed:

My commission expires: _____

CONTRACTOR AFFIDAVIT FOR FINAL PAYMENT AND BILLS PAID

STATE OF TEXAS §

COUNTY OF KENDALL §

BEFORE ME, the undersigned authority, on this day personally appeared _____ the _____ of _____ (“CONTRACTOR”). CONTRACTOR has performed labor and furnished materials pursuant to that certain Contract entered into on the _____ day of _____, 20____, by and between CONTRACTOR and **Kendall County Water Control and Improvement District No. 4** (Owner) and **Lookout Development Group, L.P.** (“Developer”) , for the erection, construction, and completion of certain improvements and/or additions upon the following described premises, to wit:

**“Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor
Improvements for George’s Ranch Highway 46 Improvements”**

Said party being by me duly sworn states upon oath that the said improvements (and the labor and materials supplied in connection therewith) have been erected and completed in a good and workmanlike manner and in full compliance with the above referred to Contract and the agreed plans and specifications therefore.

CONTRACTOR further states that he has paid in full all bills and claims for materials furnished and labor performed on said Contract and that there are no outstanding unpaid bills or claims for labor performed or materials furnished upon said job.

CONTRACTOR represents that the person executing this affidavit on behalf of CONTRACTOR is duly authorized to sign this affidavit and to legally bind CONTRACTOR hereto. All of the provisions of this affidavit shall bind CONTRACTOR, its heirs, representatives, successors and assigns and shall inure to the benefit of OWNER, and its legal representatives, successors, assigns.

THIS AFFIDAVIT IS BEING MADE BY THE UNDERSIGNED REALIZING THAT IT IS IN RELIANCE UPON THE TRUTHFULNESS OF THE STATEMENTS CONTAINED HEREIN THAT FINAL AND FULL SETTLEMENT OF THE BALANCE DUE ON SAID CONTRACT IS BEING MADE, AND IN CONSIDERATION OF THE DISBURSEMENT OF FUNDS BY OWNER, DEPONENT EXPRESSLY WAIVES AND RELEASES LIENS, CLAIMS, AND RIGHTS TO ASSERT A LIEN ON SAID PREMISES AND AGREES TO DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER SAFE AND HARMLESS FROM AND AGAINST ALL LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY CHARACTER WHATSOEVER SPECIFICALLY INCLUDING COURT COSTS, BONDING FEES, AND ATTORNEY FEES, ARISING OUT OF OR IN ANY WAY RELATING TO CLAIMS FOR UNPAID LABOR OR MATERIAL USED OR ASSOCIATED WITH CONSTRUCTION OF IMPROVEMENTS ON THE ABOVE-DESCRIBED PREMISES.

<CONTRACTOR>

By: _____

Subscribed and sworn to before me, the undersigned authority, on this the _____ day of _____, 20__.

Notary Public in and for _____ County, Texas

CERTIFICATION OF COMPLETION
(By CONTRACTOR)

We hereby certify that the Work on the Project “**Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor Improvements for George’s Ranch Highway 46 Improvements**”, has been completed in substantial compliance with the PLANS and TECHNICAL SPECIFICATIONS.

CONTRACTOR’s Company Name

By: _____

Title: _____

Date: _____

CERTIFICATION OF COMPLETION
(By Subcontractor)

We hereby certify that the (Description of Work Performed) _____

Work performed by us on the Project “**Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor Improvements for George’s Ranch Highway 46 Improvements**”, has been completed in substantial compliance with the PLANS and TECHNICAL SPECIFICATIONS.

Subcontractor’s Company Name

By: _____

Title: _____

Date: _____

STANDARD SPECIFICATIONS

PART I GENERAL

- A. All work to be performed under this contract is to be performed in accordance with these Standard Specifications, unless these Standard Specifications are superseded by the attached Special Specifications.
 - 1. Texas Department of Transportation (TxDOT)
 - a. Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges
 - 2. Texas Commission on Environmental Quality (TCEQ)
 - a. Rules and Regulations for Public Water Systems

These forms in their current issue with all revisions and addenda, are made a part of the Contract Documents with the same force and effect as though bound herein. All construction performed under these Contract Documents shall be in accordance with the terms of these items used in conjunction with the other sections of the Contract Documents.

Copies of each of the above described items may be examined at the office of Cude Engineers, LLC 4122 Pond Hill Road, Suite 101, San Antonio, Texas 78216.

SPECIAL SPECIFICATIONS

TABLE OF CONTENTS

SECTION

01000

SITEWORK

General Requirements

SECTION 01000
GENERAL REQUIREMENTS

SCOPE OF WORK

The project consists of the following elements of work in connection with this development.

- A. Construction of Turn Lane, Acceleration Lane, and Subdivision Entry Corridor Improvements for George's Ranch Highway 46 Improvements

The limits of the Work are illustrated on the construction drawings.

LOCATION OF WORK

This project is located as illustrated on the vicinity map included with the construction drawings.

The Work shall be performed within public right-of-way, on land owned by the Owner, or within easements or rights-of-way obtained by the Owner. Should the Contractor require use of additional space or construction easements, he shall make his own arrangements with the proper parties.

Permits necessary for construction within existing rights-of-way as well as coordination necessary to obtain final acceptance by Kendall County, Kendall County Flood Control District, the City of Boerne, Texas Department of Transportation and the Texas Commission on Environmental Quality are the responsibility of the Contractor and will be at the Contractor's expense. The Contractor shall comply with all specifications and standards applicable to construction required by Contract Documents.

CONTRACTOR INTERFACE

The work described in these bid documents is only one element of the improvements proposed to accomplish this development. The Supplementary Conditions describe other construction related activities which may be under construction simultaneously with the construction of this contract. The Contractor should be aware of issues relating to site accessibility as a result of the related construction activities described in the Supplementary Conditions.

The Contractor shall be required to coordinate with the contractors for the referenced projects as required to facilitate construction and this shall be incidental to the other bid items.

EXISTING UTILITIES

The Contractor shall notify the City of Boerne Public Works Department (830-248-1538) a minimum of 48 working hours prior to operating or connecting to any existing facility, and must arrange for and have an appropriate representative of the Operator present to witness all such operations or connections. All existing utilities presented on the construction drawings are shown at the approximate locations based on the best available information. The Contractor shall field determine the exact locations of all existing utilities prior to commencing construction and shall be fully responsible for any and all damages caused by his failure to exactly locate and maintain these underground utilities. It shall be the Contractor's responsibility to protect and save from damage all utilities, public or private, which are crossed by his construction operations whether shown on the drawings or not. Where existing utilities are cut, broken or damaged, the Contractor shall be responsible for the immediate repair of the utility with the same type of material or better at his own cost and expense.

Where utilities such as underground power, telephone or gas lines are exposed by the Contractor and conflict with the proposed construction, the Contractor shall notify the respective utility owner and they shall be lowered or relocated by the respective owners at no cost to the Contractor.

PROTECTIVE MEASURES

Where construction creates possible hazards to traffic or the public safety, the Contractor shall furnish and maintain suitable temporary barricades, warning signs, lights, etc. as required. Expenses for such safety measures will be paid for by the Contractor at no additional cost to the Owner.

SANITARY FACILITIES

The Contractor shall provide and maintain sanitary facilities for persons on the job site that comply with the regulations of State and local departments of health. The Contractor shall enforce the use of such sanitary facilities by construction personnel on the job site. Such facilities shall be enclosed. Pit-type toilets will not be permitted. No discharge will be allowed from these facilities. Collect and store sewage and waste so as not to cause a nuisance or health problem and have the sewer and waste hauled off-site and properly disposed of in accordance with State and local regulations. Locate the sanitary facilities near the work site. Keep the facilities clean and supplied throughout the course of the work. Expenses for installing and maintaining sanitary facilities will be paid for by the Contractor at no additional cost to the Owner.

FINAL GRADES AND CONDITIONS

The Contractor shall restore to original grades and conditions all on-site and off-site properties or facilities damaged by his activity related to the work. The condition of all disturbed areas, upon completion of job, shall be as good or better than the condition prior to starting the Work. The Contractor shall take adequate precautions to avoid sediment, materials, trash, etc. from entering sewers or adjacent properties, both public and private throughout the duration of the project. All work under this item shall be incidental to the other bid items.

REMOVAL AND DISPOSAL OF EXISTING FACILITIES

All existing facilities designated for demolition and/or removal in the Construction Plans shall be removed and legally disposed of offsite by the Contractor at his own expense, unless otherwise directed by the Engineer or Owner's representative.

All holes and excavations created during the removal of these items in the Construction Plans shall be backfilled. The backfill shall be placed in 8 inch (maximum) loose lifts and compacted to 95% density per ASTM D698 at +/- 2% of optimum moisture content. The backfill material shall be similar to the adjacent material. Backfill and compaction shall be incidental to the specific bid items established for demolition and/or removal of existing facilities.

SITE PREPARATION AND CLEARING/GRUBBING

The excavation and fill areas for this project will be cleared of trees and brush and shall be included in the work under this Contract. The contractor shall verify the clearing and grubbing work extents included in this contract.

PROTECTION OF TREES

All trees outside the limits of construction shall be carefully and adequately protected from loss or damage during construction at the Contractor's expense. Heavy equipment, vehicular traffic, and stockpiles of construction materials are not permitted within the drip line of any tree, tree trunks, exposed roots, and limbs of trees which are damaged during construction operations shall be cared for as prescribed by a forester or licensed tree expert at the Contractor's expense.

STORM WATER POLLUTION PREVENTION PLAN

The Construction Drawings and specifications include a Storm Water Pollution Prevention Plan (SWPPP) prepared in accordance with TCEQ requirements. A bid submittal will confirm that the Contractor agrees to execute any documents necessary to comply with the TPDES regulations. The Contractor shall be responsible for enforcement of the TPDES requirements and general source controls along with maintenance of the SWPPP for the duration of construction.

TRENCH SAFETY SYSTEM

The Contractor shall be responsible for Trench Safety as required to facilitate construction in accordance with the plans, specifications, and geotechnical report recommendations.

EXCAVATION AND UTILITY DISPOSAL

The area provided for the disposal of the excavation is defined on the grading plan as shown on the construction plans. The entire area shall be filled and/or cut to the elevations and final grades indicated on the grading plans subject to the following procedure:

1. All areas which are to be excavated and all areas which are to receive fill shall be prepared according to Special specification 02100 "Site Preparation". All topsoil has been stockpiled on-site at locations which shall be coordinated with the Engineer. Site Preparation of fill areas have been cleared of trees and brush by others prior to work under this Contract. Contractor is to notify Engineer if additional site preparation is required.
2. All fill to be placed in conformance with Special specification 02201 "Fill Placement" to the elevations indicated on the grading plans. Contractor shall conduct excavation and fill operations to insure positive drainage over the entire project site throughout the duration of construction and upon completion.
3. Upon completion of excavation, fill operations and site grading: a minimum of three inches of the stockpiled topsoil material shall be placed uniformly over all areas except street rights-of-way.

Balancing of material by transporting excavation from one area of the project to another as required to conform with the Fill Map is considered part of the Contract and is to be included in the unit price bid for Disposal of Excess Utility Excavation. The unit price bid shall be full compensation for all labor, hauling, materials, equipment, and any other incidental items necessary to complete work.

HYDRO-MULCH SEEDING

The Contractor shall hydro-mulch seed and fertilize all the disturbed areas in accordance with Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges (Items 164,166, and 168). All work under this item shall be included in the unit price bid for "Revegetation" on the Bid Form.

DEWATERING

The Contractor shall be responsible for dewatering as required to facilitate construction in accordance with the plans, specifications, and geotechnical report recommendations.

END OF SECTION