



**SAN JACINTO RIVER AUTHORITY
PURCHASING DEPARTMENT**

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Conroe, TX 77304
Attn: Grady Garrow
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GGarrow@sjra.net

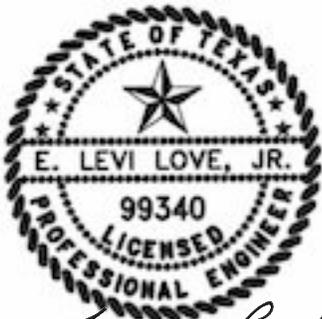
**LAKE CONROE DIVISION
OFFICE FACILITIES REPAIR**

Date Issued: FEBRUARY 22, 2019

Due Date & Time: MARCH 21, 2019 at 11:00 AM CST

SJRA PROJECT NO. GAPR0004.1003.2C001
COMPETITIVE SEALED PROPOSAL NO. 19-0041
CONTRACT NO. 19-0041

L SQUARED ENGINEERING, F-11235
E. LEVI LOVE, JR, LICENSE NUMBER 99340



February, 2019

2/19/2019

Disclosure Requirements

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the San Jacinto River Authority, including affiliations and business and financial relationships such persons may have with San Jacinto River Authority officers. An explanation of the requirements of Chapter 176, applicable forms and a complete text of the new law are available at: <http://www.sjra.net>. If you are unable to obtain such information online, please contact the San Jacinto River Authority Purchasing Department, 1577 Dam Site Road, Conroe, Texas 77304 or call (936) 588-3111.

BY DOING BUSINESS OR SEEKING TO DO BUSINESS WITH THE SAN JACINTO RIVER AUTHORITY, YOU ACKNOWLEDGE THAT YOU HAVE BEEN NOTIFIED OF THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE AND THAT YOU ARE SOLELY RESPONSIBLE FOR COMPLYING WITH THEM.

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INVITATION TO SUBMIT PROPOSALS

GENERAL NOTICE

The San Jacinto River Authority is requesting Competitive Sealed Proposals (CSP) for the Construction of the following project in Montgomery County, Texas:

CSP No. 19-0041 – Lake Conroe Office Facilities Repair

PROJECT DESCRIPTION

The Lake Conroe Division Office serves as a critical facility for Lake Conroe operations staff. Assessments of the Office have confirmed that repairs are needed. The San Jacinto River Authority (SJRA) has identified the need for a Contractor to provide professional services in the Lake Conroe Division Office project. The Contractor shall furnish all labor, materials, supplies and travel required to perform all necessary repairs. The SJRA expects that the project staff will include individuals with expertise in maneuvering through an environmentally sensitive area within an urbanized community.

Competitive Sealed Proposals must be delivered to the San Jacinto River Authority, G&A Building, 3rd Floor Receptionist, 1577 Dam Site Road, Conroe, TX 77304 no later than 11:00 AM (CST) on March 21, 2019. Proposals will be publicly opened and read aloud at this time. Address proposals to:

Grady Garrow, CPPB
Senior Buyer
San Jacinto River Authority
Purchasing Department
1577 Dam Site Road
Conroe, TX 77304

A mandatory Pre-Submittal Conference will be held at SJRA General Admission Office, 1577 Dam Site Road, Conroe, TX 77562, at 11:00 AM CST on March 5, 2019. Proposals will not be accepted from Offering Firms which fail to attend the Pre-Submittal Conference.

A complete set of (CSP) Documents may be accessed via the Brazos Valley Online Bidding System (<http://brazosbid.cstx.gov>) or via a link from the SJRA Website, Purchasing Tab, Bid Opportunities. A one-time registration is required in order to view or download CSP Documents and receive automatic notification of Addenda.

Attendance at the Pre-Submittal Conference may be the only opportunity for Offerors to see the existing conditions of the site prior to Proposal due date.

The SJRA reserves the right to reject any or all Proposals and to waive informalities and irregularities.

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DIVISION 00

REQUIREMENTS FOR OFFERORS

CONTRACT FORMS

CONDITIONS OF THE CONTRACT

SECTION 00 21 13.02CN

**INSTRUCTIONS TO OFFERORS
(COMPETITIVE SEALED PROPOSALS)**

1. Overview of Competitive Sealed Proposal Process.

The objective of the Competitive Sealed Proposal (CSP) process is to competitively procure goods and services with the firm whose Proposal provides the best value for the Owner (SJRA). Proposals will be received, publically opened, and the names and monetary Proposals of Offerors read aloud. Subsequently, the Proposals will be ranked according to the criteria described in this CSP Document. Both cost and non-cost factors will be evaluated and scored. One or more Offerors may be invited back for discussions or to present their Proposal to the SJRA before the final rankings are made.

The SJRA may enter into contract negotiations with the highest ranked firm for the completion of the Work. If the negotiations with the highest ranked firm are unsuccessful, the SJRA will formally close negotiations with this firm and initiate contract negotiations with the next highest ranked firm. Upon Standard Form of Agreement between both parties, a Contractor-executed Contract may be recommended for approval by the SJRA Board of Directors or the SJRA General Manager, as applicable. Upon approval, the Contract will be executed by the General Manager of the SJRA.

2. Defined Terms.

2.1. Definitions for the following terms used in these Instructions do not replace definitions for similar terms that may be contained within other sections of the Contract Documents.

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

2.2.1. Addendum or Addenda- Additions, deletions, and/or changes to any part of the CSP issued in writing by the Owner prior to Proposal due date and time.

2.2.2. Apparent Best Value Offeror- the Offering Firm whose Proposal for completion of the Work provides the best value for the Owner as defined by the ranking detailed in Article 11 of Instructions to Offerors.

2.2.3. Board of Directors – The governing body of the SJRA comprised of seven (7) directors appointed to six (6) year terms by the Governor of the state of Texas.

2.2.4. Contract Negotiations- Discussions which take place between the Owner and the Apparent Best Value Offeror in an effort to reach Standard Form of Agreement on contract scope of work, price, time and other contractual requirements.

- 2.2.5. Contractor – The successful Offeror to this CSP who enters into a contractual relationship with the Owner for completion of the Work, following any contract approval by the SJRA Board of Directors or the SJRA General Manager, as applicable.
- 2.2.6. CSP Document- Abbreviation of the Competitive Sealed Proposals Document, the document used to request Competitive Sealed Proposals for the procurement of goods and services as authorized under Government Code Chapter 2269, Subchapter D.
- 2.2.7. Engineer’s Opinion of Probable Construction Cost – Engineer’s opinion of project construction cost to owner developed by the Principal Architect/Engineer. Actual contract amount may vary significantly.
- 2.2.8. Issuing Office - The location from which the CSP Documents are issued. For this project the issuing office is San Jacinto River Authority, 1577 Dam Site Road Conroe, Texas 77304.
- 2.2.9. Offeror, Offering Firm- Firm which responds to a CSP by submitting a Proposal directly to Owner. Offeror and Offering Firm shall have the same meaning in the Instructions to Offerors.
- 2.2.10. Owner - The San Jacinto River Authority (SJRA).
- 2.2.11. Proposal- Offeror’s submittal which conforms to the requirements set forth in this CSP.
- 2.2.12. Proposal Form- As detailed in the requirements of this CSP, contains unit pricing for all parts of the Work and their aggregate as detailed and affirmed on the Proposal Form and may include additional forms supplied by Offeror and/or the Owner that relate to the Offeror’s proposed cost for completing the Work.
- 2.2.13. SJRA- San Jacinto River Authority, a government agency whose mission is to develop, conserve, and protect the water resources of the San Jacinto River basin.
- 2.2.14. Statement of Qualifications, (SOQ) - Offeror submitted documents which describe the Offering Firm’s qualifications for performing the Work and contain no pricing or cost data. Requirements for the Statement of Qualifications (SOQ) are set forth in Article 8 and Article 10 of the Instructions to Offerors (this CSP).
- 2.2.15. Subcontractor - Any contractor hired by the Contractor to furnish services, or goods and services, specified in this CSP.
- 2.2.16. Successful Offeror - The Firm who has completed negotiations with the Owner and, following any approval by the SJRA Board of Directors or the SJRA General Manager, as applicable, is selected to enter into a Contract with the Owner to complete the Work.
- 2.2.17. Supplier- Any supplier of materials and/or equipment to Contractor for the Project.

3. Schedule.

CSP Documents Posted on Website:	February 22, 2019
Legal Advertisements:	February 22, 2019
Pre-Proposal Conference (Mandatory):	March 05, 2019, 11:00 AM (CST)
Deadline for Questions and Inquiries:	March 14, 2019, 11:00 AM (CST)
Proposal Submission Deadline:	March 21, 2019, 11:00 AM (CST)
Anticipated Construction Start:	May, 2019

4. Competitive Sealed Proposal Documents/Copies.

4.1. This Request for Competitive Sealed Proposals (CSP) consists of the following documents:

- 4.1.1. Invitation to Submit Proposals (00 11 13);
- 4.1.2. Instructions to Offerors (00 21 13.02);
- 4.1.3. Proposal Form (00 41 00.02), Contractor shall also complete and submit the provided Microsoft Excel spreadsheet of the Proposal Form;
- 4.1.4. Statement of Qualifications (00 21 13.03);
- 4.1.5. All Contract Documents referenced in this CSP;
- 4.1.6. Addenda to this CSP issued by the SJRA Purchasing Department;
- 4.1.7. Any attached forms; and
- 4.1.8. Proposal Security (Offeror's Bond)

4.2. A complete set of CSP Documents may be accessed at the Brazos Valley Online Bidding System (<http://brazosbid.cstx.gov>) or via a link from the SJRA Website (www.SJRA.net) Purchasing Tab (Bid opportunities). Interested parties that are not already registered on the Brazos Valley Online Bidding System website site must register as a "New Vendor" in order to download the CSP Document(s) and receive automatic notification of Addenda.

4.3. Complete sets of CSP Documents must be used in preparing Proposals; neither Owner nor Principal Architect/Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of CSP Documents.

4.4. Owner and Principal Architect/Engineer, in making copies of CSP Documents available on the above terms, do so only for the purpose of obtaining Proposals for the Work and do not confer a license or grant for any other use.

5. Competitive Sealed Proposal Process\Contract Documents.

5.1. All questions about the Competitive Sealed Proposal Process or the meaning or intent of the Contract Documents are to be directed to the SJRA Purchasing Department.

Contact: Grady Garrow, CPPB
Senior Buyer, San Jacinto River Authority
GGarrow@sjra.net
936-588-7181

- 5.2. Any questions submitted via the Brazos Valley Online Bidding System website on the appropriate webpage for submitting questions shall be the equivalent of contacting the SJRA Purchasing Department directly (via phone or email).
- 5.3. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda and posted on the Brazos Valley Online Bidding website, www.brazosbid.cstx.gov and via link a link from the SJRA Website (www.SJRA.net) Purchasing Tab (Bid opportunities).

6. Pre-Submittal Conference.

- 6.1. A single mandatory Pre-Submittal Conference will be conducted at the offices of the San Jacinto River Authority, Lake Conroe Division, 1577 Dam Site Road, Conroe, TX. 77304, (936-828-3980) at 11:00 A.M, March 5, 2019. Representatives of Owner and Principal Architect/Engineer will be present to discuss the project. Proposals will not be accepted from offering firms who fail to attend the pre-submittal conference.
- 6.2. All questions about the meaning or intent of the Competitive Sealed Proposal and Contract Documents are to be directed to the SJRA Purchasing Department. The SJRA Purchasing Department will address all questions as Owner considers necessary in response to inquiries arising at the conference through written Addenda and posted on the Brazos Valley Online Bidding System website: <http://brazosbid.cstx.gov> and via link a link from the SJRA Website (www.SJRA.net) Purchasing Tab (Bid opportunities). Oral statements may not be relied upon and will not be binding or legally effective.

7. Estimated Budget.

- 7.1. An Engineer's Opinion of Probable Construction Cost (project cost estimate) has been generated by the Principal Architect/Engineer. If an award is made, the actual contract amount may vary.
- 7.1.1. The Engineer's Opinion of Probable Construction Cost for this project is \$502,667.46 with alternates being awarded at the discretion of SJRA

8. Basis for Ranking of Proposals.

- 8.1 The Owner will consider the qualifications (Statement of Qualifications) of the Offerors and their respective proposed Contract Price (Proposal Form) when

evaluating Proposals to determine which Offeror, in the sole opinion of the Owner, will provide the best value to the Owner. All procurements shall conform to Chapter 2269 of the State of Texas Government Code. The Proposals will be evaluated using the following criteria and weighting:

- 8.1.1. Proposed Project Cost: The Offeror's Proposed Cost of Performing the Work shall be indicated as the "Total Proposal Price" (indicated as "E" on in the Proposal Form (Specification Section 00 41 00.02). The Owner has established an internal budget for this Project. The total Proposal Price is defined per the Proposal Form to include the cost(s) of the proposed Total Base Items ("A"). The Total Proposal Price may and at the Owner's sole discretion, be inclusive of the individual or collective costs associated with the Offeror's Total Cash Allowances ("B") and Total Alternate Items ("C") costs. For example: Total Proposal Price ("D") = A + B + C.

The Owner will evaluate the Total Proposal Price (including any requested costs for Extra Unit Price Items, Sash Allowances and Alternate Items, as identified) that the Owner can award with its available budget at the time Contract is negotiated. Attach the Proposal Form and all information/documents required to be submitted with the Proposal. Contractor shall also complete and submit the provided Microsoft Excel spreadsheet of the Proposal Form.

- 8.1.2. Experience/Past Performance of Offeror with Similar Projects: Provide general information about the Organization as required in Table 1 and Table 2 of Specification Section 00 21 13.03 Statement of Qualifications (SOQ). Provide any additional information as required by the Construction Experience section of Table 2. Describe the Organizational structure and the qualifications of the management team as it relates to this Project in Table 3. Provide a narrative format as described in Table 4, describe Offeror's experience as a general contractor and describe the Organization's operating philosophy and approach to constructing, completing, and commissioning projects. Provide a list of projects completed by the Organization in the last three (3) years using Table 4.

Offeror must demonstrate experience in the construction of projects of similar construction cost and/or techniques and describe how they intend to provide the needed experience and expertise. If Offeror does not have specific experience with projects of this type and magnitude, the Offeror may describe its proposed approach and how its experience with other projects enhances its capability to successfully complete this Project. Offeror may submit photographs, project descriptive narratives, letters of recommendation, project awards, and references to demonstrate experience in constructing a project which meets the Owner's expectations for a quality Project constructed on time. This narrative is not to exceed one (1) page in length.

Provide information to demonstrate the ability of the Organization to complete projects within budget and on time. Comments may be added to the tabulations to indicate any reasons for amending the contract amounts or completion dates.

Provide narrative information to indicate the number of projects and dollar volume currently under contract by the Organization and the projected completion date of each active project. Describe how the resources dedicated to these assignments will impact Offeror's ability to effectively execute the construction of this Project. Provide an estimate of the amount of the Project that will be done using in-house resources and the amount to be performed by Subcontractors and Suppliers. This narrative is not to exceed five (5) pages in length.

- 8.1.3. Experience and Qualifications of Proposed Key Personnel with Similar Projects: Provide information on the managerial structure and the key personnel that will be actively working on this Project in Tables 6 through 8. Key personnel include the Project Manager, Project Superintendent, Safety Manager, and Quality Control Manager. If more than one of these key roles are to be filled by one individual, provide this with the list of proposed individuals. The Offeror is to provide a list of individuals from which the individual for any given position may be selected if the Offeror is not able to commit to one individual for the Project at the time the Proposal is submitted. Qualifications of these individuals will be considered in evaluating the qualifications of the Offeror. The Proposal must offer to commit the services of the proposed key personnel for the life of the Project as a condition of qualification. Failure to offer to commit the proposed key Personnel may result in the disqualification of the Offeror and may void the award of the Contract.
- 8.1.4. Financial Management (Stability): Provide the past two (2) years of available financial statements, preferably audited, with this Proposal. Provide financial statements showing the name and address of the firm preparing the financial statements and the date of preparation. Offerors may choose to report on the financial stability of their Organization to demonstrate that they have the ability to complete the Project in a manner that will not impose undue efforts on the part of the Owner to invoke rights under bonds to complete the Project or for Offeror to meet financial obligations. Describe the Offeror's systems and philosophy for financial management of the Project. Describe Offeror's systems and philosophy for contracting with Subcontractors and Suppliers and managing payments and retainage. Provide other information if desired to demonstrate solid financial management practices that will enhance completion of the Project. This narrative is not to exceed two (2) pages in length.

This is a Pass or Fail. Any Offeror receiving a score of "Fail", will be

automatically disqualified.

8.1.5. Other Factors: The Owner will consider other factors in evaluating Proposals, including the following (narratives for this Section shall not exceed five (5) pages total in length):

8.1.5.1. Claims Experience and Litigation History: List all claims or litigation involving construction project owners that have been filed within the last five (5) years, whether or not still outstanding. Provide a brief description of the nature of each suit and, if not already resolved, when it is anticipated that the suit will be resolved.

8.2. Table of criteria and weighting for the ranking of Offeror's Proposals.

Rating Category	Description	Weighting Points
8.1.1	Proposed Project Cost (D= A+B+C)	75
8.1.2	Experience/Past Performance of Offeror with Similar Projects	10
8.1.3	Experience and Qualifications of Proposed Key Personnel with Similar Projects	15
8.1.4	Financial Management (Stability)	Pass/Fail
8.1.5	Other Factors	0
	Total	100

9. Proposal Form.

9.1. A Proposal Form (00 41 00.02) is included with the CSP Documents; additional copies may be obtained at <http://www.sjra.net> (Purchasing Tab) or directly at <http://brazosbid.cstx.gov>. Interested parties that are not already registered on the Brazos Valley Online Bidding System website must register as a "New Vendor" to download the CSP Document(s) and receive automatic notification of Addenda.

9.2. All blanks on the Proposal Form must be completed in ink, by hand, or electronically printed.

9.3. Contractor shall also complete and submit the provided Microsoft Excel spreadsheet of the Proposal Form. Template may be obtained at <http://www.sjra.net> (Purchasing Tab) or directly at <http://brazosbid.cstx.gov>.

9.4. The Proposal price shall include such amount as the Offeror deems proper for overhead and profit.

10. Offering Firm's Statement of Qualifications (SOQ).

- 10.1. SOQs shall not exceed five (5) pages, including transmittal letters and narratives, and excluding completed SOQ tables and attachments, covers and plain section dividers. SOQs shall be printed on single side 8 ½" by 11" pages with not less than 1 inch margins, not less than 1.25 line spacing and not less than 11 point font.
- 10.2. The SOQ must be submitted with the Proposal and include, as a minimum, the information as described in Article 8, Basis for Ranking of Proposals. Failure to submit the required information in the SOQ may result in the Owner considering the Proposal non-responsive and result in rejection of the Proposal by Owner. Offerors may be required to provide supplemental information if requested by the Owner to clarify, enhance or supplement the information provided in the SOQ.
- 10.3. Offerors must provide requested SOQ information using the tables provided in specification section 00 21 13.03 - Statement of Qualifications. A copy of these tables will be made available in Microsoft Word to assist with the preparation of the SOQ. Information in these tables must be provided completely and in detail. The information in these tables will be used to make direct comparisons with the information provided by other Offerors. Failure to include the information completely and clearly may result in lower scores in the evaluations. Information that cannot be totally incorporated in the table may be included in an appendix to the table. Appendices must be clearly referenced by appendix number in the table, and the appended material must include the appendix number on every sheet of the appendix. Each appendix must include only the information that responds to the question or item number to which the appended information applies. The required tables are listed below:

Table 1	General Information
Table 2	Organizational Experience
Table 3	Organizational Structure
Table 4	Project Experience and Resources
Table 5	Proposed Key Personnel
Table 6	Proposed Project Managers
Table 7	Proposed Project Superintendent
Table 8	Subcontractors and Suppliers

- 10.4. Offerors may provide supplemental information to the SOQs using AIA, AGC or other industry standard SOQ tables and / or Offerors may submit additional

information such as organizational brochures or other marketing information to help demonstrate their ability to provide best value to the Owner. This information may not be submitted as a substitute to the information specifically requested in this Section, or in the SOQ tables. If this information is to be included as an appendix to the information requested in Article 10.3. (above), the appendix must specify the paragraph or section to which the appendix applies and the paragraph or section must accurately reference the appendix.

11. Ranking of Offeror's Proposals.

- 11.1. The Owner will consider the qualifications (Statement of Qualifications) of the Offerors and Offeror's proposed Subcontractors, Suppliers and consultants, in addition to the proposed cost(s) (Proposal Form) when evaluating Proposals to determine which Proposal offers the best value to the Owner. Owner will rank each of the Offeror's Proposals based on the criteria and criteria weighting described in Article 8, Basis for Ranking of Proposals.
- 11.2. Evaluation and ranking of the Proposals will be completed no later than the 15th Calendar day after the date of Proposal opening. Offerors are requested not to withdraw their Proposals within ninety (90) Calendar days from the date on which Proposals are opened. Proposal Security of the highest ranking firms will be held by the Owner until contract negotiations are finalized.
- 11.3. In evaluating Proposals, Owner will consider the selection criteria set forth in Article 8 of these Instructions to Offerors and whether or not the Proposals comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested by Owner.
- 11.4. 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 General 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 recommendation of award to Owner's Board of Directors or its General Manager, as applicable.
- 11.5. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of Offerors, 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.

12. Award of Contract.

- 12.1. It is the intent of the San Jacinto River Authority to award this contract to the Offering Firm whose Proposal for completion of the Work provides the best value for the Owner after consideration of the relative importance of costs and other evaluation factors described in the Basis for Ranking Proposals set forth in Article 8 of these Instructions to Offerors.
- 12.2. The Owner reserves the right to adopt the most advantageous interpretation of the Proposals submitted in the case of ambiguity or lack of clearness in stating Proposal Prices, to reject any or all Proposals, and/or to waive informalities.
- 12.3. Owner reserves the right to reject any or all Proposals, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced, or conditional Proposals and to reject the Proposal of any Offeror if Owner determines that an award to that Offeror would not provide the best value for the Owner, whether because the Proposal is not responsive or the Offeror is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner.
- 12.4. 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 Apparent Best Value Offeror. 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.
- 12.5. The qualifications of a firm shall not deprive the Owner of the right to accept a Proposal, which in its judgment offers the best value to the Owner. In addition, the Owner reserves the right to reject any Proposal where circumstances and developments have, in the opinion of the Owner, changed the qualifications or responsibility of the firm.
- 12.6. Material misstatements in the information submitted for evaluation may be ground for rejection of Offeror's Proposal. Any such misstatement, if discovered after award of the contract to such firm, may be grounds for immediate termination of the contract. Additionally, the Offeror will be liable to the Owner for any costs or damages to the Owner resulting from such misstatements, including costs and attorneys' fees for collecting such costs and damages.
- 12.7. If the Contract is to be awarded, it will be awarded to the Apparent Best Value Offeror following successful Contract Negotiations and following any required approval by the SJRA Board of Directors or the SJRA General Manager, as applicable.

- 12.8. If Contract Negotiations with the Apparent Best Value Offeror are unsuccessful, The Owner will formally close Contract Negotiations with this Firm and attempt to open Contract Negotiations with the next highest-ranked firm according to the selection criteria set forth in Article 8 of these Instructions to Offerors.
- 12.9. If the Contract is to be awarded, Owner will notify Successful Offeror of intent to submit contract for approval by SJRA's Board of Directors within fifteen (15) Calendar days after the day of the Proposal opening. Following approval by the SJRA Board of Directors or the SJRA General Manager, as applicable, the General Manager of the SJRA may execute the contract.
- 12.10. The Offeror may submit exceptions or alternatives not in accordance with the terms and conditions of the Contract Documents, or for Work that is not in strict compliance with the Contract Documents. In such event, Offeror must describe the intent and substance of the changes in the Proposal in adequate detail so they are clearly identifiable and understandable. Alternates will not be considered in the ranking and evaluation of the Proposals. Upon selection of the Proposal that offers the best value to the Owner, the Owner and Principal Architect/Engineer may consider proposed alternates in negotiating a final Contract scope, time/schedule and price.
- 12.11. Addenda may be issued to clarify, correct, or change the Contract Documents, prior Addenda or the related supplemental data as deemed advisable by Owner or Principal Architect/Engineer.

13. Interpretation and Addenda.

- 13.1. All questions about the meaning or intent of the Competitive Sealed Proposal and Contract Documents are to be directed to the SJRA Purchasing Department in writing. Interpretations or clarifications considered necessary by Owner's Representative in response to such questions will be issued by written Addenda and posted on the Brazos Valley Online Bidding System website, <http://brazosbid.cstx.gov> and via a link from the SJRA website www.SJRA.net Purchasing Tab (Bid opportunities).

Contact: Grady Garrow, CPPB
Senior Buyer, San Jacinto River Authority
GGarrow@sjra.net
936-588-7181

Any questions submitted via the Brazos Valley Online Bidding System website on the appropriate webpage for submitting questions shall be the equivalent of contacting the SJRA Purchasing Department directly (via phone or email).

- 13.2. To properly qualify their Proposal, each Offeror shall, prior to submitting their Proposal, check the receipt of all Addenda and acknowledge such receipt on the Proposal Form and on the acknowledgement line of the Addendum Cover page. Proposals submitted without such acknowledgment of all issued Addenda and letters of clarification may cause Proposal to be considered non-responsive. Such Addenda and letters of clarification shall become a part of the executed contract and modify the contract documents accordingly.
- 13.3. Questions received after the deadline for Questions and Inquiries may not be answered.
- 13.4. Only questions answered by formal written Addenda issued by Owner will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 13.5. Addenda may be issued to clarify, correct, or change the Contract Documents, Addenda or the related supplemental data as deemed advisable by Owner or Principal Architect/Engineer. Addenda may also be issued to modify the CSP Documents as deemed advisable by Owner or Principal Architect/Engineer.
- 13.6. Notification of addenda will be by default via the Brazos Valley Online Bidding System (<http://brazosbid.cstx.gov>), provided that the Offeror has registered on the Brazos Valley Website and downloaded from the site the CSP Documents.
- 13.7. The Owner will not be responsible or liable for any failure of the Brazos Valley Online Bidding System notification to reach Offeror. Offerors are encouraged to visit the webpage where the CSP Documents are issued until the legal limit for filing addenda (48 hours prior to Proposal due date and time) has passed to ensure receipt of all addenda.

14. Confidentiality of Proposal Information.

All materials submitted to the SJRA and upon receipt by the SJRA become public property and are subject to the Texas Public Information Act, Government Code Chapter 552. If an Offeror does not desire proprietary Information in the SOQ to be disclosed, each page must be identified and marked proprietary at the time of submittal. The SJRA will, to the extent provided by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available to the public upon request. Proposers shall not be permitted to mark entire Proposal as proprietary.

15. Examination of Contract Documents and Site.

- 15.1. It is the responsibility of each Offeror before submitting a Proposal:
 - 15.1.1. To examine thoroughly the Contract Documents and other related data identified in the CSP Documents (including "technical data" referred to below);
 - 15.1.2. To visit the site to become familiar with and satisfy Offeror as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work;
 - 15.1.3. To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;
 - 15.1.4. To study and carefully correlate Offeror's knowledge and observations with the Contract Documents and such other related data; and
 - 15.1.5. To promptly notify The SJRA Purchasing Department of all conflicts, errors, ambiguities or discrepancies which Offeror has discovered in or between the Contract Documents and such other related documents.
- 15.2. Provisions concerning responsibilities for the adequacy of data furnished to prospective Offerors with respect to surface conditions and other physical conditions, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Article 6 of the Standard Form of Agreement and Article 4.2 of the General Conditions.
- 15.3. Before submitting a Proposal, each Offeror will be responsible for obtaining such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface) 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 Offeror and safety precautions and programs incident thereto or which Offeror deems necessary to determine its Proposal for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- 15.4. On request, the SJRA Purchasing Department may provide each Offeror access to the site to conduct such examinations, investigations, explorations, tests and studies, as each Offeror deems necessary for submission of a Proposal. Offeror must fill any resultant holes and clean up and restore the site to its former condition upon completion of such explorations, investigations, tests and studies.
- 15.5. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be

incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures of permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

- 15.6. Reference is made to Specification Section 01 11 13 - Work Covered By Contract Documents 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 Proposal is to be submitted. On request, Owner may provide to each Offeror for examination access to or copies of Contract Documents (other than portions thereof related to price) for such Work.
- 15.7. The submission of a Proposal will constitute an incontrovertible representation by Offeror that Offeror has complied with every requirement of this Article 15, that without exception the Proposal is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Offeror has given Owner or Principal Architect/Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Offeror has discovered in the Contract Documents and the written resolutions thereof by Principal Architect/Engineer are acceptable to Offeror, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

16. Proposal Security.

- 16.1. Each Proposal must be accompanied by Proposal Security made payable to the Owner in the amount not less than five percent (5%) of the total Proposal Amount, including any Cash Allowances and Alternates, and shall be in the form of a cashier's check or Offeror's Bond.
- 16.2. Offeror's Bond must be on the form provided within the Contract Documents (CSP) and must bear the impressed seal of the Surety, and be signed by the Offeror and an authorized individual of the Surety. Bonds will only be accepted from Sureties authorized to issue bonds in accordance with state law.
- 16.3. The Proposal Security of Successful Offeror will be retained until such Offeror has executed the Standard Form of Agreement, furnished the required contract securities and met the other conditions contained in Specification Section 00 41 00.02 – Proposal Form, whereupon the Proposal Security will be returned. If the Offeror fails to execute and deliver the Standard Form of Agreement and furnish the required contract security within ten (10) Calendar days after the SJRA Board of Directors has approved a contract award, Owner may annul its award and the Proposal Security of that Offeror will be forfeited. The Proposal Security

of other Offerors 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 Standard Form of Agreement or the ninety-first day after the Proposal opening, whereupon Proposal Security furnished by such Offerors will be returned. Proposal Security, if submitted in the form of cashier's check, submitted with Proposals which are not competitive will be returned within ten (10) Calendar days after the Proposal opening.

17. Contract Times.

The number of Calendar days within which, or the dates by which, the Work is to reach Substantial and Final Completion are set forth in Specification Section 00 52 00 – Standard Form of Agreement between Owner and Contractor.

18. Substitutes and "Or-Equal" Items.

The Contract, if awarded, will be on the basis of goods and services described in the Drawings or specified in the Specifications with consideration for possible substitute or "or equivalent" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal"/"or equivalent" item of material or equipment may be furnished or used by Contractor if acceptable to Principal Architect/Engineer and Owner, application for such acceptance may be made prior to Contract award in accordance with Texas Government Code 2269.155. See section 6.02.5 in the General Conditions of the Contract for more information.

19. Subcontractors, Suppliers and Others.

- 19.1. If the Owner or Principal Architect/Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, Owner may, before giving notice of its intent to recommend award to Owner's Board of Directors, request that Apparent Best Value Offeror submit an acceptable substitute without an increase in price.

If Apparent Best Value Offeror declines to make any such substitution, Owner may formally close contract negotiations with Offeror and enter into contract negotiations with the next most highly-ranked Offeror 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 Proposal Security of any Offeror. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Principal Architect/Engineer does not make written objection prior to giving notice of its intent to recommend Award to Owner's Board of Directors will be deemed acceptable to Owner and Principal Architect/Engineer, subject to revocation of such acceptance after the Effective Date of the Standard Form of Agreement as provided in Article 6.04 of the General Conditions.

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

20. Preparation of Proposals.

20.1. Prepare one (1) unbound original of the complete Proposal Package, including the completed Proposal Form 00 41 00.02. Clearly mark this package with the word "Original". Prepare one (1) bound copy with original signatures, and one (1) electronic copy on a flash drive (in .pdf format) with a completed Proposal with original signatures, Statement of Qualifications 00 21 13.03, and a full set of Financials.

20.2. An Original Proposal is the Proposal containing the Original Signature of a person authorized to sign on behalf of the Offering Firm.

20.3. Proposals shall be enclosed in an opaque sealed Envelope (or Package), marked with CSP No. 19-0041 – Lake Conroe Division Office Repair and name and address of Offering Firm.

20.4. Each Original Proposal submitted by an Offeror shall contain the following:

20.4.1. Offerors Statement of Qualifications (SOQ; 00 21 13.03);

20.4.2. Completed Proposal Form (00 41 00.02);

20.4.3. Completed Certification of Proposal (00 41 00.02), Contractor shall also complete and submit the provided Microsoft Excel spreadsheet of the Proposal Form;

20.4.4. Completed Felony Conviction Notice Form (00 41 00.02)

20.4.5. Proposal Security (Offeror's Bond 00 43 13);

20.4.6. Conflict of Interest Questionnaire (00 45 10)

20.4.7. Form of Business (00 45 20)

20.4.8. Resolution of Contractor (00 45 43);

20.4.9. Completed Verification Company Does Not Boycott Israel (00 52 00)

20.4.10. Completed TGC 2252.152 Certification Form (00 52 00)

20.4.11. Completed Vendor Information Form (00 52 00)

20.4.12. One (1) flash drive with a Completed Proposal with Original signatures, Statement of Qualifications (SOQ) and a full set of Financials; and

20.4.13. Any other Documentation required by the terms of this Competitive Sealed Proposal.

20.5. Conflict of Interest Questionnaire, Specification Section 00 45 10 of Contract shall be submitted under separate cover. If Offering Firm affirms that there are no Conflicts of Interest, Offeror shall indicate so by writing name of firm and "No Conflicts" on CIQ form and signing form.

20.6. Proposals submitted 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.

- 20.7. Submitted Proposals 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.
- 20.8. All names must be typed or printed in ink below the signature.
- 20.9. The Proposal shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Proposal Form).
- 20.10. The address and telephone number for communications regarding the Proposal must be shown.
- 20.11. 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 Specification Section 00 41 00.02 – Proposal Form. State Contractor license number, if any, must also be shown.

21. Submission of Proposals.

- 21.1. Proposals shall be submitted at the time and place indicated in the Invitation to Submit Proposals (00 11 13) and accompanied by the Proposal Security and other required documents.
- 21.2. If the Proposal is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "SEALED PROPOSAL ENCLOSED" on the face of it. Proposals not received by the time or at the location specified will be returned unopened to the Offeror.
- 21.3. The clock used by the Owner at the place used for receiving Proposals shall conclusively determine the time that Proposals are received.
- 21.4. Proposals sent by facsimile or electronic mail or delivered to any other location other than the address provided in the Invitation to Offerors will NOT be accepted.

22. Modification and Withdrawal of Proposals.

- 22.1. Proposals may be modified or withdrawn by a document duly executed (in the same manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted prior to the date and time for the opening of Proposals.

22.2. If, within twenty-four (24) hours after Proposals are opened, any Offeror files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material or substantial mistake in the preparation of its Proposal, that Offeror may withdraw its Proposal. The Proposal Security may be retained by the Owner if Offeror cannot clearly demonstrate to the Owner evidence of a material or substantial mistake in its Proposal. Thereafter, that Offeror may be disqualified from responding to a reissued CSP for the Work to be furnished under these Contract Documents.

23. Opening of Proposals.

Proposals will be opened and (unless obviously non-responsive) the names and Monetary Proposals of Offering Firms read aloud at a public opening. An abstract of the Proposals will be made available no later than the seventh day after the Contract is awarded.

24. Proposals to Remain Subject to Acceptance.

All Proposals will remain subject to acceptance for ninety (90) Calendar days after the date of the opening, but Owner may, in its sole discretion, release any Proposal and return the Proposal Security prior to that date.

25. Prevailing Wage Rates.

Contractors for this Project must pay no less than the prevailing wage rates for the area established by the San Jacinto River Authority and included in Specification Section – 00 73 43 – Wage Scale for Construction.

26. Liquidated Damages or Economic Disincentives.

Provisions for liquidated damages or economic disincentives are set forth in Specification Section 00 52 00 -Standard Form of Standard Form of Agreement between Owner and Contractor and Specification Section 00 72 00 – General Conditions of the Contract.

27. Contract Security and Insurance.

Article 5 of the General Conditions sets forth Owner's requirements as to insurance and Performance and Payment Bonds. When the Successful Offeror delivers the original, hard copy executed Standard Form of Agreement to Owner, it must be accompanied by evidence of insurance and unsigned Performance and Payment Bonds as required by Article 5 of the General Conditions, unless prior written approval of Contractor's evidence of insurance and unsigned performance and payment Bond forms has been received from the SJRA Purchasing Department. Such evidence of insurance shall include, without limitation, all required certificates and endorsements,

evidencing all required coverages, limits of liability, additional insured status, waivers of subrogation and other insurance requirements.

28. Conflict of Interest and Disclosure of Interested Parties.

28.1 Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the San Jacinto River Authority, including affiliations and business and financial relationships such persons may have with San Jacinto River Authority officers. An explanation of the requirements of Chapter 176, applicable forms and a complete text of the law are available at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>.

BY DOING BUSINESS OR SEEKING TO DO BUSINESS WITH THE SAN JACINTO RIVER AUTHORITY, YOU ACKNOWLEDGE THAT YOU HAVE BEEN NOTIFIED OF THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE AND THAT YOU ARE RESPONSIBLE FOR COMPLYING WITH THEM.

28.2 Texas Government Code Section 2252.908 requires persons who enter into a contract with a government entity to submit a disclosure of interested parties (Form 1295) to the government entity or state agency at the time business entity submits the signed contract to the government entity or state agency. Use the following link to access filing instructions:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

29. Taxes.

Owner is exempt from payment of sales and use taxes of the State of Texas and of cities and counties thereof, on all goods and services to be incorporated into the Work. Said taxes shall not be included in the Proposal.

- 29.1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of goods to be incorporated into the Work.
- 29.2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to goods not incorporated into the Work, except to the extent the exemption referred to in paragraph 18.4 applies to the Project to exempt taxes on any such items.
- 29.3. If the Project is construction of a water or wastewater system certified by the Texas Commission on Environmental Quality as a regional system, equipment, services and supplies used solely to construct the Project are exempted from taxes imposed by Chapter 151, Limited Sales, Excise and Use Tax, Texas Tax Code. Said taxes shall not be included in the Proposal. Owner will furnish any required certificates of tax exemption to Contractor.

30. Verification Company Does Not Boycott Israel

Pursuant to Section 2270.002 of the Texas Government Code, the Contractor shall be required to execute contemporaneous with its execution of the Standard Form of Agreement a verification that Contractor does not Boycott Israel and Contractor will not Boycott Israel during the term of this Standard Form of Agreement. "Boycott Israel" as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

31. Signing of Standard Form of Agreement.

SJRA's Purchasing Department will transmit to the Successful Offeror the required number of unsigned counterparts of the Standard Form of Agreement with all other written Contract Documents attached. Contractor shall deliver original, hard copies of the required number of counterparts of the Standard Form of Agreement and written Contract Documents signed by Contractor, unsigned Bond forms, evidence of insurance as set out in Section 27 above, signed disclosure of interested parties (Form 1295) to SJRA Purchasing Department ten (10) Calendar days prior to the SJRA Board of Directors Meeting for which a contract award is anticipated. Notwithstanding the foregoing, the Standard Form of Agreement may be executed using electronic signatures at the option and in the discretion of Owner, and, in such event, the provisions of the Uniform Electronic Transaction Act, Chapter 332, Texas Business and Commerce Code, as amended, and any applicable policies and procedures of Owner regarding electronic signatures shall apply. However, the requirements of this Section 31 apply regardless of whether or not the Standard Form of Agreement is also executed using electronic signatures or transmitted electronically. Following and subject to award, the Owner shall deliver one (1) fully signed counterpart of the Standard Form of Agreement to Contractor. Within three (3) Calendar days of Contractor's receipt of the fully executed Standard Form of Agreement, the Contractor shall deliver the original, hard copy fully executed Bonds to SJRA Purchasing Department.

END OF SECTION

4829-9550-5996, V. 3-9550-5996, V. 2

TABLE 1 – GENERAL INFORMATION				
Organization Doing Business As:				
Business Address of Principle Office:				
Main Telephone Number:				
Fax Number:				
Web Site Address:				
Form of Business (check one):	<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Individual	<input type="checkbox"/> Joint Venture
IF A CORPORATION				
Date of Incorporation:				
State of Incorporation:				
Chief Executive Manager's Name:				
President's Name:				
Vice President's Name(s):				
Secretary's Name:				
Treasurer's Name:				
IF A PARTNERSHIP				
Date of Organization:				
General or Limited Partnership?:				
IF AN INDIVIDUAL				
Name:				
Business Address:				
IF A JOINT VENTURE				
Name of Lead Joint Venture Manager:				
Name of Firm:				
Joint Venture Partner Manager(s):				
Name of Firm(s):				
Individuals Not Listed Above Having Significant Business Control:				
Indicators of Organization Size:				
Current Number Full Time Employees:		Estimate of Current Year's Revenue:		
Average Number of Projects per Year:		Average Project Construction Cost:		

TABLE 2 – ORGANIZATIONAL EXPERIENCE

Organization Doing Business As:	
Business Address of Principle Office:	
Main Telephone Number:	
Fax Number:	
Web Site Address:	
Organization Doing Business As:	

ORGANIZATIONAL HISTORY

List of names that this organization has operated under over the history of the organization

Names of Organization:	From Date	To Date

List of companies, firms or organizations that own any part of the organization.

Name of Companies, Firms or Organization:	Percent Ownership

CONSTRUCTION EXPERIENCE

1.	Years' experience in projects similar to the proposed project:				
	<table border="1"> <tr> <td>As a General Contractor:</td> <td></td> <td>As a Joint Venture Partner:</td> <td></td> </tr> </table>	As a General Contractor:		As a Joint Venture Partner:	
As a General Contractor:		As a Joint Venture Partner:			
2.	Has this or a predecessor organization ever defaulted on a project or failed to complete any work awarded to it? If yes provide full details in a separate attachment. (Attachment # _____)				
3.	Has this or a predecessor organization been released from a bid or proposal in the past ten years? If yes provide full details in a separate attachment. (Attachment # _____)				
4.	Has this or a predecessor organization ever been disqualification as a bidder or Offeror by any local, state, or federal agency within the last five (5) years? If yes provide full details in a separate attachment. (Attachment # _____)				
5.	Is this organization or your proposed surety currently in any litigation or contemplating litigation? If yes provide full details in a separate attachment. (Attachment # _____)				
6.	Has this or a predecessor organization ever refused to construct or refused to provide materials defined in the contract documents? If yes provide full details in a separate attachment. (Attachment # _____)				
7.	<p>Has your company, firm, corporation, or business implemented an Employee Health and Safety Program compliant with 29 CFR 1910 "General Industry Standards" https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1910 and/or 29 CFR 1926 "General Construction Standards" https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926 as they apply to your Company's customary activities?</p>				

STATEMENT OF QUALIFICATIONS

8.	Has your company, firm, corporation, partnership, or institution represented by the company, firm, corporation, partnership, or anyone acting in representation, received citations for violations of OSHA within the past three (3) years? If YES, please provide the following additional information: Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.	
9.	Has your company, firm, corporation, partnership, or institution represented by the company, firm, corporation, partnership, or anyone acting in representation received citations for violations of environmental laws or regulations, of any kind or type, within the past five (5) years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgements. If YES, please provide the following additional information: Date of offense, location of where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.	
10.	Has your company, firm, corporation, partnership, or institution represented by the company, firm, corporation, partnership, or anyone acting in representation ever been convicted, within the past ten (10) years, of a criminal offense which resulted in a serious bodily injury or death? If YES, please provide the following additional information: Date of offense, location of where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.	
11..	Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five (5) years under your current company name or any other company name? If so, provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at SJRA's option.)	
12.	Please provide a history of all OSHA actions, advisories, etc., Contractor has received on all jobs worked in any capacity, prime, or subcontractor. The history shall be for the two-year period preceding the Bid Date of the Project.	
13.	Please provide a list of all on-the-job injuries, accidents, and fatalities suffered by any present or former employees of Contractor during the same two-year period.	
14.	If less than the two-year period, give the date Contractor started doing business.	

THIS FORM MUST BE RETURNED WITH THE PROPOSAL RESPONSE

TABLE 3 – ORGANIZATIONAL STRUCTURE	
Organization Doing Business As:	
PROPOSED PROJECT ORGANIZATION	
1. Provide a brief description of the managerial structure of the organization. Include the title and names of key personnel as well as experience and qualifications of the organization's management team. Describe the individuals that are authorized to execute Contract Documents, Change Orders or receive payment for the organization.	
SURETY REFERENCES	

TABLE 4 – PROJECT EXPERIENCE AND RESOURCES	
Organization Doing Business As:	
PROJECTS	
1. Provide a list of major projects as well as the contract amounts that are currently underway, or have been completed within the last three (3) years. Identify those projects which specifically illustrate the organizations capability to provide best value to the Owner for this project.	
DIVISION OF WORK BETWEEN ORGANIZATION AND SUBCONTRACTOR	
2. What work will the organization complete using its own resources?	
3. What work does the organization propose to subcontract on this project?	

TABLE 5 – PROPOSED PROJECT MANAGERS			
Organization Doing Business As:			
PRIMARY CANDIDATE			
1.	Name of Individual:		
	Years of Experience as Project Manager:		
	Years of Experience With This Organization:		
	Number of Similar Projects as Project Manager:		
	Number of Similar Projects in Other Positions:		
	Current Project Assignments:		
	Name of Assignment:	Percent of Time Used for This Project:	Estimated Project Completion Date:

2. Reference contact information (listing names indicates approval to contacting the names individuals as a reference)

Name:		Name:	
Title/ Position:		Title/ Position:	
Organization:		Organization:	
Telephone:		Telephone:	
E-mail:		E-mail:	
Project:		Project:	
Candidate's Role on Project:		Candidate's Role on Project:	

ALTERNATE CANDIDATE

3.	Name of Individual:		
	Years of Experience as Project Manager:		
	Years of Experience With This Organization:		
	Number of Similar Projects as Project Manager:		
	Number of Similar Projects in Other Positions:		
	Current Project Assignments:		
	Name of Assignment:	Percent of Time Used for This Project:	Estimated Project Completion Date:

4. Reference contact information (listing names indicates approval to contacting the names individuals as a reference)

Name:		Name:	
Title/ Position:		Title/ Position:	
Organization:		Organization:	
Telephone:		Telephone:	
E-mail:		E-mail:	
Project:		Project:	
Candidate's Role on Project:		Candidate's Role on Project:	

TABLE 6 – PROPOSED PROJECT SUPERINTENDENT

Organization Doing Business As: _____

PRIMARY CANDIDATE

1.	Name of Individual:		
	Years of Experience as Project Superintendent:		
	Years of Experience With This Organization:		
	Number of Similar Projects as Project Superintendent:		
	Number of Similar Projects in Other Positions:		
	Current Project Assignments:		
	Name of Assignment:	Percent of Time Used for This Project:	Estimated Project Completion Date:

2. Reference contact information (listing names indicates approval to contacting the names individuals as a reference)			
Name:		Name:	
Title/ Position:		Title/ Position:	
Organization:		Organization:	
Telephone:		Telephone:	
E-mail:		E-mail:	
Project:		Project:	
Candidate's Role on Project:		Candidate's Role on Project:	
ALTERNATE CANDIDATE			
3.	Name of Individual:		
	Years of Experience as Project Superintendent:		
	Years of Experience With This Organization:		
	Number of Similar Projects as Project Superintendent:		
	Number of Similar Projects in Other Positions:		
	Current Project Assignments:		
	Name of Assignment:	Percent of Time Used for This Project:	Estimated Project Completion Date:
4. Reference contact information (listing names indicates approval to contacting the names individuals as a reference)			
Name:		Name:	
Title/ Position:		Title/ Position:	
Organization:		Organization:	
Telephone:		Telephone:	
E-mail:		E-mail:	
Project:		Project:	
Candidate's Role on Project:		Candidate Role on Project:	

TABLE 7 – SUBCONTRACTORS AND SUPPLIERS		
Organization Doing Business As:		
PROJECT SUBCONTRACTORS		
1. Provide a list of subcontractors that will provide more than 10 percent of the work (based on contract amounts)		
Name	Work to be provided	Est. percent of contract

Affidavits

One of the following four affidavits shall be executed and provided with this information. The individual signing the affidavit shall attach evidence of their authority to bind the Organization to an agreement.

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AFFIDAVIT FOR CORPORATION

State _____ §

County of _____ §

_____, being duly sworn deposes and says
(Name)

That he is _____ of the Corporation submitting the
(Title)

foregoing qualification form and related information; that he has read such documents; and that such documents are true and correct and contain no material misrepresentations; and that he is authorized to make this affidavit on behalf of the Corporation.

Signature

Signed and sworn to me before this _____ day of _____, 20__

Notary Public

My commission expires: _____

AFFIDAVIT FOR PARTNERSHIP

State _____ §

County of _____ §

_____, being duly sworn deposes and says
(Name)

That he is _____ of the Company submitting the
(Title)

foregoing qualification form and related information; that he has read such documents; and that such documents are true and correct and contain no material misrepresentations; and that he is authorized to make this affidavit on behalf of the Partnership.

Signature

Signed and sworn to me before this _____ day of _____, 20__

Notary Public

My commission expires: _____

AFFIDAVIT FOR INDIVIDUAL

State _____ §

County of _____ §

(Name) _____, being duly sworn deposes and says

That he is _____ of the company submitting the
(Title)

foregoing qualification form and related information; that he has read such documents; and that such documents are true and correct and contain no material misrepresentations.

Signature

Signed and sworn to me before this _____ day of _____, 20__

Notary Public

My commission expires: _____

AFFIDAVIT FOR JOINT VENTURE STATEMENT

We the undersigned do hereby give notice to our agreement to bid as a joint venture on the Project.

Name of Joint Venture

Name of firm

Signature

Signed and sworn to me before this _____ day of _____, 20__

Notary Public

My commission expires: _____

Name of firm

Signature

Signed and sworn to me before this _____ day of _____, 20__

Notary Public

My commission expires: _____

END OF SECTION

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SECTION 00 31 19

EXISTING CONDITION INFORMATION

1.1 SUMMARY

A. Section Includes:

1. Underground Facilities Reports
2. Existing Structures
3. Offeror Responsibilities

1.2 MEASUREMENT AND PAYMENT (NOT USED)

1.3 SUBMITTALS (NOT USED)

1.4 SUBSURFACE INVESTIGATION REPORT (NOT USED)

1.5 UNDERGROUND FACILITIES REPORTS (NOT USED)

1.6 EXISTING STRUCTURES

- A. Contract Documents indicate physical conditions in or relating to existing structures which are at or contiguous to the site that were known to, and have been used by, the SJRA and Principal Architect/Engineer in preparation of Contract documents.

1.7 OFFEROR RESPONSIBILITIES

- A. Offeror shall have full responsibility for reviewing and verifying information and data shown or indicated in the Contract Documents.

END OF SECTION

SECTION 00 41 00.02

PROPOSAL FORM

To: **The San Jacinto River Authority**
1577 Dam Site Road
G & A Building, 3rd Floor Receptionist
Conroe, Texas 77304

Project: Lake Conroe Office Facilities Repair

CSP No.: 19-0041

Project No.: SJRA Project No. GAPR0004.1003.2C001

Offeror: _____
(Print or type full name of proprietorship, partnership, corporation, or joint venture)

1.0 OFFER

- A. Total Proposal Price:** The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with Owner in the form included in the Contract Documents to perform all Work as specified or indicated in Contract Documents for the Contract Amount indicated in this Proposal or as modified by a Change Order or Change Directive.
- B. Proposal Security:** Included with the Proposal is a Proposal Security in the amount of 5 percent of the Total Proposal Price subject to terms described in Specification Section 00 21 13.02 – Instructions to Offerors.
- C. Period for Proposal Acceptance:** Offeror accepts all of the terms and conditions of the Request for Proposals and Instructions to Offerors, including without limitation those dealing with the disposition of required Bonds. This offer shall remain open to acceptance and is irrevocable for 90 days after Proposal Date (opening). That period may be extended by mutual written agreement of the SJRA and Offeror.
- D. Liquidated Damages:** Offeror accepts the provisions of the Agreement as to liquidated damages in the event of its failure to complete Work in accordance with the schedule set forth in the Agreement.
- E. Addenda:** Offeror hereby acknowledges it has received, examined and carefully studied all Addenda and all Addenda have been considered and all related costs are included in the Total Proposal Price. Offeror hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date	Signature Acknowledging Receipt

F. Proposal Supplements: The following documents shall be provided with the proposal:

- Offeror’s Statement of Qualifications (SOQ).
- Completed Certification of Proposal
- Completed Felony Conviction Notice Form
- Form of Business 00 45 20
- Proposal Security (Offeror’s Bond 00 43 13)
- Resolution of Contractor 00 45 43
- Completed Verification Company Does Not Boycott Israel (00 52 00)
- Completed TGC 2252.152 Certification Form (00 52 00)
- Completed Vendor Information Form (00 52 00)
- W-9 Request for Tax Payer Information (00 52 00)
- One (1) flash drive with a Completed Proposal with Original signatures, Statement of Qualifications (SOQ) and a full set of Financials.
- Conflict of Interest Forms (Form CIQ)

2.0 CONTRACT TIME

A. If Proposal is accepted, Contractor shall achieve Substantial Completion of the Work within 120 calendar days after the date when the Contract Time Requirements commence to run as provided in Article 2.3 of the General Conditions, and Contractor shall achieve Final Completion within 150 calendar days after the date required for Substantial Completion of the Work, subject to adjustments of Contract Time Requirements as provided in the Contract.

3.0 OFFEROR REPRESENTATIONS

- A. Offeror 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.
- B. Offeror 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 and furnishing of the Work.
- C. Offeror has carefully studied all: (1) drawings of physical conditions in or relating to existing structures at or contiguous to the Site and (2) Hazardous Conditions identified in reports and drawings provided to Offeror or available for Offeror review. Offeror understands that neither Owner nor Principal

Architect/Engineer is responsible for the accuracy of these documents and they are not part of the Contract Documents.

- D. Offeror has obtained and carefully studied all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions including surface, subsurface and Underground Improvements at or contiguous to the Site 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 Offeror, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents to be employed by Offeror, and safety precautions and programs incident thereto.
- E. Offeror does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Proposal for performance of the Work at the Contract Amount proposed, within the Contract Time Requirements proposed and in accordance with the terms and conditions of the Contract Documents. Offeror shall make no claims against the Owner and shall bear all risk of losses, if any, resulting on account of the amount and character of the Work, or because the conditions under which the Work must be done vary or differ from conditions or information contained in the Contract Documents, or are different from what were estimated or anticipated by it.
- F. Offeror 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.
- G. Offeror has correlated the information known to Offeror, 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.
- H. Offeror has given Owner or Principal Architect/Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in the Contract Documents, and the written resolution thereof by Principal Architect/Engineer are acceptable to Offeror.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Proposal is submitted.
- J. Laws to be Observed: In the performance of the Contract, the Contractor must comply with all applicable federal, state, and local laws, ordinances and regulations, including but not limited to laws concerned with labor, safety,

minimum wages, and the environment. The Contractor will make himself familiar with and shall at all times observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall Indemnify and save harmless the Owner, and its representatives against any claim arising from violation of any such law, ordinance or regulation by himself or by his subcontractor or by his employees.

K. Review by Owner:

(a) The Owner and authorized representatives, agents and employees of the Owner shall at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, books and accounting records, subcontracts, purchase orders, and all other relevant data, documents and records pertaining to this Contract.

L. Offeror will submit written evidence of its authority to do business in the state where the Project is located with its Proposal, form 00 45 20 – Form of Business.

M. Offeror further represents that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal; Offeror has not solicited or induced any individual or entity to refrain from submitting a Proposal; and Offeror has not sought by collusion to obtain for itself any advantage over any other Offeror or over Owner.

4.0 DEFINED TERMS:

A. Terms defined in this Proposal, if any, shall be for the purposes of this Proposal. Terms with initial capital letters not defined herein shall have the meaning assigned to them in the other Bid Documents or Contract Documents.

5.0 TOTAL PROPOSAL PRICE HAS BEEN CALCULATED BY OFFEROR, USING THE FOLLOWING COMPONENT PRICES AND PROCESS (PRINT OR TYPE NUMERICAL AMOUNTS):

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SAN JACINTO RIVER AUTHORITY
Lake Conroe Office Facilities Remediation & Repair
PROPOSAL FORM

A. BASE ITEMS

Item No.	Spec. Reference	Description	Qty.	Unit	Unit Price (this column controls)	Proposal Price
1	04 05 13, 07 90 00, 07 14 00, 08 51 50, 08 11 00, 08 70 00 04 21 13	Weatherproofing: Provide all materials and labor to repair all necessary items to ensure appropriate weatherproofing of structure as shown, noted in the drawings, or included by specifications. Including but not limited to: tuckpointing mortar, replacing failed sealants, reinstalling all windows, replacing weatherproofing and sweeps on all north-facing doors, and repairing all concrete expansion joint sealants.	1	LS	\$ _____	\$ _____
2	See Plans	HVAC Systems: Provide all materials and labor to perform all necessary work to remove the existing HVAC systems and replace with appropriate systems as shown, noted in the drawings, or included by specifications.	1	LS	\$ _____	\$ _____
3	See Plans	Electrical: Provide all materials and labor to perform all necessary work and repairs to rerun electrical to meet Code requirements for all interior and exterior lighting as shown, noted in the drawings, or included by specifications.	1	LS	\$ _____	\$ _____

4	07 21 00, 07 90 00,	<p>Miscellaneous Updates:</p> <p>Provide all materials and labor to perform all necessary work for all other repairs as shown, noted in the drawings, or included by specifications. Including but not limited to: replacing all ceiling tiles and insulation, sistering new joists to cut joists, adding lag bolts and sealants to attic stairs, covering all penetrations to stop rodents, painting interior of facility, and drilling out full-head weeps to extend to surface of concrete brick ledge.</p>	1	LS	\$ _____	\$ _____
5	07 61 13, 07 62 00	<p>Roof System:</p> <p>Provide all materials and labor to perform all necessary work to complete demolition of existing metal roof and installation of new standing seam metal roof as shown, noted in the drawings, or included by specifications. To include decking repair, and addition of ring shank nails or screws.</p>	1	LS	\$ _____	\$ _____
6	07 21 00	<p>Mold Remediation Repair:</p> <p>Provide all materials and labor to perform all necessary work to replace areas affected by mold remediation (remediation done by others) as shown, noted in the drawings, or included by specifications. Including but not limited to: sheetrock, insulation, sheathing, and built-in desk.</p>	1	LS	\$ _____	\$ _____
7	See Plans	<p>Mechanical/Plumbing:</p> <p>Provide all materials and labor to perform all necessary work to make plumbing repairs as shown, noted in the drawings, or included by specifications.</p>	1	LS	\$ _____	\$ _____

		Including but not limited to: installing an appropriately sized water heater, adding vents and necessary items to mop closet, replacing the mop sink and flooring in the janitor's closet, and relocating bathroom vents out of north-facing wall.				
8	See Plans	Earthwork: Provide all materials and labor to perform all necessary work to make repairs to areas surrounding the facility as shown, noted in the drawings, or included by specifications. Including but not limited to: back-filling at the southwest corner of the building with stabilized material, adding tie-in drains, and regrading gutters.	1	LS	\$ _____	\$ _____
9	01 71 13	Mobilization: Contractor mobilization and demobilization of all equipment, materials, and personnel to and from job site. As well as provide proper tree & shrub protection as directed by owner	1	LS	\$ _____	\$ _____
10	01 74 13, 01 74 19	Cleaning: Provide all materials and labor to perform all necessary work to provide adequate protection and cleaning as shown, noted in the drawings, or included by specifications. Including but not limited to: providing floor protection during the duration of the project, doing a construction clean to restore building for occupancy, and providing construction dumpster(s) to haul off all waste.	1	LS	\$ _____	\$ _____
11	00 61 13.13 00 61 13.16	Contractor Bonding Costs (Statutory Payment Bond and Performance Bond)	1	LS	\$ ____	\$

<u>A. Total Base Items:</u>					\$ _____

B. CASH ALLOWANCES			
Item No.	Spec. Reference	Description	Cash Allowance ¹
1	N/A	Agency Permits, to be reimbursed on an Actual Cost Basis.	\$ <u>7,500.00</u>
<u>B. Total Cash Allowances:</u>			\$ <u>7,5000</u>

Table C Footnotes:

(1) Fixed price determined prior to Proposal. Cannot be adjusted by Offeror.

C. ALTERNATE ITEMS						
Item No.	Spec. Reference	Description	Qty.	Unit	Unit Price (this column controls)	Proposal Price
1	See Plans	Provide all materials and labor to perform a remodel of existing restroom and the addition of an ADA shower. To include but not limited to the upsizing of water heater (water heater being replaced in base bid will be larger) for this restroom, level-up and slope floor, removing and replacing flooring to meet ADA requirements, and removal of the existing toilet. See plans for exact requirements of ADA shower.	1	LS	\$ _____	\$ _____
2	See Plans	Provide all materials and labor to replace existing kitchen cabinetry and counter tops with new cabinetry and countertops	1	LS	\$ _____	\$ _____
<u>C. Total Alternate Items:</u>					\$ _____	

Note: Alternate Items shall be included in Total Proposal Price.

D. TOTAL PROPOSAL PRICE:	\$ _____
Add Totals for Items A + B	
Total Alternate C	\$ _____

6.0 SIGNATURES: By signing this Document, I agree that I have received and reviewed all Bid Documents, Contract Documents and Addenda and considered all costs associated with the Bid Documents, Contract Documents and Addenda in calculating the Total Proposal Price.

Offeror: _____
(Print or type full name of your proprietorship, partnership, corporation, or joint venture.*)

** By: _____
Signature Date

Name: _____
(Print or type name) Title

Doing Business as: _____

Business Address: _____
(Mailing)

(Street, if different)

Telephone and Fax Number: _____
(Print or type numbers)

* If Proposal is a joint venture, add additional Proposal Form signature sheets for each member of the joint venture.

** Offeror certifies that the only person or parties interested in this offer as principals are those named above. Offeror has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive Proposing.

Note: This document constitutes a Governmental record, as defined by § 37.01 of the Texas Penal Code. Submission of a false Governmental record is a criminal offense as provided in § 37.10 of the Texas Penal Code.

7.0 CERTIFICATION OF PROPOSAL

The undersigned affirms that they are duly authorized to execute this Proposal, that this Proposal has not been prepared in collusion with any other Offeror, and that the contents of this Proposal have not been communicated to any other Offeror prior to the official opening of this Proposal. Additionally, the undersigned affirms that the Offeror is willing to sign the attached SJRA Agreement (if applicable).

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Proposal Address: _____
P.O. Box or Street City State Zip

Order Address: _____
P.O. Box or Street City State Zip

Remit to Address: _____
P.O. Box or Street City State Zip

Federal Tax ID No.: _____

Date: _____

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SECTION 00 43 13
OFFEROR'S BOND

THAT WE, _____, as Principal,
(Offeror)
("Offeror"), and the other subscriber hereto, _____, as Surety, do hereby
acknowledge ourselves to be held and firmly bound to the San Jacinto River Authority, a political sub-division of the
State of Texas, in the sum of _____ Dollars
(\$ _____) (an amount equal to five (5) percent of the Total Bid Price, including Cash Allowances and
Alternates, if any, for the payment of which sum, well and truly to be made to the San Jacinto River Authority and its
successors, the Offeror and Surety do bind themselves, their heirs, executors, administrators, successors, and
assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Offeror has submitted on or about this day a proposal offering to perform the following:

(Project Name, Location and Number)
in accordance with the Drawings, Specifications, and terms and conditions related thereto to which reference is
hereby made.

NOW, THEREFORE, if the Offeror's offer as stated in the Section 00 41 00.02 – Proposal Form is accepted
by the San Jacinto River Authority, and the Offeror executes and returns to the San Jacinto River Authority Section
00 52 00 – Tandard Form of Agreement between Owner and Contractor, required by the San Jacinto River Authority,
on the forms prepared by the San Jacinto River Authority, for the Work and also executes and returns the same
number of the Performance, Payment and Maintenance Bonds (such bonds to be executed by a Corporate Surety
authorized by the State Board of Insurance to conduct insurance business in the State of Texas, and having an
underwriting limitation in at least the amount of the bond) and other submittals as required, in connection with the
Work, within the Contract Time, then this obligation shall become null and void; otherwise it is to remain in full force
and effect.

If Offeror is unable to or fails to perform the obligations undertaken herein, the undersigned Offeror and
Surety shall be liable to the San Jacinto River Authority for the full amount of this obligation which is hereby
acknowledged as the amount of damages which will be suffered by the San Jacinto River Authority on account of the
failure of such Offeror to perform such obligations, the actual amount of such damages being difficult to ascertain.

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

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

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

(Name of Offeror)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/SURETY WITNESS: (SEAL)

(Full Name of Surety)

(Address of Surety for Notice)

(Telephone Number of Surety)

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

END OF SECTION

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SECTION 00 45 10

CONFLICT OF INTEREST QUESTIONNAIRE

Local Government Code Chapter 176 requires Offerors with the San Jacinto River Authority ("SJRA") to file a Conflict of Interest Questionnaire with the SJRA.

The Conflict of Interest Questionnaire is available for downloading on the Texas Ethics Commission's website at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>. The completed Conflict of Interest Questionnaire will be posted on the SJRA website. Also you will find a list of the SJRA Local Government Officers on the SJRA website.

For your convenience the CIQ form is attached as part of this document. Although the SJRA has provided this document for the Offeror's convenience, it is the Offeror's responsibility to submit the latest version of the CIQ form as promulgated by the Texas Ethics Commission.

The Failure of any Offeror to comply with this law is a Class C misdemeanor.

END OF SECTION

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

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

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

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

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4 I have no Conflict of Interest to disclose.

5

Signature of vendor doing business with the governmental entity

Date

SECTION 00 45 20
FORM OF BUSINESS

Please mark the box describing your firm's form of business, fill in the requested information, and include the relevant attachments.

Corporation

Corporate Name: _____
State of Incorporation: _____
Mailing Address: _____
Type of Corporation: _____

Certificate of Assumed Name, if operating under a name different than that on the corporate charter (the Certificate must have been issued within the past 10 years to be valid)

*Certificate of Good Standing

*Certificate of Existence (if non-Texas corporation, Certificate of Authority)

Partnership/Joint Venture

Partnership/Joint Venture Name: _____
Mailing Address: _____
Type of Partnership/Joint Venture: _____

Copy of the Partnership or Joint Venture Agreement, **or**
Affidavit with the name of the partnership or joint venture, the names of the individual partners or participants in the joint venture, and a statement that the partnership or joint venture is in existence

Certificate of Assumed Name, (the Certificate must have been issued within the past 10 years to be valid)

If firm is a limited partnership, the Certificate of Limited Partnership

If any partner or joint venturer is a corporation, the above information relating to corporation must be included as to each sum partner or joint venturer.

Sole Proprietorship

Name: _____
Mailing Address: _____

Certificate of Assumed Name, if operating under a name different than that of the sole proprietor (the Certificate must have been issued within the past 10 years to be valid)

** Must be furnished upon request of the SJRA and must be less than 90 days old.*

END OF SECTION

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SECTION 00 45 43
RESOLUTION OF CONTRACTOR

_____ (“Contractor”),
(Name of Contractor, e.g., “Biz. Inc.”, “Biz LLP”)

is a _____,
(Type of Organization, e.g.: Corporation, Limited Partnership, Limited Liability Partnership, Limited Liability Company, etc.)

which is bound by acts of _____,
(Name and Form of Governing Entity, e.g., “Biz Inc. Board of Directors”, “Bill Smith, GP”, etc.)

(“Governing Entity”).

On the . day of _____, 20____, the Governing Entity resolved, in accordance with all documents, rules, and laws applicable to the Contractor, that

_____, is authorized to act as the
(Contractor’s Representative)

Contractor’s Representative in all business transactions (initial one) ____ conducted in the State of Texas OR ____ related to this Contract; and

The Governing Entity warrants that the above resolution (a) was entered into without dissent or reservation by the Governing Entity, (b) has not been rescinded or amended, and (c) is now in full force and effect; and

**PART 1 - IN AUTHENTICATION OF THE ADOPTION OF THIS RESOLUTION, I
SUBSCRIBE MY NAME ON THIS ____ DAY OF _____, 20 ____.**

(Authorized Signature for Governing Entity)

(Print or Type Name and Title of Authorized Signatory)

SWORN AND SUBSCRIBED before me on _____
Date

Notary Public in and for the State of Texas

My Commission Expires: _____
Expiration Date

Print or Type Name of Notary Public

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SECTION 00 52 00

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of _____ by and between **the San Jacinto River Authority** (hereinafter called "**OWNER**") and _____ (hereinafter called "**CONTRACTOR**").

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

Article 1. WORK.

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

Construction of **Lake Conroe Office Facilities Remediation & Repair**

Article 2. PRINCIPAL ARCHITECT/ENGINEER AND OWNER'S REPRESENTATIVE.

The project has been designed by E. Levi Love, Jr., L Squared Engineering, who is hereinafter called "PRINCIPAL ARCHITECT/ENGINEER" and who assumes all duties and responsibilities and has the rights and authority assigned to PRINCIPAL ARCHITECT/ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. OWNER'S Representative shall be E. Levi Love, Jr.

Article 3. CONTRACT TIMES.

The Work will be Substantially Completed within 120 **calendar days** after the date when the Contract Time Requirements commence to run as provided in Article 2.3 of the General Conditions, and CONTRACTOR shall achieve Final Completion within 150 **calendar days** of the date required for Substantial Completion.

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 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) and, as a reasonable estimate of such damages, CONTRACTOR shall pay OWNER Five Hundred Dollars (\$500.00) for each and every day of delay in CONTRACTOR achieving Substantial Completion of the Work and readiness for final payment beyond the times specified in the above paragraph. 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 4. CONTRACT AMOUNT.

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 to be due and owing pursuant to the Proposal and any subsequent Change Orders and Change Directives thereto.

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 OWNER'S Representative or PRINCIPAL ARCHITECT/ENGINEER as determined by the OWNER and as provided in the General Conditions and Supplemental Conditions, if any.

OWNER shall make progress payments on account of the Contract Amount on the basis of CONTRACTOR'S Applications for Payment as recommended by OWNER'S Representative or PRINCIPAL ARCHITECT/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 Article 2.4.2.07 of the General Conditions (and on the number of units of each Unit Price item completed, if unit price contract). Upon final completion and acceptance of the Work in accordance with Article 14.11 of the General Conditions, OWNER shall pay the remainder of the Contract Amount as recommended by OWNER'S Representative as provided in said Article 14.11.

The 10 percent retainage withheld pursuant to Article 14.01.5 of the General Conditions shall be deposited in an interest-bearing account, and the interest earned on such retainage shall be paid to CONTRACTOR on completion of the contract.

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 Article 7) and the other related data identified in the Proposal Documents.

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 Legal Requirements 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. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents, are not warranted or represented in any manner by Owner to accurately show the conditions at the Site, and may not be complete for CONTRACTOR'S purposes. CONTRACTOR acknowledges that OWNER and PRINCIPAL ARCHITECT/ENGINEER do not assume and expressly disclaim any responsibility for the accuracy or completeness of the

information and data shown or indicated in the Contract Documents with respect to subsurface conditions or 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 research, 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 Amount, within the Contract Time Requirements 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 PRINCIPAL ARCHITECT/ENGINEER through the OWNER or OWNER'S Representative written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by PRINCIPAL ARCHITECT/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.

Pursuant to Section 2270.002 of the Texas Government Code, contemporaneous with CONTRACTOR's execution of this Agreement, CONTRACTOR shall execute the Verification Company Does Not Boycott Israel, attached hereto and incorporated herein.

Article 7. CONTRACT DOCUMENTS.

The Contract Documents are comprised of the following:

1. This Agreement.
2. Exhibits to this Agreement: Verification Company Does Not Boycott Israel
3. Performance, Payment, and Maintenance Bonds.
4. General Conditions of the Contract.
5. Supplemental Conditions, if any.
6. Specifications 01 11 13 through 08 70 00, prepared by E. Levi Love, Jr., L Squared Engineering and sealed on February 11, 2019.
7. Drawings: Lake Conroe Division Facilities Repair Dated 02/2019 Pages 21
8. Addenda:

Addendum No.	Addendum Date	Signature Acknowledging Receipt

9. CONTRACTOR'S Proposal Form pursuant to Competitive Sealed Proposal No. 19-0041, as applicable.
10. Prevailing Wage Rates.
11. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached thereto: All written Change Orders or Change Directives pursuant to Article 3.3 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 Article 3.3 of the General Conditions.

Article 8. INDEMNITY PROVISIONS.

THE GENERAL, SPECIAL, AND SUPPLEMENTAL CONDITIONS, IF ANY, INCORPORATED INTO 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 SUPPLEMENTAL CONDITIONS, IF ANY, AND ALL OTHER CONTRACT DOCUMENTS AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND ALL CONTRACT DOCUMENTS; THAT IT HAS IN FACT READ THIS AGREEMENT AND ALL CONTRACT DOCUMENTS 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 THE CONTRACT DOCUMENTS 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 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.

CONTRACTOR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Article 9:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process or the execution of the Contract to the detriment of OWNER, (b) to establish Proposal or Contract prices at artificial noncompetitive levels, or (c) to deprive OWNER of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Proposers, with or without the knowledge of OWNER, a purpose of which is to establish Proposal prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

No assignment by a party hereto of any rights or interests in the Contract 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.

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

Any provision or part thereof of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions or parts thereof 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 or part thereof.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic

transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Duplicate copies of duly executed and delivered counterparts of this Agreement shall be deemed to have the same full force and effect as originals and may be relied upon as such. Notwithstanding the foregoing, OWNER and CONTRACTOR agree that this Agreement may be executed using electronic signatures at the option and in the discretion of OWNER, and, in such event, the provisions of the Uniform Electronic Transaction Act, Chapter 332, Texas Business and Commerce Code, as amended, and any applicable policies and procedures of OWNER regarding electronic signatures shall apply.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement.

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

OWNER: San Jacinto River Authority

By: _____

Attest: _____

Address for giving notices:

CONTRACTOR:

By: _____

(CORPORATE SEAL)

Attest: _____

Address for giving notices:

License No. _____

Agent for service of process: _____

END OF SECTION

VERIFICATION COMPANY DOES NOT BOYCOTT ISRAEL

BEFORE ME, the undersigned authority, on this day personally appeared _____ [name], _____ [title] of _____ [Contractor], and, upon oath, after first being duly sworn, deposed and stated:

“My name is _____ and I am the _____ [title] of _____ [Contractor], hereinafter referred to in this verification as ‘Contractor’. The facts set forth herein are within my personal knowledge and are true and correct, and I am competent and authorized to make this verification on behalf of Contractor.

Contractor does not Boycott Israel; and

Contractor will not Boycott Israel during the term of this Agreement; and

‘Boycott Israel’ as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.”

Contractor: _____

By: _____
[Signature of Affiant]

Printed Name: _____

Title: _____

SUBSCRIBED AND SWORN TO before me on this ____ day of _____, 201__, by _____ [title] of _____ [Contractor], known to me or proved through photo identification.

Notary Public in and for the State of Texas
My commission expires: _____

TGC 2252.152 CERTIFICATION FORM

CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATIONS PROHIBITED - CERTIFICATION

I, _____, the undersigned representative of _____ (Company or business name) being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the San Jacinto River Authority's Purchasing Division.

Name of Company Representative (Print)

Signature of Company Representative

Date

VENDOR INFORMATION FORM



San Jacinto River Authority
General & Administrative
1577 Dam Site Road
Conroe, TX 77304

VENDOR INFORMATION FORM

Company Name: _____

PO MAILING / PHYSICAL ADDRESS

ACCOUNTS RECEIVABLE ADDRESS

Contact Name: _____

Title: _____

Telephone: _____
Emergency/ After Hrs #: _____

Fax: _____

E-Mail: _____

A/R Contact Name: _____

A/R Telephone: _____

A/R Fax: _____

Accepts Procurement Card: Yes No

Web Site: _____

NATURE OF BUSINESS

Wholesale Dealer	Sales	<input type="checkbox"/> Manufacturer	Service (repairs, etc.)
Construction	Factory Rep.	Retail Dealer	Professional Services
Govt. Agency			

Please notify the San Jacinto River Authority Purchasing Department immediately of any changes, such as company name, address, telephone number, fax number, email address or change in insurance.

I have reviewed and understand the Insurance Requirements (if applicable) as listed on the following page.

Signature

Please attach a completed W-9 Form and return it with this Vendor Information Form.

Form W-9 (Rev. December 2014) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give Form to the requester. Do not send to the IRS.
---	--	---

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) + _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) + _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
	6 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	8 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.																																									
	Social security number <table border="1" style="width:100%; text-align: center;"> <tr> <td style="width:10%;"> </td><td style="width:10%;"> </td> </tr> <tr> <td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> </tr> </table> OR Employer identification number <table border="1" style="width:100%; text-align: center;"> <tr> <td style="width:10%;"> </td><td style="width:10%;"> </td> </tr> <tr> <td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td> </tr> </table>											-	-	-	-	-	-	-	-	-	-											-	-	-	-	-	-	-	-	-	-
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Part II Certification Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and 3. I am a U.S. citizen or other U.S. person (defined below); and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.
--

Sign Here	Signature of U.S. person + _____	Date + _____
------------------	----------------------------------	--------------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.
 Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/w9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filed-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

SECTION 00 60 20

MONTHLY SUBCONTRACTOR PAYMENT REPORTING FORM

Legal Project Name: _____

SJRA Project No.: _____

Contractor's Company Name: _____

Address: _____

CERTIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared _____,
_____ [title] of _____ [Contractor], and, upon oath, after first being duly
sworn, deposed and stated:

"My name is _____ and I am the _____ [title] of
_____ [Contractor], hereinafter referred to in this affidavit as "Contractor". The facts
set forth herein are within my personal knowledge and are true and correct, and I am competent and
authorized to make this affidavit on behalf of Contractor.

Contractor has paid each and all of its Subcontractors, laborers, suppliers, vendors and
materialmen, if any, in full, for all work, labor, materials, equipment and/or services provided to Contractor
for incorporation in or use or work on the Project, through the period ending _____ [end
date of last paid pay period] (the "Pay Period"), except to the extent of any contractual retainage withheld
by Contractor, or other amounts withheld by Contractor for defective work or otherwise in accordance with
its contract with any Subcontractor, laborer, supplier, vendor or materialman and identified in the Payment
Notifications described below.

Contractor acknowledges that SJRA is relying on Contractor's statements and representations
herein in making payment for Work performed on the Project. Contractor agrees to indemnify SJRA from
any and all loss, cost or expense, including but not limited to attorneys' fees incurred, resulting from any
false or incorrect information contained in this affidavit."

EXCEPTION: Contractor sent Payment Notifications to the following Subcontractors, laborers, suppliers,
vendors or materialmen explaining why Contractor withheld payment, copies of which are attached:

Name: _____ Name: _____

Street Address: _____ Street Address: _____

City, State, and Zip Code: _____ City, State, and Zip Code: _____

Amount of Payment Withheld: _____ Amount of Payment Withheld: _____

Date Payment First Withheld: _____ Date Payment First Withheld: _____

Description of Good Faith Reason: _____ Description of Good Faith Reason: _____

(Signature of Contractor's Representative)

(Print or Type Name of Contractor's Representative)

SWORN TO AND SUBSCRIBED before me on:

Date

Notary Public in and for the State of Texas

My Commission Expires: _____
Expiration Date

Print or Type name of Notary Public

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4839-5211-5282, v. 1

SECTION 00 61 13.13
PERFORMANCE BOND

STATE OF TEXAS

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS: That _____ (Contractor) of the City of _____, County of _____, and State of Texas, as Principal, and _____ authorized under the Laws of the State of Texas to act as surety on bonds for principals, as Surety, are held and firmly bound unto San Jacinto River Authority (Owner), in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, 20____, for construction of: _____ (the "Contract"), which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said Contract agreed and covenanted by the Principal to be observed and performed, within the time provided therein and any extensions thereof that may be granted by the Owner, and during the life of any guarantees or warranties contained in or required under said Contract, and shall also well and truly perform all the undertakings, covenants, terms, conditions and agreements of any and all modifications of said Contract that may hereafter be made, then this obligation shall be void; otherwise to remain in full force and effect;

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

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

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

Principal

Surety

BY:_____

BY:_____

TITLE:_____

TITLE:_____

ADDRESS:

PHYSICAL ADDRESS:

MAILING ADDRESS FOR NOTICE OF CLAIMS:

TELEPHONE:_____

LOCAL RECORDING AGENT
PERSONAL IDENTIFICATION
NUMBER:

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

END OF SECTION

SECTION 00 61 13.16
STATUTORY PAYMENT BOND

STATE OF TEXAS

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS: That _____ (Contractor) of the City of _____, County of _____, and State of Texas, as Principal, and _____ authorized under the Laws of the State of Texas to act as surety on bonds for principals, as Surety, are held and firmly bound unto San Jacinto River Authority (Owner), in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the _____ day of _____, 20____, for construction of: _____ (the "Contract").

which Contract is hereby referred to and make a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a Sub-Contractor in the prosecution of the work provided for in said Contract, then, this obligation shall be void; otherwise to remain in full force and effect;

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

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

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

Principal

Surety

BY:_____

BY:_____

TITLE:_____

TITLE:_____

ADDRESS:

PHYSICAL ADDRESS:

MAILING ADDRESS FOR NOTICE OF CLAIM:

TELEPHONE:_____

LOCAL RECORDING AGENT
PERSONAL IDENTIFICATION
NUMBER:

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

END OF SECTION

4825-7140-3858, v. 1

SECTION 00 61 19

ONE-YEAR MAINTENANCE BOND

THAT WE, _____, as Principal, hereinafter called Contractor, and the other subscriber hereto, _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the San Jacinto River Authority ("SJRA") in the sum of \$ _____, for the payment of which sum to be made to the SJRA and its successors, Contractor and Surety do bind themselves, their successors, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the SJRA for _____, all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the SJRA, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall comply with the provisions of Paragraph 13.7.1 of the General Conditions, and correct work not in accordance with the Contract documents discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when given in accordance with the definition of Written Notice in the General Conditions of the Contract.

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

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

Name of Contractor

By: _____

Name:

Title:

By: _____

Name:

Title:

Date:

ATTEST/SURETY WITNESS:

Full Name of Surety

(SEAL)

Address of Surety for Notice

Telephone Number of Surety

By: _____

Name:

Title:

Date:

By: _____

Name:

Title: Attorney-in-Fact

Date:

END OF SECTION

4843-6617-2242, V. 1

SECTION 00 62 04

HISTORY OF OSHA ACTIONS AND LIST OF ON-THE-JOB INJURIES

Prior to award of the Contract, Successful Offeror will be required to file the following with the San Jacinto River Authority:

1. A history of all OSHA actions, advisories, etc., Contractor has received on all jobs worked in any capacity, prime or subcontractor. The history shall be for the two-year period preceding the Bid Date of the Project.
2. A list of all on-the-job injuries, accidents, and fatalities suffered by any present or former employees of Contractor during the same two-year period.
3. If less than the two-year period, give the date Contractor started doing business.
4. Provide the company Experience Modification Rate (EMR) for the three-year period preceding the Proposal Submission Date of the Project.

An officer of the company must certify in a notarized statement that the information submitted is true and correct.

END OF SECTION

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SECTION 00 62 07

**CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

Contractor certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State, or local department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award.

Company:

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify the above statements. My explanation is attached.

END OF SECTION

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**NAME AND QUALIFICATIONS OF
PROPOSED SUPERINTENDENT**
SECTION 00 62 10

NAME AND QUALIFICATIONS OF PROPOSED SUPERINTENDENT (FOR FILING)

Prior to award of the Contract, Offeror selected will be required to file the following with the San Jacinto River Authority:

1. The name and qualifications of the Superintendent being proposed to supervise the Project.

This information must be submitted to the SJRA within the time period stated in within 10 days of written notification of contract award. An officer of the company must certify in a statement that the information submitted is true and correct.

END OF SECTION

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SECTION 00 62 16
AFFIDAVIT OF INSURANCE

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

_____ ,
Affiant

who being by me duly sworn on his oath stated that he/she is _____
Title

of _____ ,
Contractor's Company Name

the Contractor named and referred to within the Contract Documents; that he/she is fully competent and authorized to give this affidavit on behalf of Contractor, and that the attached original insurance certificate truly and accurately reflects the insurance coverage that is now in effect and will be in effect during the periods required by the Contract.

Affiant's Signature

SWORN AND SUBSCRIBED before me on _____ .
Date

Notary Public in and for the State of TEXAS

Print or type Notary Public name

My Commission Expires: _____
Expiration Date

END OF SECTION

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4827-0155-8354, V. 1



San Jacinto River Authority

Certificate of Substantial Completion

ADMINISTRATIVE OFFICE
 P.O. Box 329 · Conroe, Texas 77305
 (T) 936.588.3111 · (F) 936.588.3043

SECTION 00 65 16 CERTIFICATE OF SUBSTANTIAL COMPLETION

		Date of Substantial Completion:	
Project Name:		Project Number:	
Project Location:		Contract Number:	
Contractor:		Notice To Proceed Date:	
Principal Architect/Eng.:		Contracted Amount:	
Construction Manager:		Amount at Completion:	
Inspector:		Time to Complete:	
Punch List Correction Period:		Date of Inspection:	
	Days		

Description of Substantially Complete Work:

Issuance and execution of this Certificate of Substantial Completion by the San Jacinto River Authority (SJRA), shall denote that the described Work for the referenced Project has been inspected for compliance to the Project's Contract Documents and the described Work was found to be Substantially Complete. Therefore, the Date of Substantial Completion is established as indicated above.

Items having no impact on the intended and proper implementation, operation, or utilization of the described Work which have been determined as requiring correction or incomplete, are documented on the attached Substantial Completion Punch List. All such items shall be completed within the above stated Punch List Correction Period.

Punch List omissions of Contract Work does not relieve the Contractor of its responsibility to complete the Project Work in accordance with the Contract Documents.

Contract required warranties and guarantee periods shall commence on the Date of Substantial Completion.

Final insurance(s) shall remain in effect until the Project's Date of Final Completion of the Work is established.

Construction Manager:	_____	_____	Date: _____
	Print	Signature	
Company:	_____		
Principal Architect/Eng.	_____	_____	Date: _____
	Print	Signature	
Company:	_____		
Contractor:	_____	_____	Date: _____
	Print	Signature	
Company:	_____		
SJRA Representative:	_____	_____	Date: _____
	Print	Signature	
SJRA General Manager:	_____	_____	Date: _____
	Print	Signature	



San Jacinto River Authority

Certificate of Substantial Completion

ADMINISTRATIVE OFFICE
 P.O. Box 329 · Conroe, Texas 77305
 (T) 936.588.3111 · (F) 936.588.3043

SUBSTANTIAL COMPLETION INSPECTION PUNCH LIST

		PREPARATION DATE:	
PROJECT NAME:		PROJECT NUMBER:	
PROJECT LOCATION:		PREPARED BY:	
CONTRACTOR:		INSPECTION DATE:	
WORK PORTION:			

INSPECTION ATTENDEES:

NAME	COMPANY	E-MAIL	TELEPHONE

SJRA FIELD REPRESENTATIVE:			DATE:	
	PRINTED	SIGNATURE		

CONTRACTOR (ACKNOWLEDGE RECEIPT):		DATE:	
	PRINTED	SIGNATURE	

SUBSTANTIAL COMPLETION INSPECTION PUNCH LIST

DESCRIPTION:	DATE COMPLETE:	SIGNED BY:

12/15/2014
 CSP No. 19-0041



San Jacinto River Authority

ADMINISTRATIVE OFFICE
 P.O. Box 329 · Conroe, Texas 77305
 (T) 936.588.3111 · (F) 936.588.3043

CERTIFICATE OF PARTIAL SUBSTANTIAL COMPLETION

SECTION 00 65 16.23 CERTIFICATE OF PARTIAL SUBSTANTIAL COMPLETION

		Date of Partial Substantial	
Project Name:		Project Number:	
Project Location:		Contract Number:	
Contractor:		Notice To Proceed Date:	
Principal Architect/Eng.:		Contracted Amount:	
Construction Manager:		Amount at Completion:	
Inspector:		Time to Complete:	
Punch List Correction Period:	Days	Date of Inspection:	

Description of Substantially Complete Work:

Issuance and execution of this Certificate of Partial Substantial Completion by the San Jacinto River Authority (SJRA), shall denote that the described Work for the referenced Project has been inspected for compliance to the Project's Contract Documents and the described Work was found to be Substantially Complete. Therefore, the Date of Partial Substantial Completion is established as indicated above.

Items having no impact on the intended and proper implementation, operation, or utilization of the described Work which have been determined as requiring correction or incomplete, are documented on the attached Partial Substantial Completion Punch List. All such items shall be completed within the above stated Punch List Correction Period.

Punch List omissions of Contract Work does not relieve the Contractor of its responsibility to complete the Project Work in accordance with the Contract Documents.

Contract required warranties and guarantee periods shall commence on the Date of Partial Substantial Completion.

Final insurance(s) shall remain in effect until the Project's Date of Final Completion of the Work is established.

Construction Manager:	_____	_____	Date: _____
	Print	Signature	
Company:			
Principal Architect/Eng.:	_____	_____	Date: _____
	Print	Signature	
Company:			
Contractor:	_____	_____	Date: _____
	Print	Signature	
Company:			
SJRA Representative:	_____	_____	Date: _____
	Print	Signature	
SJRA General Manager:	_____	_____	Date: _____
	Print	Signature	



San Jacinto River Authority

ADMINISTRATIVE OFFICE
 P.O. Box 329 · Conroe, Texas 77305
 (T) 936.588.3111 · (F) 936.588.3043

CERTIFICATE OF PARTIAL SUBSTANTIAL COMPLETION

PARTIAL SUBSTANTIAL COMPLETION INSPECTION PUNCH LIST

		PREPARATION DATE:	
PROJECT NAME:		PROJECT NUMBER:	
PROJECT LOCATION:		PREPARED BY:	
CONTRACTOR:		INSPECTION DATE:	
WORK PORTION:			

INSPECTION ATTENDEES:

NAME	COMPANY	E-MAIL	TELEPHONE

SJRA FIELD REPRESENTATIVE:			DATE:	
----------------------------	--	--	-------	--

CONTRACTOR (<i>ACKNOWLEDGE RECEIPT</i>):			DATE:	
--	--	--	-------	--

PARTIAL SUBSTANTIAL COMPLETION INSPECTION PUNCH LIST

DESCRIPTION:	DATE COMPLETE:	SIGNED BY:



San Jacinto River Authority

ADMINISTRATIVE OFFICE
P.O. Box 329 · Conroe, Texas 77305
(T) 936.588.3111 · (F) 936.588.3043

CERTIFICATE OF PARTIAL SUBSTANTIAL COMPLETION

- End of Punch List -

END OF SECTION

SECTION 00 65 19

CONTRACTOR'S CERTIFICATION OF FINAL COMPLETION

CERTIFICATE OF FINAL COMPLETION OF: _____

Project No.: _____

Contract Dated: _____

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____ who, being by me duly sworn, on his oath says that he or she represents _____, the Contractor who has performed a contract with the San Jacinto River Authority ("SJRA") for the construction of the Work described above, and is duly authorized to make this affidavit; that he or she has personally examined the Work described above as required by the Contract documents; that said Work and all items thereof have been completed and all known defects made good; that all surplus material, refuse, dirt and rubbish have been cleaned up and removed or disposed of as directed by the SJRA; that all parts of Work are in a neat, tidy, finished condition and ready in all respects for acceptance by the SJRA; that all gravel or shell roadway surfaces removed during the course of the Work have been replaced in accordance with the Specifications, that rates of pay for all labor employed on said Work have not been below the minimum set out in "Labor Classification and Minimum Wage Scale" in the Contract documents and that within the knowledge of affiant all just bills for labor and material and for the rental or use of any equipment or apparatus, used in, on, or in connection with the Work have been paid in full by the Contractor.

Affiant's Signature

SWORN AND SUBSCRIBED before me on
PART 1 -

DATE

Notary Public in and for the State of TEXAS

Print or type name

My Commission Expires: _____
Expiration Date

THIS IS TO CERTIFY that I have thoroughly inspected the Work performed by the above named Contractor on the above described Contract and find all things in accordance with the Contract documents governing this Work.

Inspector

Construction Manager

Approved:

San Jacinto River Authority

END OF SECTION

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SECTION 00 65 19.13
AFFIDAVIT OF BILLS PAID

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, party to that certain Contract entered into on the ___ day of _____, 20__, between **San Jacinto River Authority** (Owner) and _____ for the erection, construction, and completion of certain improvements and/or additions upon the following described premises, to wit:

LAKE CONROE OFFICE FACILITIES REMEDIATION & REPAIR, CSP NO. 19-0041

Said party being by me duly sworn states upon oath that the said improvements have been erected and completed in full compliance with the above referred to Contract and the agreed plans and specifications therefore.

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

This affidavit is being made by the undersigned realizing that it is in reliance upon the truthfulness of the statements contained therein that final and full settlement of the balance due on said Contract is being made, and in consideration of the disbursement of funds San Jacinto River Authority, deponent expressly waives and releases all liens, claims and rights to assert a lien on said premises and agrees to indemnify and hold Owner safe and harmless from and against all losses, damages, costs and expenses of any character whatsoever specifically including court costs, bonding fees and attorney fees, arising out of or in any way relating to claims for unpaid labor or material used or associated with construction of improvements on the above-described premises.

By: _____

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

_____ Notary Public in and for _____ County, Texas.

END OF SECTION

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San Jacinto River Authority

ADMINISTRATIVE OFFICE
 P.O. Box 329 · Conroe, Texas 77305
 (T) 936.588.3111 · (F) 936.588.3043

CERTIFICATE OF FINAL COMPLETION

SECTION 00 65 19.23 CERTIFICATE OF FINAL COMPLETION

CERTIFICATE OF FINAL COMPLETION

Project Name:		Date of Final Completion:	
Project Location:		Project Number:	
Contractor:		Contract Number:	
Principal		Notice To Proceed Date:	
Construction Manager:		Contracted Amount:	
Inspector:		Amount at Completion:	
Punch List Correction Period:	Days	Time to Complete:	Days
		Date of Inspection:	

Description of Finally Complete Work:

DATE OF FINAL COMPLETION - The Work performed under the Contract was inspected on above indicated Date of Final Completion and found to be complete. The date of final completion of the Work is hereby established as indicated above.

PUNCH LIST - Contractor certified in Document 00 65 19 – Contractor’s Certification of Final Completion that all Punch List items were completed or corrected. Failure to identify incomplete work items or requirements of the Contract prior to issuance of this Certificate does not alter the responsibility of Contractor to comply with all provisions of the Contract.

ACCEPTANCE OF THE WORK - Based on inspection and to the best of our knowledge, information and belief, the Work has been completed in accordance with the terms and conditions of the Contract and we recommend acceptance of the Work by the San Jacinto River Authority or their delegated authority.

Construction Manager:	_____	_____	Date: _____
	Print	Signature	
Company:			
Principal Architect/Engineer:	_____	_____	Date: _____
	Print	Signature	
Company:			
Contractor:	_____	_____	Date: _____
	Print	Signature	
Company:			
SJRA Project Manager:	_____	_____	Date: _____
	Print	Signature	
SJRA General Manager:	_____	_____	Date: _____
	Print	Signature	

**CONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT**

SJRA Project No. GAPR0004.1003.2C001

SECTION 00 65 21

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Legal Project Name: _____

SJRA Project No.: _____

Contractor's Company Name ("Contractor"): _____

Address: _____

On receipt by Contractor of a check from the San Jacinto River Authority ("SJRA") in the sum of \$_____ payable to Contractor, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to waive and release any and all rights, claims and causes of action which Contractor may have against SJRA, including but not limited to any and all claims for costs, expenses and damages incurred by Contractor, arising out of or related to all labor, materials, equipment and/or services furnished for incorporation in or use or work on the Project, through the period ending _____ [end date of current pay period] (the "Pay Period"), except to the extent of any contractual retainage withheld from Contractor, and except for the following pending claims, if any:

<u>Description of Claim</u>	<u>Amount (\$)</u>
-----------------------------	--------------------

Contractor warrants that Contractor has already paid or will use the funds received from this progress payment to promptly pay in full all amounts due the Contractor's laborers, Subcontractors, materialmen, vendors and suppliers for all work, materials, equipment, and/or services provided for or to the above referenced Project through the Pay Period.

Date _____

_____ (Contractor name)

By: _____ (Signature)

_____ (Title)

This instrument was executed and acknowledged before me on this ___ day of _____, 20__, by _____, known to me as the person whose name is subscribed above, as _____ [title] of _____ [company], on behalf of and as the authorized act of said entity.

Notary Public in and for the State of Texas

My Commission Expires: _____

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SECTION 00 65 27

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Legal Project Name: _____

SJRA Project No.: _____

Contractor's Company Name ("Contractor"): _____

Address: _____

On receipt by Contractor of a check from the San Jacinto River Authority ("SJRA") in the sum of \$_____ payable to Contractor, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to waive and release any and all rights, claims and causes of action which Contractor may have against SJRA, including but not limited to any and all claims for costs, expenses and damages incurred by Contractor, arising out of or related to all labor, materials, equipment and/or services furnished for incorporation in or use or work on the Project, except for the following pending claims, if any:

<u>Description of Claim</u>	<u>Amount (\$)</u>
-----------------------------	--------------------

Contractor warrants that Contractor has already paid or will use the funds received from this payment to promptly pay in full all amounts due the Contractor's laborers, Subcontractors, materialmen, vendors and suppliers for all work, materials, equipment, and/or services provided for or to the above referenced Project.

Date _____

_____ (Contractor name)

By: _____ (Signature)

_____ (Title)

This instrument was executed and acknowledged before me on this ___ day of _____, 20__, by _____, known to me as the person whose name is subscribed above, as _____ [title] of _____ [company], on behalf of and as the authorized act of said entity.

Notary Public in and for the State of Texas

My Commission Expires: _____

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**Section 00 72 00
GENERAL CONDITIONS OF THE CONTRACT**

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ARTICLE 1 – DEFINITIONS

UNLESS OTHERWISE STATED IN THE CONTRACT DOCUMENTS, WORDS WHICH HAVE WELL-KNOWN TECHNICAL OR CONSTRUCTION INDUSTRY MEANINGS ARE USED IN THE CONTRACT DOCUMENTS IN ACCORDANCE WITH SUCH RECOGNIZED MEANINGS.

Whenever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.001 Addendum:** Written instruments issued by the Contract Awarding Authority which clarify, correct or change the bidding requirements or the Contract Documents prior to the Due Date. "Addenda" is the plural form of Addendum.
- 1.002 Agreement:** Document signed by the Parties and binding the Parties, containing the name of Contractor, title and location of the Project, original Contract Time Requirements, Original Contract Amount, enumeration of documents included in the Contract and other provisions.
- 1.003 Allowance:** A not-to-exceed amount which is established between the Owner and the Contractor as part of the Contractor's Bid/Proposal when the precise scope of a particular line item has not been defined to a level which is adequate for the Contractor to provide definitive line item pricing for that particular scope of Work. The use of any Allowances by the Contractor in any Bid/Proposal will be subject to the Owner's sole approval. Additional Allowances or adjustments can be added to any Bid/Proposal upon the agreement of the Owner and Contractor.
- 1.004 Alternative Dispute Resolution:** The process by which a disputed Claim may be settled if the Owner and the Contractor cannot reach an agreement between themselves, as an alternative to litigation.
- 1.005 Application for Payment:** Is the Contractor's monthly pay application, the form of which must be acceptable to the Owner.
- 1.006 Bid/Proposal:** A complete, properly signed response to an Invitation for Bid/Proposal that, if accepted, would bind the Bidder/Offeror to perform the resultant Contract.
- 1.007 Bidder/Offeror:** A person, firm, or entity that submits a Bid/Proposal in response to an Invitation for Bids/Proposals. Any Bidder/Offeror may be represented by an agent after submitting evidence reasonably satisfactory to Owner demonstrating the agent's authority to bind the Bidder/Offeror. The agent cannot certify as to his own agency status.
- 1.008 Bid/Proposal Documents:** The Advertisement or Invitation for Bids/Proposals, Instructions to Bidders/Offerors, the Bid/Proposal Form, the Contract Documents and Addenda.
- 1.009 Bonds:** Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form the term refers to an individual instrument.
- 1.010 Calendar Day:** Any day of the week; no days being excepted. Work on Saturdays, Sundays, and/or Legal Holidays shall be as approved by and coordinated with Owner.
- 1.011 Change Directive:** A written directive to Contractor, signed by Owner, ordering a change in the Work that is within the general scope of the Contract and consisting of additions, deletions, or other revisions and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time Requirements, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive can change the Contract Amount or Contract Time Requirements, and the parties may reasonably expect that the

- change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.
- 1.012 Change Orders:** Written agreements entered into between Contractor and Owner authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Contract.
- 1.013 CMT Consultant:** Owner's consultant responsible for the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Work by the Owner as required by Section 2267.058(a) of the Texas Government Code.
- 1.014 Claim:** A written demand or written assertion by the Owner or the Contractor seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The Party making the Claim has the responsibility to substantiate the Claim.
- 1.015 Commissioning:** This is the process of verification, preliminary testing, starting up and functional operations testing of all equipment and systems which are part of the Project. The term "commissioning" shall specifically include the drafting, review and verification of all test plans and test reports for all equipment and systems which are part of the Project.
- 1.016 Construction Documents:** Means the Plans or Drawings and the Specifications and such other documents incorporated into the Contract Documents that set out the Contractor's scope of work to be performed under the Contract and/or the technical requirements for the design and construction of the Work.
- 1.017 Contractor:** Means the individual, firm, corporation, or other business entity identified as such in the Agreement, including its successors and its authorized representatives, with whom Owner has entered into the Contract for performance of the Work. The Contractor may also be referred to as the "Bidder" or "Offeror" in the Contract Documents, both of which will be understood to mean the "Contractor" as identified in the Agreement.
- 1.018 Construction Phase:** Means the implementation and execution of the Work required by the Contract Documents, commencing with the Notice to Proceed for the Work.
- 1.019 Contract:** The binding legal agreement between the Owner and the Contractor including all documents that have been incorporated into the agreement between Owner and Contractor for performance of the Work, as evidenced by the Contract Documents, and into which these General Conditions of the Contract (General Conditions) have been incorporated.
- 1.020 Contract Amount:** The monetary amount stated in the Agreement as it may be adjusted by Change Order or Change Directive, payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents.
- 1.021 Contract Awarding Authority:** The SJRA Board of Directors. When authorized by the SJRA Board of Directors, the SJRA General Manager may enter into Contracts on behalf of the SJRA.
- 1.022 Contract Documents:** Those items so designated in the Agreement. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of physical subsurface, geotechnical or environmental conditions are not Contract Documents.
- 1.023 Contract Time Requirements:** Means those requirements for the timely performance of the Work as set forth in the Agreement, including Milestones and the required dates for Mechanical Completion, Substantial Completion and Final Completion.
- 1.024 Cost of the Work:** Has the meaning set forth in Article 11.5.

- 1.025 Critical Path:** The longest series of tasks that runs consecutively from the beginning to the end of the Work, as determined by duration and workflow sequence. This longest path determines how quickly the Work can be completed, given appropriate resources.
- 1.026 Day:** Means that twenty-four hour period measured from midnight to the next midnight. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period.
- 1.027 Defective:** Means with respect to any Work, failing to conform in any respect to any one or more requirements of the Contract Documents.
- 1.028 Delay:** Means a delay, disruption, hindrance, interference, acceleration, recovery effort, or loss of productivity or efficiency, or any other impact whatsoever with respect to the Critical Path of the Work.
- 1.029 Discrepancies:** Means any error, omission, conflict, inconsistency, discrepancy, or lack of clarity in the Contract Documents discovered by the Contractor or that should reasonably have been discovered by the Contractor in fulfilling its obligations arising from the Contract and based upon its applicable standard of care as a Contractor and not as a design professional. The Discrepancy must be determinable by the Contractor through an evaluation of one or more drawings or specifications which are part of the Construction Documents, the above-grade Site conditions, geotechnical reports, surveys or other information provided to Contractor by Owner or any combination thereof.
- 1.030 Division 01:** Means the General Requirements (Division One) of the Specifications made a part of the Construction Documents, whether such Specifications are set out in a separate document or are part of the Project Manual.
- 1.031 Document Control:** This is the process of generating, transmitting, receiving, recording, filing and distributing documents and records generated by the Project Team Members and others during the execution of the Project. The process may utilize an electronic or paper format, or both.
- 1.032 Drawings:** Those portions of the Contract Documents which are graphic and pictorial representations of the scope, extent and character of the Work to be furnished and performed by Contractor and which have been approved by Owner. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings.
- 1.033 Due Date:** The date and time specified for receipt of Bids/Proposals or any other required submittal from the Contractor.
- 1.034 Equal:** The terms "equal" or "approved equal" shall have the same meaning.
- 1.035 Execution Date:** Date of last signature of the parties to the Agreement.
- 1.036 Field Order:** A written authorization by the Owner for a minor variation in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or Contract Time Requirements and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- 1.037 Final Completion:** The point in time when Owner determines that all Work has been completed and the Contract fully performed except for those obligations that survive final payment.
- 1.038 Force Account:** A basis of payment for the direct performance of Work with payment based on the Cost of the Work and consideration for overhead and profit, as set forth in Section 11.5.
- 1.039 Force Majeure:** For purposes of this Contract, events of "force majeure" shall consist of the following, to the extent that they are beyond the reasonable control of Contractor and also cause Delay to the Critical Path of the Project: acts of God, acts of war, terrorist acts, civil unrest, riots, labor disputes (excluding

disputes with laborers on the Project), unavoidable material shortages, fire or other casualty loss (not attributable to the acts or omissions of Contractor or any Subcontractor of any tier), newly announced or enacted governmental restrictions, or acts or inactions of governmental agencies other than the Owner and outside of the Owner's responsibility and control.

1.040 Hazardous Conditions: Are any materials, wastes, substances, and chemicals deemed to be hazardous under applicable Legal Requirements or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.041 Not used.

1.042 Legal Requirements: Are all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees of any governmental or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site or any Work.

1.043 Legal Holidays:

.1 The following are recognized by the Owner:

<u>Holiday Observed</u>	<u>Date</u>
New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

.2 If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.044 Major Subcontractor: Means a Subcontractor of the Contractor whose Subcontract amount with the Contractor exceeds or is reasonably expected to exceed the sum of \$50,000.00.

1.045 Manufacturer: An individual or entity who produces goods, materials, or equipment for use or sale and has a direct contract with Contractor or Supplier or any Subcontractor or Sub-Subcontractor to furnish materials or equipment to be incorporated in the Work.

1.046 Master Project Schedule: Is the most recent version of the Contractor's Project Schedule which has been formally accepted by the Owner.

1.047 Mechanical Completion: Means when the specified Work has been delivered, constructed, installed, and Contractor has successfully completed all required local functional testing, obtained Manufacturers' certificates of proper installation, and completed operations readiness testing such that all improvements and equipment are ready for performance testing.

1.048 Milestones: Means a significant event specified in the Owner's Project Schedule or the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.049 Modification: Means a written amendment to the Contract, including but not limited to (1) a Change Order, or (2) a Change Directive.

- 1.050 Notice to Proceed:** A Written Notice given by Owner to Contractor fixing the date on which the Contract Time Requirements will commence to run by establishing Date of Commencement of the Work covered by the Written Notice and on which Contractor shall start to perform Contractor's obligations under the Contract Documents for such Work.
- 1.051 Owner:** The San Jacinto River Authority (the "SJRA" or the "Owner"), a public entity, organized and existing under the laws of the State of Texas, acting through the SJRA Board of Directors, the SJRA General Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.
- 1.052 Owner's Independent Contractor:** A contractor who has been employed separately by the Owner and is not a Subcontractor of the Contractor.
- 1.053 Owner's Project Schedule:** Means the dates indicated in the Instructions to Bidders/Offerors and all Contract Time Requirements.
- 1.054 Owner's Representative:** The designated representative or representatives of the Owner. Owner's Representative may be designated from the Owner's staff, the Principal Architect/Engineer, an Owner's Independent Contractor(s), or an Owner's consultant(s) employed for the purpose of representing the Owner on a given Project or Projects.
- 1.055 Partial Occupancy or Use:** Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, provided Owner and Contractor have, with respect to such part of the Work, accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, utilities, corrective work, insurance and warranties.
- 1.056 Pre-construction Conference:** Is the required meeting between the Owner and the Contractor before Work can be initiated in the field. Contractor will have made all of the required submittals prior to the date of the Pre-construction Conference in accordance with Section 2.4.2.
- 1.057 Preliminary Project Schedule:** Is the initial Contractor's Schedule for the Work required under Section 2.4.2 and must conform to and be integrated with the Milestones contained in the Owner's Project Schedule for the Work and is subject to Owner's approval.
- 1.058 Principal Architect/Engineer (Engineer):** The Owner's design professional identified as such in the Contract. The terms "Principal Architect/Engineer" and "Engineer", as indicated with initial capital letters, mean the same entity, as defined in the Agreement. References to Principal Architect/Engineer in these General Conditions shall refer to the Owner's Principal Architect/Engineer (Engineer), except as otherwise expressly provided herein. Nothing contained in the Contract Documents shall create any contractual or agency relationship between the respective Principal Architect/Engineer and Contractor. References can be singular or plural and will apply to all of the Principal Architects or Engineers as may be applicable.
- 1.059 Project:** Total construction, of which the Work performed under Contract may be the whole or part, and which may include construction by the Owner or by Owner's Independent Contractors.
- 1.060 Project Manual:** That portion of the Contract Documents which may include the following: introductory information; bidding requirements, Contract forms, Agreement, General Conditions, Supplemental General Conditions; General Requirements; Specifications; Drawings; Project Safety Manual; and Addenda.
- 1.061 Project Schedule:** Is the Contractor's most recent schedule submitted to the Owner.

- 1.062 Project Team:** Means the Owner, the Owner's Representative, the Contractor, the Principal Architect/Engineer, any consultants of the Principal Architect/Engineer designated by the Owner, any Owner's Independent Contractors, and any Owner's consultants employed for the purpose of programming, design, and construction of the Project. The constitution of the Project Team may vary at different stages of the Work. The Project Team will be designated by Owner and may be modified from time to time by Owner.
- 1.063 Not used.**
- 1.064 Recovery Schedule:** Means a short duration schedule implemented to bring the Work back on schedule to achieve the Contract Time Requirements for the Project.
- 1.065 Rental Rate Blue Book:** Is the document published by EquipmentWatch which identifies the rental rates for equipment in the construction industry.
- 1.066 Resident Project Representative:** The authorized representative of the Owner's staff, the Principal Architect/Engineer, or an Owner's consultant who may be assigned to the Site or any part thereof. Not all Projects will utilize a Resident Project Representative.
- 1.067 Schedule of Values:** Is a schedule, prepared and maintained by the Contractor, allocating portions of the Contract Amount to various portions of the Work, including a tabulation of all of the costs of the various Subcontracts and materials which in the aggregate make up the Contract Amount. The Schedule of Values shall be subject to Owner's approval and, after such approval, be used as the basis for reviewing the Contractor's Applications For Payment.
- 1.068 Scope of Work:** Is the entire Work which is included within the Contract for this Project. This term can also be used to describe the subset of Work which is included within a particular Trade Subcontract.
- 1.069 Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled for the Work by or for Contractor, subcontractor or supplier and submitted by Contractor as required by the Contract Documents.
- 1.070 Site:** Is the land or premises on which the Project is located.
- 1.071 Specifications:** Those portions of the Contract Documents furnished by Owner through its respective Principal Architects/Engineers consisting of written technical descriptions as applied to the Work, which set forth to Contractor, in detail, the requirements which must be met by all materials, equipment, construction, systems, standards, workmanship, and services as applied to the Work and certain administrative requirements and procedural matters.
- 1.072 Start-Up:** This is the subset of Commissioning at which time the Project equipment and / or systems are placed in full operation in preparation for the operational testing phase of the Project.
- 1.073 Stipulated Sum:** Single lump sum amount stated for the completion of the Work or a portion thereof required by this Contract.
- 1.074 Substantial Completion:** The stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so Owner can occupy or utilize the Work for its intended use, as evidenced by a Certificate of Substantial Completion approved by Owner, as further defined in Article 14.07.
- 1.075 Subcontractor (or Trade Subcontractor):** An individual, firm, corporation, or other business entity having a direct contract with the Contractor for the performance of a portion of the Work under the Contract. A Subcontractor includes a supplier of tools, equipment or materials as well as an individual or entity renting tools or equipment to the Contractor. For purposes of this

- Contract, unless designated otherwise, the term "Subcontractor" shall include all Sub-Subcontractors and Suppliers in contractual privity to the Subcontractor.
- 1.076 Sub-Subcontractor:** An individual, firm, corporation, or other business entity who has a direct or indirect contract with a Subcontractor of any tier to perform a portion of the Work, to furnish tools, equipment or materials, or to rent tools or equipment. For purposes of this Contract, unless designated otherwise, the term "Sub-Subcontractor" shall include all lower tier subcontractors and Suppliers in contractual privity to the Sub-Subcontractor.
- 1.077 Superintendent:** The representative of Contractor authorized in writing to receive and fulfill instructions from the Owner's Representative, and who shall supervise and direct construction of the Work.
- 1.078 Supplemental General Conditions:** The part of the Contract Documents which amends or supplements the General Conditions, but only to the extent provided therein. Not all Projects will utilize Supplemental General Conditions. All General Conditions which are not so amended or supplemented remain in full force and effect.
- 1.079 Supplier:** An individual or entity having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment or products, or services to be incorporated in the Work by Contractor or any Subcontractor.
- 1.080 Surety:** Corporate entity that is bound by one or more Bonds, and is responsible for the completion of the Work, including during the correction period, and for payment of debts incurred by Contractor or Subcontractors for work, services, labor, materials or equipment provided in connection with the Work. Surety shall include any co-surety or reinsurer, as applicable.
- 1.081 Underground Improvements:** Is defined in Section 4.2.3 of these General Conditions.
- 1.082 Unit Price:** An amount stated in the Contract for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.
- 1.083 Unit Price Quantities:** Quantities indicated in the Contract that are approximations made by the Owner for contracting purposes.
- 1.084 Unit Price Work:** Is any Work which is to be executed based upon a Unit Price for that Work which has been agreed upon in advance between the Parties in accordance with Section 11.6 of these General Conditions.
- 1.085 Unusual Inclement Weather:** Is defined in Section 12.2 of these General Conditions.
- 1.086 Value Analysis:** Means the systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the Project, reliably, without sacrificing safety, necessary quality, or environmental attributes of the Project.
- 1.087 Work:** The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents, including all labor, products, equipment, material, supervision, insurance, temporary facilities and services provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a portion of the Project.
- 1.088 Working Day:** Any day of the week, not including Saturdays, Sundays, or Legal Holidays in which conditions under the Contractor's control will permit work for a continuous period of not less than seven (7) hours during Working Hours. Upon agreement with Owner, work on Saturdays, Sundays and/or Legal Holidays may be allowed and will be considered a Working Day.

- 1.089 Working Hours:** Those hours in which the Work shall be performed. Except as otherwise authorized in writing by Owner's, all Work shall be done between 7:00 a.m. and 6:00 p.m. However, emergency work may be done without prior permission as indicated in Section 6.11.07. Night Work may be revoked at any time by Owner if Contractor fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.
- 1.090 Written Notice:** Written communication between Owner and Contractor. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or Contractor's duly authorized representative, or if delivered at or sent by registered or certified mail with proper postage affixed to the attention of Owner's Representative or Contractor's duly authorized representative at the last business address known to the party giving notice, or by facsimile to the facsimile number known to the party giving notice, provided any notice delivered by facsimile after 5:00PM shall be deemed delivered on the next business day.

ARTICLE 2 - PRELIMINARY MATTERS

- 2.1 Delivery of Contract, Bonds, Insurance, etc.:** After written notification to Contractor of anticipated award of Contract, and at least ten (10) days prior to the SJRA Board of Directors Meeting at which a contract award is anticipated, Contractor shall deliver to Owner original, hard copies of the signed Agreement, unsigned Bond forms, required evidence of insurance, including without limitation, all certificates of insurance and endorsements, signed disclosure of interested parties (Form 1295), signed Conflict of interest Questionnaire, and signed and notarized Verification Company Does Not Boycott Israel, as identified in the Bid/Proposal Documents. Within three (3) days of Contractor's receipt of the fully executed Agreement, the Contractor shall deliver the original, hard copy fully executed Bonds to Owner. The requirements of this Section 2.1 apply regardless of whether or not the Agreement is also executed using electronic signatures or transmitted electronically. Any violation of this Section 2.1 by Contractor shall render the Contract voidable by Owner.
- 2.2 Copies of Documents:** Owner shall furnish to Contractor up to ten (10) copies of the Contract Documents unless otherwise specified. Additional copies will be furnished, upon request, at a cost to be specified by the Owner.
- 2.3 Commencement of Contract Time Requirements; Notice to Proceed:** The applicable Contract Time Requirements will begin to run on the day indicated in the Notice to Proceed for the Work covered in such Notice.
- 2.4 Before Starting Construction:**
- 2.4.1** No Work shall be done at the Project Site prior to the Pre-construction Conference without Owner's written approval. Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents to check and verify pertinent figures shown thereon and compare them accurately to all applicable field measurements and conditions and other information known to Contractor and other information made available to Contractor by Owner. Contractor shall promptly report in writing to Owner's Representative any conflict, error, ambiguity or Discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Owner's Representative before proceeding with any Work affected thereby. Contractor shall be liable to Owner for failure to report any conflict, error, ambiguity or

Discrepancy in the Contract Documents about which Contractor knew or reasonably should have known.

2.4.2 Successful completion of the Work within the applicable Contract Time Requirements is of primary importance. **Time is of the essence to this Contract.** Therefore, the Contractor hereby agrees to submit to the Owner's Representative for review and approval, or acceptance, as appropriate, all information required by this section, including a Preliminary Project Schedule for the Work within thirty (30) days from date of the Owner's issuance of the Notice To Proceed with the Work or at the scheduled Pre-construction Conference, whichever is later. The Owner's Representative will schedule the Pre-construction Conference upon the timely submittal of the required documents, unless the allowable time for providing the required submittals is extended by written mutual agreement. Prior to the date scheduled for the Pre-construction Conference, the Contractor will submit the following to the Owner:

- .01** A proposed Preliminary Project Schedule (the "Preliminary Project Schedule") for the Work developed using the scheduling software authorized in Section 6.03 of the General Conditions, unless otherwise approved by Owner, to confirm that all Work will be completed within the respective Contract Time Requirements. The Preliminary Project Schedule must satisfy the requirements of Section 6.03 of these General Conditions and must be prepared in accordance with Division 01 - Section 01 32 16, Construction Progress Schedules. Such Preliminary Project Schedule shall also conform to the Owner's Project Schedule. This Preliminary Project Schedule must contain sufficient detail to indicate that the Contractor has properly identified required Work elements and tasks, has provided for a sufficient and proper workforce and integration of Subcontractors and Suppliers, has provided sufficient resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract Time Requirements. The Project Schedule and Schedule of Values shall be developed together to permit the Work progress to be accurately reflected in the Contractor's Applications for Payment.
- .02** An organizational chart showing the principals and management personnel who will be involved with the Work, including each one's responsibilities for the Work;
- .03** A complete listing of the Contractor's key employees proposed for the Work. List each one by name and job title, and show length of employment with Contractor.
- .04** Emergency contact telephone numbers for the Project Manager and the project Superintendent.
- .05** A discussion and confirmation of the Contractor's commitment to health, safety and environment by providing a copy of its Health, Safety and Environmental Policies, employee's safety handbook and the safety records for the past three years of Contractor's proposed project manager and Superintendent;
- .06** A preliminary schedule of Shop Drawings and sample submittals;
- .07** A preliminary Schedule of Values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. At a minimum, the schedule of values

shall be broken out by trade and split between materials and labor as commented on and accepted by Owner. Such prices will include overhead and profit applicable to each item of Work;

- .08** A letter designating Contractor's Superintendent and project manager, and a confirmation of past project experience for the Contractor's Superintendent and project manager specifically applicable to the Work;
- .09** A letter designating the "Competent Person(s)" on general safety and excavation safety measures along with certifications or other documentation of the safety representative's qualifications;
- .10** If applicable, an excavation safety system plan;
- .11** If applicable, a plan illustrating proposed locations of temporary facilities;
- .12** A letter designating the Texas Registered Professional Land Surveyor for layout of the Work, if the Work requires the services of a licensed surveyor.

2.4.3 Neither the rejection, acceptance, comment on nor the approval of any of the submittals required in Section 2.4.2, above, will constitute either the adoption, affirmation, or direction of the Contractor's means and methods of the performance of the Work which remain the sole responsibility of the Contractor. Owner shall not be responsible for, and will not have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Owner shall not be responsible for or have control or charge over the acts or omissions of Contractor, Subcontractors or any of their agents or employees or any other persons performing any of the Work.

2.5 Pre-construction Conference: Prior to commencement of Work at the Site, Contractor must attend a Pre-construction Conference with Owner's Representative and others required by Owner, and participate in an inspection of the Project Site if required by Owner.

2.6 Initially Acceptable Schedules: Unless otherwise provided in the Contract Documents, Contractor shall obtain approval of Owner of the Preliminary Project Schedule submitted in accordance with Section 2.4.2.01 before the first progress payment will be made to Contractor. The Preliminary Project Schedule must provide for an orderly progression of the designated portion of the Work to completion within the Contract Time Requirements, including any specified Milestones, and shall permit the Work progress to be accurately reflected in the Contractor's Applications for Payment. Approval of the Preliminary Project Schedule by Owner will not impose on Owner responsibility or liability for the sequencing, scheduling or progress of the Work, nor shall it constitute interference with, nor shall it relieve Contractor from Contractor's full responsibility for the Work. Contractor's schedule of Shop Drawings and sample submissions shall provide adequate time, in Owner's opinion, for properly reviewing and processing the required submittals. Contractor's Schedule of Values must conform to the requirements set forth in the Contract. The process of approving Preliminary Project Schedule and updates to the Master Project Schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on the Preliminary Project Schedule or the Master Project Schedule, or approval of the logic set out in the Preliminary Project Schedule

or Master Project Schedule. Approval of the Preliminary Project Schedule, the Master Project Schedule or any updates thereto does not constitute a warranty by the Owner to furnish any Owner-furnished information or services any earlier than Owner would otherwise be obligated to furnish that information or services under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not serve as any basis for a Claim for additional compensation or adjustment of the Contract Time Requirements.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent: The intent of the Contract Documents is to include all information necessary for the proper execution and timely completion of the Work by Contractor. The Contractor will execute the Work described in and reasonably inferable from the Contract Documents as necessary to produce the results intended by the Contract Documents.

3.1.1 The Contract Documents are complementary in nature, and what is shown in one location on the Drawings or Specifications shall be construed to apply to all other similar locations of the Drawings and Specifications. In the event of any internal inconsistency in either the Drawings or Specifications, or with each other, the Owner shall resolve such inconsistency and Contractor shall perform in accordance with the Owner's determination. In the determination of the Contract Amount, the Contractor has provided for such further development consistent with the Contract Documents and reasonably inferable therefrom. It is the intent and understanding of Contractor that the Contract Amount includes the construction of completed and tested Work by the Contractor, including all devices, fasteners, materials or other work not shown in the Drawings and Specifications but which are reasonably inferable therefrom and any and all incidental accessories necessary to make the Work complete and operable in all respects (even if not specified in the description of the Work, but necessary for proper installation and operation of the Work under the Drawings and Specifications), all of which shall be included in the Contract Amount.

3.1.2 The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence of the Contractor required by the Contract Documents. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Change Directive. The Contract Documents shall be interpreted with the understanding that a common sense approach will be utilized as necessary so that the Contract Documents produce the intended results for the benefit of the Owner as follows:

- .1** The Contract Documents are intended to be complimentary and interpreted in harmony so as to avoid conflict. Words and phrases will be interpreted in a manner consistent with construction and design industry standards. What is required by any Contract Document shall be required by all of them;
- .2** In the event of any inconsistency, conflict or ambiguity between or among the Contract Documents that cannot be harmonized so as to avoid conflict, the Contract Documents shall take precedence in the

following order: Modifications, documents amending, modifying or supplementing the Contract Documents pursuant to Article 3.3 of the General Conditions, the Agreement, Exhibits to the Agreement, the Supplemental Conditions (if any), the General Conditions, Instructions to Bidders/Offerors, Notice to Proceed, Addenda, Specifications, Drawings, Contractor's Bid/Proposal, Documentation submitted by Contractor prior to Notice of Award and attached to the Agreement, Performance, Payment and Maintenance Bonds; and

- .3** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Party shall be construed to include such Party's successors and assigns (subject to the restrictions contained herein), and (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to the entirety of the Contract Documents and not to any particular provision, unless the context clearly dictates otherwise. No provision of this Agreement shall be interpreted or construed against any Party because such Party or its legal representative drafted such provision.

3.1.3 Standards, Specifications, Codes, Laws, and Regulations

- .1** Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Legal Requirements, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Legal Requirements in effect at the time of opening of Bids/Proposals (or on the Effective Date of the Agreement if there were no Bids/Proposals) and as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, 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, or the Principal Architect/Engineer, or any of their related entities 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.

3.2 Reporting and Resolving Discrepancies: If, during the performance of the Work, Contractor discovers any Discrepancy within the Contract Documents or

between the Contract Documents and any provisions of any Legal Requirements or of any such standard, specification, manual or code or instructions of any Supplier, Contractor shall report it to Owner's Representative in writing at once, and Contractor shall not proceed with the Work affected thereby until a clarification, an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Section 3.3.1 or Section 3.3.2 below. Contractor shall be liable to Owner for failure to report any such Discrepancy that Contractor knew about or should reasonably have discovered in fulfilling its obligations arising from the Contract.

3.3 Clarifying, Amending and Supplementing Contract Documents:

3.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- .1 Change Order.
- .2 Change Directive.

3.3.2 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work that do not affect the Contract Amount or Contract Time Requirements may be authorized, in one or more of the following ways:

- .1 Field Order.
- .2 Shop Drawing or sample approved in accordance with the Contract Documents.
- .3 Written interpretation or clarification issued in accordance with the Contract Documents.

3.4 Reuse of Documents Prohibited: Contractor and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Owner: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of Principal Architect/Engineer or Principal Architect/Engineer's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of Owner and Principal Architect/Engineer. Contractor may retain one (1) set of such documents for its records.

3.5 Not Used.

3.6 Electronic Data: Owner utilizes Microsoft SharePoint or similar document management software (the "Program") for its projects. Contractor will be provided access to the Program solely for purposes of Contractor's performance of its obligations under the Contract, at no cost to Contractor. The Program may be used to handle management, distribution and submission of all Project documents (including without limitation drawings, specifications, submittals, RFIs, schedules, etc.). Contractor must access the Program for all such Project documents, unless otherwise directed in writing by Owner. Contractor is responsible for all of the content contained in the Program related to the Project, including but not limited to all periodic updates, revisions and additions to the Project documents contained therein. All Project documents contained in the Program shall be deemed delivered to Contractor. Contractor is responsible for ensuring and maintaining compatibility of

Contractor's computer systems with the Program. Contractor shall take all necessary precautions to prevent any unauthorized access to the Program and the Project documents contained therein, and to prevent any virus or malware infiltration of the Program. **CONTRACTOR SHALL COMPLY WITH ALL MICROSOFT OR OTHER SIMILAR DOCUMENT MANAGEMENT SOFTWARE VENDOR TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR'S USE OF THE PROGRAM, AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITY, LOSS, COST AND EXPENSE, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, INCURRED AS A RESULT OF ANY CONTRACTOR BREACH OF SUCH TERMS AND CONDITIONS (COLLECTIVELY "CLAIMS" AS USED IN THIS SECTION 3.6), EVEN IF SUCH CLAIMS ARE CAUSED IN PART BY, BUT NOT TO THE EXTENT CAUSED BY, THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF OWNER, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF OWNER, OTHER THAN CONTRACTOR OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.** Any use, interpretation, conclusion or information obtained or derived from such Program information and documents will be at the user's sole risk. If there is a conflict or inconsistency between the Program information or documents and any hard copies furnished to Contractor, Contractor shall promptly notify Owner and Principal Architect/Engineer in writing, and shall not rely upon such Program information or documents or the hard copies furnished to Contractor until such conflict or inconsistency is resolved in writing by Owner or Principal Architect/Engineer. When distributing documents in electronic media format, Owner makes no representations as to compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those which are used by Owner or the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands: The Owner will provide access to all land and interests in land required for the Work and will notify Contractor of any known restrictions in such access. Contractor may make a Claim if, after having received seventy-two hours' prior written notice, the Owner fails to provide timely access to the Work. Contractor is solely responsible for and must obtain any additional temporary construction facilities, stockpiling or storage sites not otherwise provided by the Owner.

4.1.1 In the event that Owner has agreed to provide any special licenses or easement(s) relating to the Work and in the event that Delays in the Work that are the responsibility of the Contractor cause the Work to be Delayed to the point that the ending date of such a license or easement has been exceeded, the Contractor shall reimburse the Owner for any additional costs and/or expenses incurred by Owner (including but not limited to reasonable attorneys' fees) in endeavoring to extend or renew the duration of any such license or easement in order to facilitate the completion of the Work.

4.2 Subsurface and Physical Conditions:

- 4.2.1** Contractor specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the Site of the proposed Work and is thoroughly familiar with all of the conditions surrounding construction of the Project, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper, to satisfy itself as to conditions, including but not limited to subsurface conditions, at the Site of the Work, and to inform itself by its independent research, tests and investigations of the difficulties to be encountered and to judge for itself the accessibility of the Work and all attending circumstances affecting the cost of doing the Work or time required for its completion. Contractor acknowledges the receipt of the geotechnical report, if any, and agrees that the report is not a guarantee of specific Site conditions which may vary between boring locations and over time, and is not a Contract Document. Contractor may not rely upon or make any Claim against Owner with respect to any Contractor interpretation of or conclusion drawn from any data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings. Contractor shall make no claims against the Owner and shall bear all risk of losses, if any, resulting on account of the amount and character of the Work, or because the conditions under which the Work must be done vary or differ from conditions or information contained in the Contract Documents, or are different from what were estimated or anticipated by it.
- 4.2.2** Except as provided in Section 4.2.5 below, Contractor must notify Owner in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the Site which are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or other information provided by Owner to Contractor or (ii) unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of Work being performed under this Contract. Contractor may not disturb the conditions until Owner conducts an investigation of such conditions. Upon receipt of notice from the Contractor, the Owner's Representative will promptly investigate such conditions with the Principal Architect/Engineer.
- 4.2.3** Notwithstanding any other provision of this Contract, Contractor is solely responsible for the location and protection of any and all underground utilities, pipelines, facilities and improvements, whether public or private, and whether utility_distribution, supply or collection systems, or lines connecting customers to utility distribution, supply or collection systems, and including but not limited to all electric, telecommunication, gas, water, storm sewer and sanitary sewer lines, and all pipes, conduits, cables, wires, manholes, vaults, tanks, and tunnels (collectively "Underground Improvements"). Contractor shall notify "One Call" and shall retain a private underground locator service, and shall exercise due care to locate, mark, uncover and otherwise protect all Underground Improvements in the construction zone and any of Contractor's Work or storage areas. Contractor's responsibility for the location and protection of Underground Improvements is primary and non-delegable. **Contractor shall defend and indemnify Owner from and against any losses, Claims, expenses, costs or penalties (including fines that may be levied against Owner) that may result from damage to any Underground Improvements in the Work area.** Owner reserves the right to repair any damage Contractor causes to such Underground Improvements

at Contractor's expense or to offset the cost of such repairs against funds then or thereafter due Contractor pursuant to the Contract. If any Underground Improvements are damaged by Contractor, Contractor shall give verbal notice to the Owner's Representative within one (1) hour and written notice within twenty-four (24) hours after such damage occurs.

4.2.4 Contractor shall take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of Owner and Archeology Division, Texas Historical Commission. When such objects are uncovered unexpectedly, Contractor shall stop all Work in close proximity and immediately notify the Owner's Representative and Archeology Division, Texas Historical Commission of their presence. Contractor shall reference Texas Water Development Board Emergency Conditions for cultural resources in the event of accidental discoveries. Contractor shall not disturb them until written permission and permit to do so is granted by the governing authorities and Owner. All primitive rights to antiquities uncovered on Owner's property shall remain property of State of Texas, Archeology Division, Texas Historical Commission in accordance with the Texas Natural Resources Code. If it is determined by Owner, in consultation with Archeology Division, Texas Historical Commission, that exploration or excavation of primitive records or antiquities on Project Site is necessary to avoid loss, Contractor shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in Contractor's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time Requirements will be equitably adjusted.

4.2.5 Environmental Conditions: Contractor shall immediately stop all Work and must notify Owner in writing as soon as reasonably possible, but no later than one (1) calendar day after any significant environmental conditions are encountered at the Site which are or may be subject to any Legal Requirements. Contractor shall reference Texas Water Development Board Emergency Conditions for threatened and endangered species in the event of accidental discoveries. Contractor shall not disturb the conditions until Owner conducts an investigation. Owner's Representative and Principal Architect/Engineer will promptly investigate such conditions. If it is determined that such conditions are subject to Legal Requirements, did not result from any Hazardous Conditions brought to the Site by Contractor or any Subcontractor, and cause an increase or decrease in the Contractor's cost of or time required for performance of any part of the Work, Owner's Representative will recommend an equitable adjustment in the Contract Amount or Contract Time Requirements, or both. If it is determined that such conditions are not subject to Legal Requirements or resulted from any Hazardous Conditions brought to the Site by Contractor or any Subcontractor, Owner's Representative will notify Contractor in writing of such findings and the Contract Amount and Contract Time Requirements will not be adjusted. Contractor may dispute such a determination in accordance with Article 16.

4.3 Reference Points: Unless otherwise specified, primary control lines and bench marks suitable for use in layout will be furnished by Owner. Lay out of the Work shall be performed in accordance with the requirements of Division 01. Controls, bench marks and property boundary markers shall be carefully preserved by

Contractor by use of flags, staffs or other visible devices and in case of destruction or removal by Contractor, any Subcontractor or their employees, such controls and bench marks shall be replaced by a Texas Registered Professional Land Surveyor at Contractor's expense. Any SJRA survey monuments damaged by Contractor will be reestablished by Owner at Contractor's expense.

4.4 Hazardous Conditions:

4.4.1 Contractor shall not be responsible for any Hazardous Conditions uncovered or revealed at the Site which were not shown, indicated or identified in the Contract Documents to be within the scope of the Work, and which were not brought onto the Site by the Contractor or the Subcontractors. Contractor shall immediately notify Owner's Representative of any such suspected Hazardous Conditions encountered at the Site before or during performance of the Work, and shall stop Work immediately in the affected area, and take all necessary precautions to avoid disturbance of the Hazardous Conditions.

4.4.2 Contractor shall be responsible for any Hazardous Conditions brought to the Site by Contractor, Subcontractor, Suppliers or anyone else for whom Contractor is responsible.

4.4.3 No asbestos-containing materials or lead-based paint shall be incorporated into the Work or brought on the Project Site without prior written approval of Owner. The Contractor shall not knowingly use, specify, request or approve for use any asbestos containing materials or lead-based paint without the Owner's written approval. When a specific product is specified, the Contractor shall endeavor to verify that the product does not include asbestos containing material or lead-based paint.

4.4.4 Refer to Section 1.040 Hazardous Conditions definitions and to Division 01 for procedures related thereto.

- .1** Not used.
- .2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent consultants to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- .3** Contractor shall be obligated to resume Work at the affected area of the Project only after Owner or its qualified independent consultant provides written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site. The Contractor shall be responsible for continuing the Work in the unaffected portion of the Project and Site.
- .4** Contractor will be entitled, in accordance with these General Conditions, to an adjustment in its Contract Amount and/or Contract Time Requirements to the extent Contractor's cost of performance is

actually increased and/or the Critical Path of the Work has been delayed by the presence of Hazardous Conditions discovered at the Site.

- .5** Notwithstanding anything in the Contract Documents to the contrary, Owner, its officers, directors, agents and employees, and the Owner's Representative, the Principal Architect/Engineer, the Principal Architect/Engineer's Consultants and Subconsultants and their respective officers, directors, partners, employees and agents are not responsible for Hazardous Conditions introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable. Contractor shall be responsible for use, storage and remediation of any Hazardous Conditions brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible. **Contractor shall defend, indemnify and hold harmless Owner and Owner's officers, directors, employees and agents and the Owner's Representative, the Principal Architect/Engineer, the Principal Architect/Engineer's Consultants and Subconsultants and their respective officers, directors, partners, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and court costs, arising out of or resulting from Hazardous Conditions introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Contract, the obligation to defend, indemnify and hold harmless set forth in this Section 4.4.4.5 shall not apply to the extent prohibited by Subchapter C of Chapter 151 of the Texas Insurance Code.**

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies: All Bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly admitted and licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. Bonds shall be in a form acceptable to Owner and shall be issued by a surety which complies with the requirements of Chapter 3503 of the Texas Insurance Code. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury and has an A.M. Best rating of A-, X or better.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

- .1** Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the

- division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.
- .2** 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 Owner.
 - .3** Persons providing services on the Project 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.
 - .4** 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.
- 5.2.2** Contractor shall 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, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
- 5.2.3** Contractor must provide a certificate of coverage to Owner prior to being awarded the Contract.
- 5.2.4** 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 Owner showing that coverage has been extended.
- 5.2.5** Contractor shall obtain from each person providing services on the Project, and provide to Owner:
- .1** A certificate of coverage, prior to that person beginning Work on the Project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - .2** No later than seven (7) days after receipt by 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.
- 5.2.6** Contractor shall retain all required certificates of coverage for the Duration of the Project and for one (1) year thereafter.
- 5.2.7** Contractor shall notify Owner in writing by certified mail or personal delivery, within ten (10) days after Contractor knew or should have known,

of any change that materially affects the provision of coverage of any person providing services on the Project.

- 5.2.8** Contractor shall post on each Project Site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 5.2.9** Contractor shall contractually require each person with whom it contracts to provide services on the 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, Section 401.011(44) for all of its employees providing services on the Project, for the Duration of the Project;
 - .2** Provide to 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 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 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 coverage, 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 (1) year thereafter;
 - .6** Notify Owner in writing by certified mail or personal delivery, within ten (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 require each person with whom it contracts, to perform as required by these Section 5.2.9.1 through Section 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- 5.2.10** By signing this Contract or providing or causing to be provided a certificate of coverage, Contractor is representing to 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 division. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

5.2.11 Contractor's failure to comply with any of these provisions is a breach of the Contract by Contractor which entitles Owner to declare the Contract void if Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from Owner.

5.3 Additional Insurance Requirements:

5.3.1 Contractor And Subcontractor Provided Insurance: Contractor and Subcontractors shall obtain and maintain insurance coverages described in Sections 5.3.1.01 through 5.3.1.08 and, to the extent applicable, Sections 5.3.1.09 through 5.3.1.11 through the end of the warranty period (with the exception of Builders' Risk, which is required to remain in effect at least until final payment) or such longer periods of time as may be set forth herein; except that Subcontractors' limits of coverage for Commercial General Liability shall be no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, Subcontractors shall not be required to maintain separate Builder's Risk Insurance, Subcontractors shall not be required to maintain Environmental Impairment Liability or Pollution Liability Insurance unless their Scope of Work involves Hazardous Conditions in which event such Subcontractors shall maintain such insurance with limits of coverage not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, Subcontractors shall not be required to maintain Professional Liability coverage unless their Scope of Work includes professional services in which event such Subcontractors shall maintain such insurance with limits of coverage not less than \$1,000,000 per occurrence and in the aggregate, and Subcontractors' limits of coverage for Umbrella Liability shall be no less than \$3,000,000. All insurance secured by Contractor, Subcontractors and Sub-Subcontractors pursuant to Owner's requirements under this provision shall be in accordance with Article 5 of the General Conditions and Section 5.3.1.01 as follows.

5.3.1.01 General Requirements.

- .01** Contractor shall carry insurance in the types and amounts indicated below for the Duration of the Project or such longer periods of time set forth below, and shall include coverage for items owned by Owner in the care, custody and control of Contractor prior to and during construction and the warranty period.
- .02** Contractor shall forward Certificates of Insurance evidencing the coverage and limits of insurance required herein to Owner with copies to each additional insured and loss payee listed in the Supplemental Conditions (if any), before the Contract is executed. Contractor shall also provide copies of policy endorsements and excerpts from policies to evidence the required coverages. Contractor shall not commence Work until the required insurance is obtained and until such insurance has been reviewed and approved by Owner. Approval of insurance by Owner shall not relieve or decrease the liability of Contractor hereunder and shall not be construed to be a limitation of liability on the part of Contractor. Contractor must also forward new Certificates of Insurance to Owner whenever a previously identified policy period has expired as verification of continuing coverage.
- .03** Contractor's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of A-, X or

- better, except for pollution liability or environmental impairment liability insurance which shall be written by companies with A.M. Best ratings of A- or better.
- .04** All endorsements naming the Owner as an additional insured, waivers of subrogation in favor of Owner, and notices of cancellation endorsements as well as the Certificates of Insurance shall specify Owner's name and address as: the San Jacinto River Authority, 1577 Dam Site Road, Conroe, Texas 77304.
 - .05** The "other" insurance clause shall not apply to the Owner where the Owner is an additional insured shown on any policy. Insurance policies required by the Contract shall be primary and non-contributing with respect to any other insurance coverage maintained by or available to the Owner and/or other additional insureds. The policies shall be endorsed to provide severability of interests.
 - .06** If underlying insurance policies are not written with coverage limits for at least the amounts specified below, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage and have the same inception and termination dates as the primary coverage.
 - .07** Owner shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies. Failure of Contractor to provide certified copies, as requested, is a material breach of the Contract.
 - .08** Owner reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as Contractor.
 - .09** All insurance policies required to be maintained will contain a provision or endorsement stating that the coverage afforded will not be cancelled until at least 30 days' prior written notice has been provided to the Contractor and to the Owner. Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
 - .10** Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. The amounts of all deductibles or self-insured retentions shall be disclosed on the Certificates of Insurance. Any deductible or self-insured retention in excess of \$25,000 is subject to the written approval of Owner.
 - .11** Contractor shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages required by the Contract.
 - .12** If Owner-owned property is being transported or stored off-site by Contractor, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect Owner's property.

- .13** The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of Contractor. The inclusion of required minimum insurance limits in this Contract shall not be construed as limiting the Owner's or other additional insured's rights under any policy with higher limits. The minimum insurance limits set forth in this Contract shall be deemed to be amended to any higher limits actually contained in Contractor's insurance policies.
- .14** The Contractor hereby waives its rights of recovery from the Owner, its officers, directors, agents and employees, and the Owner's Representative, the Principal Architect/Engineer, the Principal Architect/Engineer's Consultants and Subconsultants and their respective officers, directors, partners, employees and agents with regard to all causes of property and/or liability loss covered by insurance required by this Contract, and shall cause a waiver of subrogation endorsement to be provided in favor of the Owner, its officers, directors, agents and employees, and the Owner's Representative, the Principal Architect/Engineer, the Principal Architect/Engineer's Consultants and Subconsultants and their respective officers, directors, partners, employees and agents on all insurance coverage carried by the Contractor, whether required herein or not.
- .15** Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If Contractor shall fail to remedy such breach, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to Owner from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by Owner. In the event of any failure by Contractor to comply with the provisions of this Contract, Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that Owner shall have no obligation to do so and if Owner shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- .16** Additional insured status shall be provided in favor of the Owner, its officers, directors, agents and employees, and the Owner's Representative, the Principal Architect/Engineer, the Principal Architect/Engineer's Consultants and Subconsultants and their respective officers, directors, partners, employees and agents on all insurance policies other than Workers' Compensation, Professional Liability and Builder's Risk, on ISO forms CG 20 10 10 01 and CG 20 37 10 01 or their combined equivalent. It is the intent of the parties to this Contract that this Additional Insured status shall include coverage for completed operations and for the additional insureds' concurrent and sole negligence. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Contract, this additional insured obligation shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code.
- .17** Contractor's obligations under this Contract to defend, indemnify and/or hold harmless Owner or other parties shall not be limited in any way by any insurance required of Contractor by this Contract or otherwise provided or maintained by

Contractor. Any insurance obligations of Contractor under this Contract are independent from Contractor's obligations under this Contract to defend, indemnify and/or hold harmless Owner or other parties.

5.3.1.02 Business Automobile Liability Insurance: Provide coverage for all owned, non-owned and hired vehicles. The policy shall provide coverage in the following types and amounts:

- .1 A minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage.
- .2 A minimum combined single limit of \$1,000,000 minimum per occurrence for bodily injury and property damage.
- .3 The policy shall contain the following endorsements in favor of Owner:
 - .a Waiver of Subrogation endorsement; and
 - .b 30 day Notice of Cancellation endorsement; and
 - .c Additional Insured endorsement.

5.3.1.03 Workers' Compensation And Employers' Liability Insurance: Coverage shall meet or exceed statutory limits and all other benefits outlined in the Texas Workers' Compensation Act (Section 401). The minimum policy limits for Employers' Liability Insurance coverage shall be \$500,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and \$500,000 bodily injury by disease each employee.

- .1 Contractor's policy shall cover all States in which Work is performed and apply to the State of Texas and shall include these endorsements in favor of Owner:
 - .a Waiver of Subrogation; and
 - .b 30 day Notice of Cancellation.

5.3.1.04 Commercial General Liability Insurance: Provide coverages with minimum limits as follows: combined bodily injury and property damage limit of \$2,000,000 minimum per occurrence and \$5,000,000 aggregate. The Contractor's policy shall include coverage for:

- .1 Blanket contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project; and
- .2 Completed Operations/Products Liability for at least three years after Substantial Completion; and
- .3 Explosion, Collapse and Underground (X, C & U) coverage; and
- .4 Independent Contractors coverage; and
- .5 Aggregate limits of insurance per project; and
- .6 Additional insureds as required in 5.3.1.01.16; and
- .7 30 day notice of cancellation in favor of Owner; and
- .8 Waiver of Transfer of Recovery Against Others in favor of all required additional insureds; and
- .9 Primary and non-contributing endorsement.

5.3.1.05 Builder's Risk Insurance: Contractor shall maintain Builder's Risk Insurance or Installation Insurance on an all-risk physical loss form in the Contract Amount plus the value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Work at the site on a replacement cost basis without optional

deductibles. Coverage shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, explosion, tornado, malicious mischief, collapse, earthquake, flood, surface water, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements and shall cover reasonable compensation for Principal Architect/Engineer's and Contractor's services and expenses required as a result of any insured loss. Coverage shall continue until final payment for the Work is made by the Owner. Coverage shall allow for partial occupancy/use by the Owner. Owner shall be an additional named insured on the policy. Policy must include expenses incurred in the repair or replacement of any insured property, including but not limited to fees and charges of the Principal Architect/Engineer and any other engineers and architects and their respective subconsultants. If off-site storage is permitted by the Owner, coverage shall include materials in transit and storage in an amount sufficient to protect property being transported or stored. Any losses covered by the Builder's Risk or Installation Insurance shall be adjusted by the Owner.

5.3.1.06 Environmental Impairment Liability or Pollution Liability Insurance:

Contractor shall comply with the following insurance requirements in addition to those specified above:

- .1 Provide an Environmental Impairment Liability policy with minimum limits of \$2,000,000 each occurrence and \$5,000,000 aggregate. Coverage shall contain a "per project" aggregate, 30 day notice of cancellation to Owner and waiver of subrogation in favor of Owner. Coverage to include non-owned disposal sites. Coverage shall include clean-up costs, bodily injury, property damage and defense costs.
- .2 Policy shall contain proper endorsement wording to comply with Federal or TCEQ requirements. Policy will also cover vessels and marine operations. Contractor shall submit complete copies of the policy providing pollution liability coverage to Owner.

5.3.1.07 Professional Liability Insurance: For Work which requires professional engineering or architectural or professional survey services to meet the requirements of the Contract, including but not limited to excavation safety systems, traffic control plans, and construction surveying, the Contractor or Subcontractors, responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of \$1,000,000 each occurrence and \$3,000,000 aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed in connection with professional services provided for or in connection with the Work of this Contract.

5.3.1.08 Umbrella Liability: Umbrella Liability with a limit of \$5,000,000, with the Owner as an additional insured and with waiver of subrogation and 30 day notice of cancellation. The Umbrella Liability policy shall follow form, be excess over and be no less broad than all coverages described above (with the exception of Workers' Compensation, Professional

Liability and Pollution Liability), shall include a drop-down provision and contain a per job aggregate. This policy shall have the same inception and expiration dates as the Commercial General Liability insurance required above. Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least three (3) years following Date of Substantial Completion of the Work to be performed under the Contract.

5.3.1.09 Protection and Indemnity: Protection and Indemnity coverage for any over water operations, vessels, barges, divers. This policy shall have limits of \$1,000,000 each occurrence, \$2,000,000 aggregate and policy endorsed to provide

5.3.1.10 Excess P&I: Excess P&I in the amount of \$20,000,000 each occurrence with additional insured, waiver of subrogation and 30 day notice of cancellation to the Owner.

5.3.1.11 Marine: Contractor and/or any Subcontractors shall have appropriate workers compensation insurance to provide coverage for USL&H and Jones Act exposures.

5.3.2 Waiver of Rights

5.3.2.1 All policies purchased in accordance with Section 5.3.1.05 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 named insureds thereunder. Owner and Contractor waive all rights of recovery for damages against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, the Principal Architect/Engineer, the Principal Architect/Engineers Consultants and Subconsultants and Owner's Representative and any named insured or additional named insured or loss payee to the extent (a) of 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 (b) that such losses and damages are actually paid by such policies or other property insurance applicable to the Work. 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 adjuster or recipient thereof or otherwise payable under any such policy.

5.3.3 Receipt and Application of Insurance Proceeds

5.3.3.1 Any insured loss under the policies of insurance required by Section 5.3.1.05 will be adjusted with Owner and made payable to Owner for the named insureds, additional named insureds, and loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Section 5.3.3.2. Owner shall deposit 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, to the extent of loss payments received, covered by an appropriate Change Order.

5.3.3.2 Owner shall have power to adjust and settle any loss with the builder's risk or other property insurers.

5.3.4 Partial Utilization, Acknowledgment of Property Insurer:

5.3.4.1 If Owner desires to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Section 14.08, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Section 5.3.1.05 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, and the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

5.4 Bonds:

5.4.1 General:

- .1** Contractor shall furnish performance, payment, and one-year maintenance Bonds, each in an amount at least equal to the Contract Amount as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents, as well as a second year maintenance Bond, in an amount equal to ten percent (10%) of the Contract Amount. The one-year maintenance Bond shall remain in effect until completion of the correction period specified in Section 13.7.1. The second year maintenance Bond shall remain in effect until 2-years from the date of Substantial Completion. Contractor shall also furnish such other Bonds as are required by the Contract Documents.
- .2** Bonds shall be executed on forms furnished by Owner, as included in the Specifications. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each Bond.
- .3** If the Surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it is placed into receivership, Contractor shall within ten (10) days thereafter substitute other Bonds and Surety, each of which must be acceptable to Owner.
- .4** The Performance Bond and Payment Bond shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all Contractor's obligations under the Contract Documents. All Bonds, including but not limited to the Performance Bond and Payment Bond shall be issued by a solvent corporate surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by Owner pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of ten percent (10%) of its capital and surplus. Such a surety must reinsure any obligations over the ten percent (10%) limit.

5.4.2 Performance Bond:

- .1 Contractor shall furnish Owner with a Performance Bond in the form set out in the Contract Documents.
- .2 The Performance Bond shall include the one (1) year warranty correction period obligation from the date of Substantial Completion of the Work.

5.4.3 Payment Bond:

- .1 Contractor shall furnish Owner with a Payment Bond in the form set out in the Contract Documents.

5.4.4 One-Year Maintenance Bond:

- .1 Contractor shall furnish Owner with a One-Year Maintenance Bond in the form set out in the Contract Documents.

5.4.5 Second-Year Maintenance Bond:

- .1 Contractor shall furnish Owner with a Second-Year Maintenance Bond in the form set out in the Contract Documents.
- .2 The Second-Year Maintenance Bond shall be in an amount equal to ten percent (10%) of the Contract Amount, and shall remain in effect until 2-years from the date of Substantial Completion.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence:

6.01.1 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 be responsible to see that the completed Work strictly complies with the Contract Documents.

6.01.2 Contractor shall have an English-speaking, competent Superintendent on the Work at all times that Work is in progress. The Superintendent will be Contractor's representative on the Site and shall have the authority to act on the behalf of Contractor. All communications given to the Superintendent shall be as binding as if given to Contractor. Contractor's Superintendent and Project Manager shall provide cellular telephone numbers and emergency and home telephone number(s) at which one or the other may be reached if necessary when Work is not in progress. Telephone or cellular phone number(s) shall be to a live person having responsible authority for the Work and not an answering machine or answering service. The Superintendent must be an employee of the Contractor, unless such requirement is waived in advance in writing by the Owner. If the Contractor proposes a management structure with a Project Manager supervising, directing, and managing construction of the Work in addition to or in substitution of a Superintendent, the requirements of these

Construction Documents with respect to the Superintendent shall likewise apply to any such Project Manager:

- .1 Contractor shall present the resume of the proposed Superintendent to the Owner's Representative showing evidence of experience and successful superintendence and direction of Work of a similar scale and complexity. If, in the opinion of the Owner, the proposed Superintendent does not have sufficient experience in line with the Work, he/she will not be allowed to be the designated Superintendent for the Work.
- .2 The Superintendent shall not be replaced without prior Written Notice to Owner's Representative. If Contractor deems it necessary to replace the Superintendent, Contractor shall provide the necessary information for approval, as stated above, on the proposed new Superintendent.
- .3 A qualified substitute Superintendent may be designated in the event that the designated Superintendent is temporarily away from the Work, but not to exceed a time limit acceptable to the Owner's Representative.
- .4 Contractor shall replace the Superintendent upon Owner's request in the event the Superintendent is unable to perform to Owner's satisfaction.

6.02 Labor, Materials and Equipment:

6.02.1 Contractor shall maintain a work force adequate to accomplish the Work within the Contract Time Requirements. Contractor agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. Contractor, Subcontractors, Sub-Subcontractors, and their employees may not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on Owner's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. Subject to the applicable provisions of Texas law, Contractor, Subcontractors, Sub-Subcontractors, and their employees may not use or possess any firearms or other weapons while on the job or on Owner's property. If Owner or Owner's Representative notifies Contractor that any worker or representative of Contractor is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Texas law or this Contract, or has possessed or was under the influence of alcohol or drugs on the job, Contractor shall immediately remove such worker or representative, including any officer or owner of Contractor, from performing Contract Work, and may not employ such worker or representative again on Contract Work without Owner's prior written consent. Contractor shall at all times maintain good discipline and order on or off the Site in all matters pertaining to the Project. Contractor shall pay workers no less than the applicable wage rates established for the Contract, and maintain weekly payroll reports as evidence thereof, in accordance with the requirements of Chapter 2258 of the Texas Government Code.

6.02.2 Except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular Working Days and regular Working Hours.

Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without the Owner's prior written consent given after the Contractor has provided 48-hour advanced written notice to the Owner's Representative.

6.02.3 Unless otherwise specified in Division 01, Contractor shall provide and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work, provided the Owner's CMT Consultant shall provide certain inspection services, the Owner shall provide testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by Owner, as required by Section 2267.058(a) of the Texas Government Code.

6.02.4 All materials and equipment shall be of good quality and new (including new products made of recycled materials, pursuant to Section 361.426 of the Texas Health & Safety Code), except as otherwise provided in the Contract Documents. If required by Owner's Representative, Contractor shall furnish satisfactory evidence (reports of required tests, Manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Manufacturer or Supplier, except as otherwise provided in the Contract Documents.

6.02.5 Substitutes and "Approved Equal" Items:

.1 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 Manufacturer or Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains words reading that no like, equivalent or "approved equal" item or no substitution is permitted, other items of material or equipment of other Manufacturers or Suppliers may be submitted by Contractor, at Contractor's sole risk, including potential impacts and disruptions to the Critical Path of the Project Schedule, to Principal Architect/Engineer for their review and approval through Owner's Representative under the following circumstances:

(a) "Approved Equal": If in Principal Architect/Engineer's and Owner's sole discretion an item of material or equipment proposed by Contractor is functionally equal and of equivalent type and quality to that named, and sufficiently similar so that no change in related Work, time of performance or Contract Amount will be required, it may be approved by Principal Architect/Engineer and Owner through the submittal process as an "approved equal" item. Contractor shall provide Principal Architect/Engineer and Owner with all necessary documentation required for Principal Architect/Engineer and Owner to make their evaluation, and shall identify the item of material or

equipment proposed by Contractor as a variation in accordance with Section 6.20.5.

- (b) Substitute Items: Contractor may submit an item of material or equipment which does not qualify as an "approved equal" item under Subsection 6.02.5.1(a), or may resubmit an item of material or equipment proposed by Contractor and rejected by Principal Architect/Engineer or Owner as an "approved equal" item under Subsection 6.02.5.1(a), as a proposed substitute item. All of Contractor's requests for substitutions must be clearly identified as a "**Request For Substitution**" on the face of the document. Contractor shall submit sufficient information as provided in Division 01 to allow Principal Architect/Engineer and Owner to evaluate the item of material or equipment proposed as a substitute for the item named.
- .2 Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may, at Contractor's sole risk, including potential impacts and disruptions to the Critical Path of the Project Schedule, with prior approval of Principal Architect/Engineer, furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. All such proposed substitutions must be clearly identified as being a "**Substitution**" in all of the Contractor's submittals. Contractor shall submit sufficient information to Owner's Representative to allow Principal Architect/Engineer's, in Principal Architect/Engineer's sole discretion, evaluation of the proposed substitute as an equivalent to that method or procedure expressly called for by the Contract Documents. The procedure for review by Principal Architect/Engineer will be same as that provided for substitute items in Division 01.
- .3 Principal Architect/Engineer's Evaluation: Principal Architect/Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Subsections 6.02.5.1(a), 6.02.5.1(b), and 6.02.5.2. Principal Architect/Engineer and Owner will be the judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until Principal Architect/Engineer's and Owner's review is complete, and any "approved equal" is approved through the submittal process, or any approved substitute is evidenced by either a Change Order, or a Change Directive. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety Bond with respect to any approved substitute. Owner shall not be responsible for any Delay due to review time for any "approved equal" or substitute.
- .4 Contractor's Expense: All data and documentation to be provided by Contractor in support of any proposed "approved equal" or substitute item will be at Contractor's expense.
- .5 The approval of the Principal Architect/Engineer and/or Owner will not relieve the Contractor from primary responsibility and liability for the suitability and performance of any proposed substitute item, method or procedure and will not relieve Contractor from its primary responsibility and liability for curing Defective Work and performing warranty work, which the Contractor shall cure and perform,

regardless of any claim the Contractor may choose to advance against the Owner, the Principal Architect/Engineer or Manufacturer.

- .6 Notwithstanding the foregoing, it is agreed and understood that the Contract Amount shall not be adjusted as a result of the Contractor's use of the cost of any possible substitute or "approved equal" items in calculating its Bid/Proposal price.

- 6.02.6** Contractor agrees to assign and hereby assigns to Owner any rights it may have to bring antitrust suits against its Manufacturers or Suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. Contractor further agrees to cooperate with Owner should Owner wish to prosecute suits against Manufacturers or Suppliers for illegal price fixing.

- 6.03 Project Schedule Requirements:** Unless otherwise provided in Division 01, Contractor shall adhere to the Owner's Project Schedule as provided by the Owner, which shall be further developed by the Contractor to become first the Contractor's Preliminary Project Schedule and then, upon acceptance by the Owner, become the Master Project Schedule, as it may be adjusted from time to time as provided below:

- 6.03.1 Preliminary Project Schedule:** Within thirty (30) days from the issuance of a Notice To Proceed by the Owner, the Contractor shall submit to the Owner's Representative a Preliminary Project Schedule to be used as the Contractor's baseline schedule for the Project. This Preliminary Project Schedule shall be initially based on and shall include and be consistent with all of the Milestones contained in Division 01, Work Covered By Contract Documents Specification, and shall be presented in a form reasonably acceptable to the Owner. The Preliminary Project Schedule shall be a Critical Path Method (CPM) schedule depicting all significant activities which will occur on the Project; the durations for all major items of Work to be performed; the start and finish dates of such activities; the Contract Time Requirements as set out in the Contract Documents; and the precedence logic of such activities. The Contractor's Preliminary Project Schedule shall include, at a minimum:

- .1 Duration and milestone dates for all equipment, materials delivery, and operations efforts that may affect the timely completion of the Project.
- .2 Duration and milestone dates for each anticipated construction activity.
- .3 Pre-purchase of materials and equipment with a "long lead" time.
- .4 Permitting and regulatory milestones.
- .5 Dates associated with the activities leading to delivery milestones from others including for offsite roadways and utilities.

- 6.03.2** The Contractor shall coordinate the Preliminary Project Schedule with the Contractor's Submittal Schedules for Shop Drawings and Samples as required by Division 01 of the Project Manual. The Contractor's Submittal Schedule must provide an adequate duration for reviewing and processing the required Submittals acceptable to Owner and the Principal Architect/Engineer.

- 6.03.3** The Contractor shall provide Owner with an electronic version (by disk or CD) of the Preliminary Project Schedule and of each subsequent Master

Project Schedule, including all subsequent electronic schedule revisions and updates, created without password protection, in latest version of Microsoft Project (.MPT, .MPX or .MPD suffix) or a format approved by Owner. Failure to furnish Owner, Owner's Representative, and Principal Architect/Engineer with a revised Project Schedule in one of the above formats within ten (10) days of receipt of a written request shall constitute a breach of the Contract by Contractor, and shall be considered to be adequate cause for termination of the Contractor by Owner.

6.03.4 Master Project Schedule: Once the Contractor's Preliminary Project Schedule has been accepted by Owner, it shall become the Master Project Schedule (Baseline Schedule) for the Project. The Contractor shall update the Master Project Schedule monthly or more often by the submission of a revised Master Project Schedule or when circumstances develop which make it beneficial to the Project, or as may be required by Owner. Once the most recently revised Master Project Schedule has been accepted by Owner, the Master Project Schedule shall be considered to have been updated. The updated Master Project Schedule shall then be distributed by the Contractor to Owner's staff, the Principal Architect/Engineer, each consultant, and other appropriate parties. The Master Project Schedule shall be reviewed at the monthly team meeting at a summary level, including for a three month look-ahead and anticipated Project completion.

6.03.5 Changes to the Master Project Schedule: A copy of the accepted Master Schedule shall be maintained unaltered. The Contractor shall thereafter submit to Owner's Representative an updated Project Schedule each month with its Application for Payment, to reflect actual progress that has been made and to forecast future progress of the Work. The monthly Project Schedule update shall be based upon the accepted Master Project Schedule. Contractor shall submit to Owner's Representative for review and acceptance by Owner any proposed changes or adjustments in its monthly Project Schedule that modify either the Master Project Schedule or the previous month's approved Project Schedule. Any such proposed adjustments must be substantiated with a written narrative containing an explanation of any changes to the underlying logic of the subject schedule. Contractor's proposed changes to the schedule must show how the Contractor will consistently advance the progress of the Work in accordance with the Critical Path of the Work and the Contract Time Requirements, including all required contractual Milestones. Such adjustments will conform generally to the Master or monthly Project Schedule then in effect and additionally will comply with any provisions of Division 01 applicable thereto.

6.03.6 Proposed adjustments indicated by the Project Schedule that will change the Contract Time Requirements, including Milestones, shall be submitted in accordance with the requirements of Article 12. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Master Project Schedule. Such adjustments may only be made by a Change Order or Change Directive in accordance with Article 12.

6.03.7 Contractor shall keep a current schedule of submittals that coordinates with the Master Project Schedule, and shall submit the initial schedule of

submittals to Owner's Representative for acceptance along with the Preliminary Project Schedule.

6.04 Concerning Subcontractors, Suppliers and Others:

6.04.1 Assignment: Contractor shall retain direct control of and give direct attention to the fulfillment of this Contract. Contractor shall not assign, transfer, or convey this Contract or any portion thereof, or any right, title or interest in, to or under same, or any causes of action or claims for damages arising under this Contract or any breach thereof, without the prior written consent of Owner. In addition, without Owner's written consent, the Contractor will not subcontract the performance of the entire Work or the supervision and direction of the Work.

6.04.2 Award of Subcontracts for Portions of the Work: Contractor shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom Owner may have reasonable objection. Owner will communicate such objections by Written Notice. If Owner requires a change without good cause of any Subcontractor, person or organization previously accepted by Owner, the Contract Amount shall be increased or decreased by the difference in the cost caused by any such change, and an appropriate Change Order shall be issued. Contractor shall not substitute any Subcontractor, person or organization that has been accepted by Owner, unless the substitute has been accepted in writing by Owner. No acceptance by Owner of any Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of Owner to reject Defective Work. Contractor shall comply with the applicable requirements set forth in the Bid/Proposal Documents and Contract Documents with respect to Subcontractors and the subcontracting process.

6.04.3 Contractor shall enter into written agreements with all Subcontractors and Suppliers which specifically bind the Subcontractors, Manufacturers and Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Principal Architect/Engineer. The Owner reserves the right to specify that certain requirements shall be adhered to by all Subcontractors, Manufacturers and Suppliers as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreements between Contractor and Subcontractors, Manufacturers and Suppliers.

6.04.4 Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Manufacturers, or Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Manufacturer, or Supplier or other person or organization any contractual relationship between Owner and any such Subcontractor, Supplier, Manufacturer or other person or organization, nor shall it create any obligation on the part of Owner or Principal Architect/Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Manufacturer, or Supplier or other

person or organization except as may otherwise be required by laws and regulations.

- 6.04.5** Contractor shall be solely responsible for efficiently scheduling and coordinating the Work of Subcontractors, Manufacturers, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor in order to avoid any Delays or inefficiencies in the prosecution of the Work. Contractor shall require all Subcontractors, Manufacturers, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner's Representative through Contractor.
- 6.04.6** The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing or delineating the Work to be performed by any specific trade.
- 6.04.7** Contractor shall pay each Subcontractor, Manufacturer and Supplier their appropriate share of payments made to Contractor not later than ten (10) Calendar Days from Contractor's receipt of payment from Owner.
- 6.04.8** To the extent allowed by Texas law, the Owner shall be deemed to be a third party beneficiary to each subcontract and may, if Owner elects, following a termination of the Contractor, require that the Subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of the Owner, rather than the Contractor; however, if the Owner requires any such performance by a Subcontractor for the Owner's direct benefit, then the Owner shall be bound and obligated to pay such Subcontractor the reasonable value for all Work performed by such Subcontractor to the date of the termination of the Contractor, less previous payments to Contractor for such Subcontractor's work, and for all Work performed by Subcontractor thereafter. In the event that the Owner elects to invoke its right under this section, Owner will provide written notice of such election to the terminated Contractor and the affected Subcontractor(s).

6.05 Patent Fees and Royalties:

- 6.05.1** Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid/Proposal.
- 6.05.2** Contractor shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters patent or copyright, suitable legal agreement with the patentee, copyright holder, or their duly authorized representative, whether or not a particular design, device, material, or process is specified by Owner.
- 6.05.3** Contractor shall defend Owner in all suits or claims for infringement of any patent or copyright and shall indemnify and save Owner harmless from any loss or liability, direct or indirect, arising with respect to Contractor's process in the formulation of its Bid/Proposal or the performance of the

Work or otherwise arising in connection therewith, with the exception that the Contractor will not be responsible to defend or indemnify the Owner for such loss or liability when a particular design, process or product of a particular Manufacturer or Manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Principal Architect/Engineer, unless Contractor knew or reasonably should have known of the patent or copyright violation and failed to notify Owner of same. Owner reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event Contractor shall, to the extent provided in this Subsection, indemnify and save harmless Owner from all costs and expenses of such defense as well as satisfaction of all judgments entered against Owner.

6.05.4 Owner shall have the right to stop the Work and/or terminate this Contract at any time in the event Owner discovers that Contractor's work methodology includes the use of any infringing design, device, material or process.

6.06 Permits, Fees: Contractor shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work. However, Owner or Owner's Representative will obtain and pay for the following permits, licenses and/or fees:

- .1 Site Development Permit; and
- .2 Initial Corp of Engineer Permits (404, Letter of Permission only, if applicable).

6.07 Laws and Regulations:

6.07.1 Contractor shall give all notices and comply with all Legal Requirements applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any governmental entity or public body having jurisdiction over the Work or any part thereof. Except where otherwise expressly required by applicable laws and regulations, neither Owner, Owner's Representative, nor Principal Architect/Engineer shall be responsible for monitoring Contractor's compliance with any Legal Requirements.

6.07.2 Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. Contractor shall plan and execute its operations in compliance with all applicable Legal Requirements concerning control and abatement of water pollution and prevention and control of air pollution.

6.07.3 If Contractor performs any Work knowing or having reason to know that it is contrary to applicable Legal Requirements, Contractor shall bear all claims, costs, losses and damages arising therefrom; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with all Legal Requirements, but this does not relieve Contractor of the Contractor's obligations under the terms of the Contract.

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

Contractor's responsibilities are as follows.

- .01** Contractor must prepare a Storm Water Pollution Prevention Plan (SWPPP), or make modifications if SWPPP is already completed and as required, prior to filing the NOI form.
- .02** Contractor must file a Notice of Intent (NOI) form with the TCEQ at least two (2) days prior to start of construction activity and pay for the permit. The required NOI form is available from the Internet at <https://www.tceq.texas.gov/assets/public/permitting/waterquality/forms/20022.pdf>.
The form shall be mailed or submitted online to the TCEQ. If submitting online, the web address is <https://www3.tceq.texas.gov/steers/>. If Contractor has not already registered to use the TCEQ online application submittal service, it will take up to ten (10) working days to receive a user name and password. Contractor shall take this timeframe into consideration if applying online. A Time Extension shall not be granted for this timeframe. The mailing address is:

Texas Commission on Environmental Quality
Stormwater Processing Center (MC-228)
P.O. Box 13087
Austin, TX 78711-3087

For overnight mail: Stormwater Processing Center (MC-228)
12100 Park 35 Circle
Austin, TX 78753

- .03** Contractor must mail a copy of the completed Notice of Intent (NOI) form to the local Municipal Separate Storm Sewer Systems (MS4) representative.
- .04** Contractor must obtain a signed certification statement from all Subcontractors responsible for implementing the erosion and sediment control measures. This statement shall indicate that the Subcontractor understands the permit requirements. The certified statement forms shall be attached to and become part of the SWPPP.
- .05** Contractor must post a notice near the main entrance of the Work with the following information.
 - .1** The TPDES permit number for the Work or a copy of the NOI if a permit number has not yet been assigned,
 - .2** The name and telephone number of a local contact person,
 - .3** A brief description of the Work, and
 - .4** The location of the SWPPP if the Site is inactive or does not have an on-site location to store the plan.
 - .5** If posting this information near a main entrance is infeasible due to safety concerns, the notice must be posted in a local public building. If the Work is linear (pipeline, highway, etc.), the notice must be placed in a publicly accessible location near

where construction is actively underway and moved as necessary. For linear Work, multiple postings of the information may be required by Owner (e.g. postings at both ends of the Work).

- .06** Contractor must maintain all erosion and sediment control measures and other protective measures identified in the SWPPP in effective operating condition.
- .07** Contractor must retain weekly inspection reports and be available for audit by the Owner, the TCEQ or the EPA.
- .08** Contractor must perform inspections every seven (7) calendar days and after every ½ inch rainfall event, noting the following observations on an inspection form provided by Owner:
 - .1** Locations of discharges of sediment or other pollutants from the Site.
 - .2** Locations of storm water / erosion / sedimentation controls that are in need of maintenance.
 - .3** Locations of storm water / erosion / sedimentation controls that are not performing, failing to operate, or are inadequate.
 - .4** Locations where additional storm water / erosion / sedimentation controls are needed.
- .09** Contractor must maintain at Work Site at all times a copy of the SWPPP (with all updates, as described below) and inspection reports.
- .10** Contractor must update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion / sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports.
- .11** Contractor must file a Notice of Termination with the TCEQ within thirty (30) days of final stabilization on all portions of the Work Site. Form is available from Owner or on the Internet at:
<https://www.tceq.texas.gov/assets/public/permitting/waterquality/forms/10443.docx>.
The notice shall be mailed to:
Texas Commission on Environmental Quality
Storm Water & General Permits Team;
- .12** Upon completion of the Work, the Contractor must provide copies of all TPDES records to Owner.

6.07.6 Contractor shall abide by all Legal Requirements including, but not limited to, the Endangered Species Act.

6.07.7 Contractor warrants and represents that: (i) Contractor does not have any contracts with and does not provide supplies or services to any organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189 (a "Foreign Terrorist Organization"); or (ii) the United States government has affirmatively declared Contractor to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a Foreign Terrorist Organization.

6.08 Taxes:

- 6.08.1** Contractor shall pay only those sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the laws and regulations of the State of Texas in the performance of this public works contract.
- 6.08.2** Owner is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas.
- 6.08.3** In addition, if the Project is construction of a water or wastewater system certified by the Texas Commission on Environmental Quality as a regional system, equipment, services and supplies used solely to construct the Project are exempted from taxes imposed by Chapter 151, Limited Sales, Excise and Use Tax, Texas Tax Code.

6.09 Use of Premises:

- 6.09.1** Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor assumes 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. Should any claim be made by any such owner or occupant because of or in connection with 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. Any such settlement shall not include any admission of liability on the part of Owner and shall be subject to Owner's approval, which approval shall not be unreasonably withheld.
- 6.09.2** Contractor shall defend, indemnify and hold harmless the Owner, the Owner's Representative, the Principal Architect/Engineer, Principal Architect/Engineer's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorneys' fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Owner's Representative, Principal Architect/Engineer or any other party indemnified hereunder arising out of the Work except to the extent such claims, costs, losses or damages are caused by negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard or rule or breach of contract of the Owner, the Owner's Representative, the Principal Architect/Engineer, Principal Architect/Engineer's Consultants or any third party under the control or supervision of them other than Contractor or its agent or employee or Subcontractors of any tier.
- 6.09.3** During the progress of the Work and on a daily basis, Contractor shall keep the premises free from any accumulations of waste materials, rubbish and

other debris resulting from the Work. Contractor shall provide such personnel, waste containers and or equipment necessary to maintain an orderly, clean and safe work site. Contractor shall keep all streets, access streets, driveways, and areas of public access, walkways, and other designated areas clean and open at all times. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall have the Site clean and ready for occupancy by Owner at Substantial Completion of the Work. Contractor shall, at a minimum, restore to original condition all property not designated for alteration by the Contract Documents. If the Contractor fails to clean up or restore at the completion of the Work, Owner may do so and the cost thereof will be charged against the Contractor.

6.09.4 Contractor shall not load or 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.

6.10 Record Documents: Contractor shall maintain in a safe place at the Site, or other location acceptable to Owner, one (1) record copy of all red line Record Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all final samples and all final Shop Drawings and submittals will be available to Owner, Owner Representative, and Principal Architect/Engineer for reference during performance of the Work. Upon Substantial Completion of the Work, these record documents, samples, Shop Drawings and submittals shall become the property of the Owner and shall be neatly labeled and organized per the Owner's direction and promptly delivered in containers acceptable to the Owner, to Owner's Representative. Record drawings must also include an electronic format that is either ".dwg" or ".dxf".

6.11 Safety and Protection:

6.11.01 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Prior to commencement of the Work, Contractor shall submit a site security plan for approval by Owner. By reviewing the plan or making recommendations or comments, Owner will not assume liability nor will Contractor be relieved of liability for damage, injury or loss. 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 Work 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, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Improvements not designated for removal, relocation or replacement in the course of construction.

6.11.02 The Contractor will provide a Safety Manager for this Project. The Safety Manager will be responsible for the safety of the entire Work and the prevention of accidents in connection with the Work. The Safety Manager shall be competent and qualified to perform his/her duties, including but not limited to having received all appropriate Occupational Safety and Health Act of 1970, as amended ("OSHA") and other safety training, and experienced in managing safety programs on construction projects comparable in scope and complexity.

6.11.03 Specific Duties of the Contractor's Safety Manager: This person will ensure compliance with all provisions of the Contract Documents, OSHA, other governmental agencies, industry safety requirements and standards. The Contractor Safety Manager will prepare and enforce a site-specific safety plan for the Work.

- .1** Additional duties of the Contractor's Safety Manager shall include the following:
 - (a)** Be responsible for safety over-sight of the entire Work.
 - (b)** Review and direct immediate action to correct all substandard safety conditions.
 - (c)** Be responsible for providing any necessary additional safety personnel with support in carrying out the duties and responsibilities of that position.
 - (d)** Conduct regular supervisory safety meetings, including the discussion of observed unsafe work practices or conditions, a review of accidents experienced and corrective actions, and encouragement of safety suggestions from employees.
 - (e)** Investigate all accidents and implement immediate corrective action.
 - (f)** Cooperate with the insurance carrier(s) and Owner's safety personnel.
 - (g)** Provide timely reports in writing of any observed unsafe conditions or practices, or violations of job security regarding safety issues and take corrective actions.
 - (h)** Report all injuries and accidents in a timely manner to the Contractor and safety personnel in accordance with Contract Documents, federal, state and local laws and regulations.
 - (j)** Ensure that the necessary competent safety persons are on Site as required in the Contract.
 - (k)** Comply with insurance carriers requirements in all accident investigation and reporting procedures.
 - (m)** Coordinate safety activities with insurance carriers, and take necessary steps to promptly implement safety recommendations or directives issued thereby.
 - (n)** Be responsible for the availability and proper use of all necessary safety equipment including personal protective equipment and apparel for the employees.

- (p)** Ensure that adequate first-aid supplies are available at the Work Site and that personnel are qualified and identified to administer first-aid as required.
 - (r)** Be on the Site at all times while Work is in progress. If the Safety Manager has to leave the Site, the Contractor is required to provide an alternate competent and qualified Safety Manager.
- .2** The Contractor Safety Manager shall stop Work as necessary in the event of imminent danger or in situations where they deem necessary to protect a person from injury or prevent property damage.

6.11.04 Contractor shall comply with all applicable Legal Requirements, including but not limited to all laws and regulations of any governmental entity or public body having jurisdiction for safety of persons or property or to protect them 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 Improvements, and 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. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor or any Subcontractor, 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, shall be remedied by Contractor (except to the extent of damage or loss attributable to errors or omissions in the Drawings or Specifications, or to the acts or omissions of Owner, the Owner's Representative, or the Principal Architect/Engineer, or Principal Architect/Engineer's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable other than Contractor or its agent, or employee, or Subcontractors of any tier). Contractor's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to Owner and Contractor in accordance with Article 14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). Without limitation, Contractor shall comply with the following specific provisions:

- .1** It shall be the duty and responsibility of Contractor and all of its Subcontractors to be familiar with and comply with 29 USC Section 651, et seq., the Occupational Safety and Health Act of 1970, as amended ("OSHA") and to enforce and comply with all provisions of this Act.
- .2** The Contractor and all of its Subcontractors shall comply with all applicable requirements of Subpart P of Part 1926 of 29 C.F.R, OSHA Safety and Health Standards, Texas Health and Safety Code Section 756.023, as amended, and shall submit a unit price for the particular excavation safety systems to be utilized by the Contractor for all excavations which exceed a depth of five feet (5').

6.11.05 Before commencing any excavation which will exceed a depth of five feet (5'), the Contractor shall prepare and employ detailed drawings and specifications regarding the safety systems to be utilized. Said plans and specifications shall include a certification from a registered Texas professional engineer indicating full compliance with the OSHA provisions cited above.

6.11.06 Hazard Communication Programs: 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 applicable laws and regulations.

6.11.07 Emergencies:

- .1** In emergencies affecting the safety or protection of persons or the Work at the Site or adjacent thereto, Contractor, without special instruction or authorization from Owner, Owner Representative, or Principal Architect/Engineer, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. Contractor shall give Owner's Representative telephone notification as soon as reasonably practical and a prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action.
- .2** Authorized agents of Contractor shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project Site of Contractor or his agent to protect the Work or adjacent property from damage, injury or loss, or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should Contractor and/or its agent fail to respond and take action to alleviate such an emergency situation, Owner may direct other forces to take action as necessary to remedy the emergency condition, and Owner will deduct any cost of such remedial action from the funds due Contractor under this Contract, or Contractor shall reimburse Owner for same on demand.
- .3** In the event there is an accident involving injury to any individual or damage to any property on or near the Work, Contractor shall provide to Owner's Representative verbal notification within one (1) hour and written notification within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports, police accident reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for Owner's and Principal Architect/Engineer's records, within forty-eight (48) hours of the event. Contractor shall cooperate with Owner on any Owner investigation of any such incident.

6.12 Continuing the Work: Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Owner and Contractor may otherwise agree in writing.

6.13 Contractor's General Warranty and Guarantee:

6.13.1 Contractor warrants and guarantees to Owner that all Work will conform to the drawings and specifications, be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be Defective and that the whole and entire Work will function and operate as expressed or required by the Contract Documents. This warranty will survive the termination or expiration of the Contract. 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 or Suppliers; or
- .2 normal wear and tear under normal usage.

6.13.2 Nothing in this warranty is intended to limit any Manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section or the Contract Documents. Further, nothing in this warranty shall be limited by the Contractor's obligation to cure defects within any specific corrective or warranty period as required in the Contract Documents, including Section 13.7 below.

6.13.3 Contractor's obligation to perform and complete the Work in a good and workmanlike manner 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 Owner's Representative, Owner's CMT Consultant, and/or Principal Architect/Engineer;
- .2 recommendation of any progress or final payment by Owner's Representative;
- .3 the issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
- .4 use or occupancy of the Work or any part thereof by Owner;
- .5 any acceptance by Owner or any failure to do so;
- .6 any review of a Shop Drawing or sample submittal;
- .7 any inspection, test or approval by others;
- .8 any correction of Defective Work by Owner; or
- .9 progress payments or final payment by Owner.

6.13.4 Except as otherwise agreed in writing by the Parties, partial occupancy or use of some or all of the Work or any part thereof shall not commence the corrective period under Section 13.7 below.

6.13.5 Independent from Contractor's warranty and corrective work obligations, Contractor shall be responsible for maintenance of the Work prior to Owner's occupancy or use of same, such that the Work shall be capable of being started-up and operated as designed without any additional

maintenance, or any repair or replacement of, or additional work or services on, the equipment, materials or systems.

6.13.6 Not used.

6.14 INDEMNIFICATION BY CONTRACTOR:

6.14.1 Contractor shall defend, indemnify and hold harmless (collectively, "Indemnify") Owner, the Owner's Representative, the Principal Architect/Engineer, Principal Architect/Engineer's Consultants and Subconsultants and their respective officers, directors, partners, employees, agents and other Consultants (the "INDEMNIFIED PARTIES") from and against all claims, costs, losses, demands, injuries, liabilities, damages, causes of action and expenses (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or resulting from the Work, provided that any such claim, cost, loss, demand, injury, liability, damage or cause of action:

- .1** 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, and
- .2** Is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, even if caused in part by any negligence or omission of one or more of the INDEMNIFIED PARTIES; save and except that Contractor's obligation to Indemnify shall not apply to the extent such claims, costs, losses, demands, injuries, liabilities, damages, causes of action or expenses are caused by negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard or rule or breach of contract of an Indemnified Party or any third party under the control or supervision of an Indemnified Party other than Contractor or its agent or employee or Subcontractors of any tier.

6.14.2 Notwithstanding Subsection 6.14.1, **CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") OWNER, THE OWNER'S REPRESENTATIVE, THE PRINCIPAL ARCHITECT/ENGINEER, PRINCIPAL ARCHITECT/ENGINEER'S CONSULTANTS AND SUBCONSULTANTS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS AND OTHER CONSULTANTS (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, LOSSES, DEMANDS, INJURIES, LIABILITIES, DAMAGES, AND CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES (COLLECTIVELY, IN THIS SUBSECTION 6.14.2, "EMPLOYEE CLAIMS"), FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER**

(COLLECTIVELY "EMPLOYEE" FOR THE PURPOSE OF THIS SECTION 6.14.2), ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE WORK OR THIS CONTRACT, INCLUDING BUT NOT LIMITED TO CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY CONTRACTOR, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF CONTRACTOR OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS CONTRACTOR IS LIABLE. CONTRACTOR'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH EMPLOYEE CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY, EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE.

- 6.14.3** The indemnification obligation under Section 6.14.1 and 6.14.2 shall not be limited in any way by any insurance required by or provided in connection with this Contract or otherwise, or by any limitation on the amount or type of damages, or compensation or benefits payable by or for Contractor or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 6.14.4** Notwithstanding anything in Section 6.14.1 or 6.14.2 to the contrary, the obligations of Contractor under Section 6.14.1 and 6.14.2 shall not extend to the liability of a registered architect, a licensed engineer, or an agent, servant or employee of a registered architect or a licensed engineer, for damage that is caused by or results from defects in plans, designs or specifications prepared, approved or used by the architect or engineer, or negligence of the architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs or specifications that are a part of the construction contract; and arises from personal injury or death, property injury, or any other expense that arises from personal injury, death, or property injury.
- 6.14.5** In the event Contractor fails to follow Owner's directives concerning use of the Site, scheduling or course of construction, or engages in other conduct which results in damage to property based on inverse condemnation or otherwise, then and in that event, Contractor shall indemnify Owner against all costs and claims resulting therefrom except to the extent such costs or claims are caused by negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard or rule or breach of contract of Owner or any third party under the control or supervision of Owner other than Contractor or its agent or employee or Subcontractors of any tier.
- 6.14.6** Subject to the limitation as set out in Section 6.14.4, in the event Contractor's negligence or breach of contract results in Delay in the progress of the Work or the performance of services being done by others

on the Site or otherwise with regard to the Project (including Owner's separate contractors, design professionals, and consultants) so as to result in loss for which Owner becomes liable to such others, then Contractor shall indemnify Owner from and reimburse Owner for such loss, except to the extent such loss is caused by negligence or fault, breach or violation of a statute, ordinance, governmental regulation, standard or rule or breach of contract of Owner or any third party under the control or supervision of Owner other than Contractor or its agent or employee or Subcontractors of any tier.

6.15 Not used.

6.16 Not used.

6.17 Notice of Claim: Should Contractor suffer injury or damage to person or property because of any error, omission or act of Owner or of any of Owner's employees or agents or others for whose acts Owner is liable, a Claim must be made to Owner within five (5) calendar days of the event giving rise to such injury or damage. The provisions of this Section 6.17 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

6.18 Liquidated Damages or Economic Disincentives: Contractor and its Surety shall be liable for liquidated damages or economic disincentives as provided in the Contract for the failure of the Contractor to timely complete the Work within the Contract Time Requirements.

6.19 Commissioning: The Contractor will be responsible to provide all of the required commissioning of the mechanical, electrical, instrumentation, and proprietary equipment and systems for the Project. This is the process of verification, preliminary testing, starting up and functional operations testing of all such equipment and systems which are part of the Project. The term "commissioning" shall specifically include the drafting, review and verification of all test plans and test reports for all equipment and systems which are part of the Project. The verification, testing, start-up and commissioning of the mechanical, electrical, instrumentation, and proprietary equipment and systems for the Project can be performed by the Contractor's personnel or it can be part of a subcontract work package with the Contractor managing and supervising that Scope of Work.

6.19.1 At least ninety (90) days prior to the planned dates for the initiation of the preliminary testing of any mechanical, electrical, instrumentation, and proprietary equipment and systems for the Project, or within a time-frame agreed upon at the Pre-Construction Meeting, the Contractor shall prepare and submit an overall Project Testing and Commissioning Program for Owner, Owner's Representative, and Principal Architect/Engineers' review and approval.

6.19.2 Project Testing and Commissioning Program: The Project Testing and Commissioning Program shall cover all aspects of the Project and shall contain as a minimum, all of the following information:

.1 Equipment Test Plans: An individual Equipment Test Plan configured for each piece of mechanical, electrical, instrumentation, and

proprietary equipment and items on the entire Project that identifies how each piece of such equipment or item is to be verified, tested and commissioned including what functional elements must be demonstrated and precisely how those functional elements will be demonstrated to be operational to the Owner, Owner's Representative, and the Principal Architects/Engineers.

6.20 Shop Drawings & Submittals: The Contractor shall be required to provide submittals, samples and Shop Drawings to the Owner's Representative for transmittal to the Principal Architect/Engineer for approval in accordance with the Schedule of Submittals and section 01 33 00 of Division 01 Submittals.

6.20.1 Each submittal shall be identified in a format and in quantities as may be required by the Owner and section 01 33 00 of Division 01 Submittals. Contractor shall utilize Owner's standard forms unless otherwise approved in writing by the Owner.

6.20.2 Where a Shop Drawing or sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Principal Architect/Engineer's review and approval of the pertinent submittal will be at the sole risk and expense of Contractor.

6.20.3 Before submitting each Shop Drawing or sample, Contractor shall have:

- .1** 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;
- .2** determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- .3** 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
- .4** 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.

6.20.4 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 preparation, review and approval of that submittal.

6.20.5 With each submittal, Contractor shall give Principal Architect / 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 Principal Architect / Engineer for review and approval of each such variation.

- 6.20.6** Principal Architect/Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Principal Architect/Engineer. Engineer's review and approval will be only to evaluate whether the items covered by the submittals appear that they 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.
- 6.20.7** Principal Architect/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.
- 6.20.8** Principal Architect/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 Section 6.20.5 and Principal Architect/Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or sample. Principal Architect / Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Section 6.20.3.
- 6.20.9** Contractor shall make corrections required by Principal Architect / 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 Principal Architect/Engineer on previous submittals.
- 6.21 Operation & Maintenance Manuals:** The Contractor shall be required to provide Operations & Maintenance Manuals for all mechanical, electrical, instrumentation, and proprietary equipment and items being installed as part of the Work. The Contractor must compile all specified instructions, maintenance manuals and operating data as defined under this section and in the Specifications. The compilation and assembly of the Operations & Maintenance Manuals for the Work can be performed by the Contractor's personnel or it can be part of a subcontract work package with the Contractor managing and supervising that Scope of Work. The Contractor shall strictly adhere to all of the requirements for the assembly, formatting and printing of the O&M Manuals as more thoroughly defined in the Contract Documents.
- 6.22 Training of Owner's Personnel:** The Contractor shall be required to provide training of the Owner's designated personnel for all mechanical, electrical, instrumentation, and proprietary equipment and items being installed on the Project. The Contractor must provide this training as defined under this section, Division 01 and the Specifications. The training of the Owner's designated personnel for all mechanical, electrical, instrumentation, and proprietary equipment and items being installed on the Project can be performed by the Contractor's personnel or it can be part of a subcontract work package with the Contractor managing and supervising that Scope of Work.

ARTICLE 7 - OTHER WORK

- 7.1** Owner may perform other work related to the Project at the Site by Owner's own forces, or let other contracts for the other work, or have other work performed by utility owners. Contractor and Owner agree to and shall use best efforts to cooperate and coordinate the Work with others performing work and other work related to the Project in order to avoid conflicts and Delays in the Work.
- 7.2** Contractor shall afford Owner's Independent Contractors and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the advance written consent of Owner's Representative and the other contractors whose work will be affected. Unless expressly so consented to by such parties, Contractor shall promptly remedy damage caused by Contractor to completed or partially completed construction or to property of the Owner or separate contractors.
- 7.3** If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Owner's Representative 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 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.
- 7.4** Owner shall provide for coordination of the activities of the Owner's own forces and of Owner's Independent Contractors with the Work of Contractor, who shall cooperate with them. Contractor shall participate with Owner's Independent Contractors and Owner's Representative in reviewing their construction schedules when directed to do so. On the basis of such review, Contractor shall make any revisions to the Project Schedule agreed upon as necessary after a joint review. The agreed upon construction sequences shall then constitute the Project Schedules to be used by Contractor, separate contractors and Owner until subsequently revised.
- 7.5** Contractor shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with Owner's Independent Contractors, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

- 8.1** Prior to the start of construction, Owner will designate in writing a person or entity to act as Owner's Representative during construction. The Owner shall retain the right

to communicate directly with the Contractor. However, except as otherwise provided in these General Conditions, the Owner shall issue communications to Contractor through the Owner's Representative. Owner's Representative will be responsible for providing Owner-supplied information and approvals. Owner's Representative will also endeavor to provide Contractor with prompt notice if it observes a failure on the part of the Contractor to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work; however, failure of the Owner's Representative to provide Contractor with such notice shall not relieve Contractor of any of its responsibilities under the Contract Documents.

8.2 Owner and Owner's Representative 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. Owner and Owner's Representative are not responsible for any failure of Contractor to comply with Legal Requirements applicable to furnishing or performing the Work. Owner and Owner's Representative are not responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of Owner or Owner's Representative to discover, or object to or condemn any Defective Work or material shall not relieve Contractor from the obligation to properly and fully perform the Contract.

8.3 Owner and Owner's Representative are not responsible for the acts or omissions of Contractor, or of any Subcontractor, any Manufacturer or Supplier, or of any other person or organization performing or furnishing any of the Work. Contractor acknowledges and agrees that Owner's or Owner's Representative's direction to perform Work in accordance with the approved Master Project Schedule is not a demand for acceleration or a dictation of Contractor's means or methods.

8.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness. The Owner or Owner's Representative shall have a reasonable amount of time to investigate Site conditions, review submittals, analyze requests for changes, and to make other decisions in the orderly administration of the Contract. Contractor must notify the Owner and/or Owner's Representative in writing, if the time for the investigation, review, analysis of any submittals, required for changes or otherwise required for Owner's decision, impacts in any way the Critical Path of the approved Master Project Schedule.

8.5 Furnishing of Services and Information

8.5.1 Owner may provide, at its own cost and expense, for Contractor's information and use, any of the following, all of which are not binding on Owner, are not Contract Documents, are not warranted or represented in any manner to accurately show the conditions at the Site of the Work, and shall not be the basis for any Claim for damages, additional compensation or extension of time should the actual conditions in the course of the Work vary or differ from conditions or information contained in or inferable from them:

- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

- .2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Contractor to perform the Work;
- .4 A legal description of the Site;
- .5 As-built and record drawings of any existing structures at the Site; and
- .6 Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, known by the Owner to be in existence at the Site.

ARTICLE 9 – PRINCIPAL ARCHITECT/ENGINEER'S STATUS DURING CONSTRUCTION

9.1 Principal Architect/Engineer's Authority and Responsibilities:

- 9.1.1** The duties and responsibilities and the limitations of authority of Principal Architect/Engineer during construction, as set forth in the Contract Documents, may be assigned or assumed by the Owner, but shall not be extended without written consent of Owner and/or Principal Architect/Engineer. The assignment of any authority, duties or responsibilities to Principal Architect/Engineer under the Contract Documents, or under any agreement between Owner and Principal Architect/Engineer, or any undertaking, exercise or performance thereof by Principal Architect/Engineer, is intended to be for the sole and exclusive benefit of Owner and not for the benefit of Contractor, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.
- 9.1.2** Principal Architect/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. Principal Architect/Engineer is not responsible for any failure of Contractor to comply with Legal Requirements applicable to the furnishing or performing the Work. Principal Architect/Engineer is not responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of Principal Architect/Engineer to discover, or object to or condemn any Defective Work or material shall not relieve Contractor from the obligation to properly and fully perform the Contract.
- 9.1.3** Principal Architect/Engineer is not responsible for the acts or omissions of Contractor, or of any Subcontractor, any Manufacturer or Supplier, or of any other person or organization performing or furnishing any of the Work.
- 9.1.4** If Owner and Principal Architect/Engineer agree, Principal Architect/Engineer will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, but only to determine generally that their content appears to

comply 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.

- 9.1.5** The limitations upon authority and responsibility set forth in this Section 9.1 shall also apply to Principal Architect/Engineer's Consultants, Resident Project Representative and assistants.
- 9.2 Visits to Site:** If Owner and Principal Architect/Engineer agree, Principal Architect/Engineer will make visits to the Site at intervals appropriate to the various stages of construction as requested by the Owner or the Owner's Representative and as Principal Architect/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, Principal Architect/Engineer will endeavor for the benefit of Owner to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Principal Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Principal Architect/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 on-site observations, Principal Architect/Engineer will keep Owner and Owner's Representative informed of the progress of the Work and will endeavor to guard Owner against Defective Work. Principal Architect/Engineer's visits and on-site observations are subject to all the limitations on Principal Architect/Engineer's authority and responsibility set forth in Section 9.1 above.
- 9.3 Resident Project Representative:** If Owner and Principal Architect/Engineer agree, Principal Architect/Engineer may furnish a Resident Project Representative to assist Principal Architect/Engineer in providing more continuous observation of the Work. Owner may designate another representative or agent to represent Owner at the Site who is not a Principal Architect/Engineer, Principal Architect/Engineer's consultant, agent or employee.
- 9.4 Clarifications and Interpretations:** Principal Architect/Engineer may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued by the Principal Architect/Engineer after consultation with the Owner, and the Contractor will comply with same. If Contractor believes that a written clarification or interpretation alters the Scope of Work and justifies an adjustment in the Contract Amount or the Contract Time Requirements, Contractor may make a Claim as provided in Article 11 or 12.
- 9.5 Rejecting Defective Work:** Principal Architect/Engineer will recommend that Owner disapprove or reject Work which Principal Architect/Engineer believes fails to conform to a requirement of the Contract Documents or believes will not produce a completed Project that conforms to the Contract Documents, or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

- 9.6** The Principal Architect/Engineer shall not have the authority to issue changes in the field without the express written approval of the Owner.
- 9.7 Shop Drawings:** Refer to Division 01 for Principal Architect/Engineer's authority concerning Shop Drawings.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Changes:

- 10.1.1** Without invalidating the Contract and without providing notice to any Surety, Owner may, at any time or from time to time, order additions, deletions or revisions in the Work. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order. In the event that the Owner and the Contractor are unable to negotiate the terms of a Change Order for the performance of additional Work, the Owner may, at its election, perform such additional Work with its own forces or an Independent Contractor and such work will be considered "Other Work" in accordance with Article 7 or issue a Change Directive.
- 10.1.2** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order. Contractor's proposals for changes in the Contract Amount and/or Contract Time Requirements shall be submitted within ten (10) Calendar Days as requested by the Owner, including estimated impacts to the approved Master Project Schedule if any. Owner will review each proposal and promptly respond to Contractor. After initial review of Contractor's proposal by Owner, Contractor shall provide any supporting data requested by Owner, including but not limited to any Subcontractor or Supplier proposal, within seven (7) Calendar Days, unless Owner grants an extension.
- 10.1.3** Contractor shall not be entitled to an increase in the Contract Amount or an extension of the Contract Time Requirements with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Sections 3.3.1 and 3.3.2, except in the case of an emergency as provided in Section 6.11.15 or in the case of uncovering Work as provided in Section 13.4.
- 10.1.4** Except in the case of an emergency as provided in Section 6.11.15, a Change Order or Change Directive is required before Contractor commences any activities associated with a change in the Work which, in Contractor's opinion, will result in a change in the Contract Amount and/or Contract Time Requirements. Any Work performed prior to Contractor's receipt of a Change Order or Change Directive, will be at Contractor's sole risk and expense, including potential cost impacts and any Delay to the Critical Path of the Master Project Schedule.
- 10.1.5** Not used.
- 10.1.6** Contractor shall provide to the Owner's Representative's all Contractor documentation/records deemed necessary by Owner or Owner's Representative to evaluate the Contractor's Claim including, but not limited

to certified payroll, receipts, bills of lading, invoices, schedules, contractor daily reports, and equipment logs. Other documents, if any, shall be provided pursuant to the Contract Documents.

10.2 Change Orders:

10.2.1 Owner and Contractor shall execute appropriate written Change Orders covering:

- .1 a change in the Work, subject to limitations in Article 10 and elsewhere in the Contract;
- .2 the amount of the adjustment in the Contract Amount, if any; and
- .3 the extent of the adjustment in the Contract Time Requirements, if any.

10.2.2 An executed Change Order shall constitute a settlement of and represent the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time Requirements owed to Contractor or Owner as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

10.3 Change Directives:

10.3.1 Owner may, by written Change Directive, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time Requirements being adjusted as the Owner may deem necessary. A Change Directive may be used in the absence of complete and prompt agreement on the terms of a Change Order, or as otherwise may be deemed to be necessary by the Owner. Where practicable, any items or elements of changed Work that may be agreed upon, prior to the performance of Work under this Article, will be included in a separate Change Order.

10.3.2 If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on one of the methods provided in Article 11.4.1.

10.3.3 A Change Directive signed by Contractor indicates the agreement of Contractor with the proposed basis of adjustment in the Contract Amount and Contract Time Requirements as described within that Change Directive. Such agreement shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.

10.3.4 The Contractor is not obligated to execute a Change Directive, but that Change Directive still constitutes valid direction to the Contractor from the Owner. The refusal by the Contractor to accept the terms incorporated within a Change Directive does not invalidate the content of the Change Directive or undermine in any manner the Owner's right to provide the directive contained within that Change Directive. Upon receipt of a Change Directive, Contractor shall promptly proceed with the change in the Work involved, provided, prior to the commencement of any Work under this section, the Contractor must submit its proposed Work plan, anticipated schedule, and a list of its work force and equipment proposed to be used in

such Work for Owner's approval. Upon such approval, Contractor must promptly commence and make continuous progress in the Change Directive Work. The Owner reserves the right to withhold payment for low production or lack of progress.

10.3.5 The Owner will allow the Contractor to bill for all portions of a Change Directive for which the Work has been successfully completed, if and to the extent the Change Directive provides for an adjustment to the Contract Amount.

10.4 Field Order:

10.4.1 Owner may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount or the Contract Time Requirements and are compatible with the design concept of the completed Project as a functioning whole as intended by the Contract Documents. These minor variations shall be accomplished by written Field Order and shall be binding on Owner and on Contractor who shall perform the Work involved promptly. Contractor shall promptly acknowledge in writing the receipt of a Field Order.

10.4.2 If Contractor believes that a Field Order justifies an adjustment in the Contract Amount and/or Contract Time Requirements, Contractor shall make a prompt written request to Owner for a Change Order or Change Directive. Any request by Contractor for an adjustment in Contract Amount and/or Contract Time Requirements must be made in writing prior to the Contractor or the Contractor's Subcontractors beginning the Work covered by the Field Order.

10.5 Limitation on Damages for Delay:

10.5.1 Contractor shall receive no compensation or damages for Delays except when, and only to the extent that, Contractor demonstrates to the reasonable satisfaction of Owner that direct and unavoidable extra cost to Contractor is caused by: (a) Change Orders or Change Directives (not attributable to Contractor's failure to comply with the Contract Documents or other fault or negligence) that Delay the Work; or (b) specific orders given by Owner to stop or suspend Work (not attributable to Contractor's failure to comply with the Contract Documents or other fault or negligence) that Delay the Work; or (c) failure of Owner to:

.1 provide permits or material, which is to be furnished by Owner, or

.2 provide access to the Work,

and only to the extent that such circumstances continue after the Contractor furnishes Owner with written notice of such failure, such circumstances are not attributable to Contractor's failure to comply with the Contract Documents or other fault or negligence, and such failure causes Delay;

(a "Compensable Delay").

10.5.2 When extra compensation or damages are claimed for a Compensable Delay, Written Notice and support shall be delivered to the Owner as Provided in Section 12.1.1, and a written statement thereof shall be

presented by Contractor to Owner's Representative for Owner's Representative and Owner's review and consideration. Contractor's application for extra compensation or damages shall, however, be subject to review and approval by the Owner. In no event other than a Compensable Delay shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delays, including without limitation: consequential damages, lost opportunity costs, lost profits, unabsorbed home office overhead or other similar damages, and Contractor hereby expressly waives and releases any and all rights to claim or recover any such compensation or damages. The Owner's exercise of any of its rights or remedies under the Contract Documents (including without limitation ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference in the Contractor's performance of the Work.

10.5.3 In the event of a Compensable Delay, Contractor's sole and exclusive remedy (other than as provided in Section 10.5.4) shall be recovery of Contractor's General Conditions Costs for the period of time during any Working Day that Contractor is prevented from performing Work on the Critical Path, and Contractor hereby expressly waives and releases any and all rights to claim or recover any other compensation or damages arising out of or related to a Compensable Delay. "General Conditions Costs" consist only of actual and direct costs necessarily incurred by the Contractor and which Contractor was unable to mitigate despite the exercise of reasonable diligence, for standby costs of facilities, machinery, and equipment on Site ("Standby Equipment Costs"), and "Jobsite Overhead" as defined below, calculated as follows:

- .1** Standby Equipment Costs will not be claimable, due or paid for periods when the facilities, machinery or equipment would have otherwise been idle. Claims for Standby Equipment Costs time are limited to no more than eight (8) hours per twenty-four (24) hour day, forty (40) hours per week, and one hundred seventy-six (176) hours per month. Standby Equipment Costs will be payable at 50 percent (50%) of the applicable Blue Book Rental Rates and calculated by dividing the monthly rate by one hundred seventy-six (176), multiplying the result by the number of standby hours, and multiplying that number by the regional adjustment factor and the rate adjustment factor contained in the Blue Book. Operating costs will not be claimable or payable.
- .2** Jobsite Overhead will be claimable and payable based on actual costs that the Contractor will be required to document. "Jobsite Overhead" is defined as the wages or salaries of the Contractor's on-Site administrative and supervisory personnel (when unable to perform other services for Contractor), and reasonable office expenses incurred at the Site office, and will not include any element of home office labor, employees or overhead expenses.

10.5.4 Except as otherwise provided in this Section 10.5, an extension of the Contract Time Requirements, to the extent permitted under Article 12, shall be the sole remedy of the Contractor for any claimed Delays, or loss, costs, expenses or damages incurred as a result of same.

10.5.5 This Section 10.5 is intended as a limitation on damages available to Contractor and as a defense in favor of Owner against damages not compensable in accordance with its terms, in both cases pursuant to Section 271.155 of Subchapter I of Chapter 271 of the Texas Local Government Code. Contractor and Owner agree that such limitation and defense shall apply even if Owner is found to have breached the Contract.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

11.1 The Contract Amount is stated in the Contract and, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents.

11.2 Contractor agrees and acknowledges that, unless otherwise permitted by law, the original Contract Amount may not be increased by more than twenty-five percent (25%).

11.3 The Contract Amount shall only be changed by a Change Order or Change Directive. Any Claim by Contractor for an adjustment in the Contract Amount shall be made by Written Notice delivered to Owner promptly (but in no event later than fifteen (15) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by Contractor, and shall represent that the adjustment claimed covers all known amounts to which Contractor is entitled as a result of said occurrence or event. If Owner and Contractor cannot otherwise agree, all Claims by Contractor for adjustment in the Contract Amount shall be determined as set out in Article 16.

11.4 Determination of Value of Change Order or Change Directive Work:

11.4.1 The value of any Work covered by a Change Order or Change Directive for an adjustment in the Contract Amount will be determined by one of the following methods:

- .1** by application of unit prices contained in the Contract Documents or subsequently agreed upon to the quantities of the items involved.
- .2** by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- .3** by a cost which has been determined in a manner agreed upon by the Parties and mutually acceptable fixed or percentage fee; or
- .4** as provided in Subsection 11.5.

11.4.2 No cost will be included in the Change Order or Change Directive for the Contractor's time spent preparing the Change Order or responding to the Change Directive, nor will costs be included for the time to negotiate the Change Order or Change Directive costs for machinery, tools, or equipment as described in Subsection 11.5.3.

11.4.3 Before using the method described in Section 11.4.1.4, Owner and Contractor agree to attempt to negotiate a Change Order or Change Directive using the methods identified in Sections 11.4.1.1 through

11.4.1.3, as appropriate, to determine the adjustment in the Contract Amount.

11.5 Determination of Value of Change Order or Change Directive Work When No Agreement: If none of the methods defined in Sections 11.4.1.1, 11.4.1.2 or 11.4.1.3 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Change Directive, and the appropriate adjustment determined using the Force Account method set forth below in Subsections 11.5.1 through 11.5.6. The "Cost of the Work" consists only of those items specified in Subsections 11.5.1 through 11.5.5, below.

11.5.1 For all personnel, Contractor or Subcontractors will be entitled to reimbursement for wages or salaries and employee benefit costs for extra Work performed using the employees' actual wages or salaries and a forty percent (40%) burden rate. No charge for additional superintendence will be permitted unless considered necessary and ordered by Owner;

11.5.2 Contractor will be entitled to the actual cost, including freight charges, of the materials used and installed on such Work. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount;

11.5.3 For machinery, trucks, power tools, or other similar equipment (the "equipment") agreed to be necessary by Owner and Contractor, Contractor will be entitled to reimbursement for actual rental costs;

11.5.4 Contractor will be entitled to the actual cost of Contractor's premiums for Bond(s) and insurance on the extra Work, based on invoices from Surety and insurance carriers. Contractor shall provide Owner's Representative or Owner with invoices from Surety and insurance carriers indicating such cost when requested by Owner's Representative or Owner;

11.5.5 Contractor will be entitled to reimbursement for actual, direct additional General Conditions Costs, but without duplication of any costs otherwise recoverable under this Subsection 11.5, reasonably and necessarily incurred by Contractor in the performance of the extra Work and which can be reasonably demonstrated to the Owner to be necessary to implement the changed Work; and

11.5.6 Contractor will be entitled to allowances for overhead and profit as stated below.

.1 The maximum allowance for overhead and profit on increases due to Change Orders and Change Directives:

	Overhead	Profit
To Contractor for change in the Work performed by Subcontractors:	10 percent	0 percent
To first tier Subcontractors for change in the Work performed by its Subcontractors:	10 percent	0 percent

To Contractor and Subcontractor for change in the Work performed by their respective firms: 10 percent 5 percent

- .2** For changes in the Work performed by Contractor and Subcontractors, allowance for overhead and profit will be applied to an amount equal to cost of all additions less cost of all deletions to the Work. Allowance for overhead to Contractor and first tier Subcontractors on changes performed by Sub-Subcontractors are applied to an amount equal to the sum of all increases to the Work by applicable Sub-Subcontractors, less any decreases in such Sub-subcontractors' Work.

11.5.7 If Owner deletes Work or makes a change which results in a net decrease in the Contract Amount, the Owner is entitled to a credit calculated in accordance with Subsections 11.4.1.1 through 11.4.1.4.

11.5.8 The compensation, as herein provided for, shall be received by Contractor and any affected Subcontractor as payment in full for Work done by Change Directive and will include use of small tools, and total overhead expense and profit. Contractor shall maintain in accordance with generally accepted accounting principles a documented, itemized accounting, evidencing the expenses and savings, including overhead and profit, associated with such changes, both for expenses and savings, in the performance of the Work resulting from the change. Contractor shall submit to Owner's Representative records of Work done by Change Directive at the end of each day, which records will be made upon forms provided for this purpose by Owner, and Contractor shall request that Contractor and Owner's Representative compare records of Work done by Change Directive at the end of each day. Any record of such comparison shall be signed by both Owner's Representative and Contractor, with one copy being retained by Owner and one by Contractor. Refusal by Contractor to sign these records within two (2) working days of presentation does not invalidate the accuracy of the record.

11.6 Unit Price Work:

11.6.1 The following Sections 11.6.1 through 11.6.7 apply only to those elements of the Work which are identified in the Contract Documents as being "Unit Price Work".

11.6.2 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Amount will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as set forth in the Bid/Proposal. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids/Proposals and determining an initial Contract Amount. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner's Representative. Owner's Representative will review with Contractor the determinations on such matters before rendering a written decision thereon (by recommendation of payment on an Application for Payment or otherwise).

- 11.6.3** When "plan quantity" is indicated for a Bid/Proposal item, Contractor shall be paid the amount specified in the Contract Documents without any measurements.
- 11.6.4** Contractor agrees each Unit Price includes amounts for all overhead and profit associated with performing the units of Work for which the Unit Prices applies.
- 11.6.5** A Major Item is any individual Bid/Proposal item in the Bid/Proposal that has a total cost equal to or greater than five percent (5%) of the original Contract Amount or \$50,000, whichever is greater, computed on the basis of Bid/Proposal quantities and Contract Unit Prices.
- 11.6.6** Owner or Contractor may make a Claim for an adjustment in the Contract Amount in accordance with Article 11 if:
- .1** the actual quantity of any Major Item should become as much as twenty five percent (25%) more than or twenty five percent (25%) less than that in the Bid/Proposal; or
 - .2** Contractor presents documentation contesting accuracy of a "plan quantity" and Owner verifies actual quantity and determines the "plan quantity" is in error by five percent (5%) or more;
- 11.6.7** Provided, however, in the event a Major Item is reduced by twenty-five percent (25%) or more relative to the quantity amount in the Bid/Proposal, no additional Article 11.5.6 profit or overhead will be added, if, due to other additions in the Work, the net value of the Contract Amount is not reduced.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1 Requisites for Changes in Contract Time Requirements:

- 12.1.1** The Contract Time Requirements (including Milestones) may only be changed by Change Order duly executed by both Contractor and Owner or by Change Directive. Any Claim for an adjustment of the Contract Time Requirements (including Milestones) or adjustment of the Contract Amount due to any Compensable Delay as provided in Section 10.5 shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than five (5) calendar days after the start of the occurrence or event giving rise to the Delay) and stating the general nature of the Delay. Notice of the extent of the Delay and any requested adjustment of the Contract Amount due to any Compensable Delay as provided in Section 10.5, with supporting data, shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed is the entire adjustment to which claimant is entitled as a result of said occurrence or event. If Owner and Contractor cannot otherwise agree, all Claims for adjustment in the Contract Time Requirements (including Milestones) and/or adjustment of the Contract Amount due to any Compensable Delay as provided in Section 10.5 shall be determined in accordance with and

subject to the requirements of Article 16. Notwithstanding anything in the Contract Documents to the contrary, no Claim for an adjustment in the Contract Time Requirements (including Milestones) and/or adjustment of the Contract Amount due to any Compensable Delay as provided in Section 10.5 will be valid if not submitted in accordance with the requirements of this Article.

12.1.2 When Contractor is at fault and Owner stops the Work so that corrections in the Work can be made by Contractor, no extensions of time will be allowed.

12.1.3 In the event of a Delay attributable to Force Majeure, an extension of the Contract Time Requirements (including Milestones) in an amount equal to the time lost due to such Delay shall be Contractor's sole and exclusive remedy for such Delay. "Force Majeure" is circumstances beyond the control of both Owner and Contractor, and not attributable to the fault or negligence of Contractor, any Subcontractor or any other party for whose acts Contractor is liable, and includes an Act of God, war, riot, terrorism, civil commotion, sovereign conduct, industry-wide delays or disruptions in manufacture or delivery of materials or equipment required for the Work, and Unusual Inclement Weather and the direct effects thereof such as standing water or loss of Site power. In such an event, Contractor shall take all commercially reasonable action to mitigate the Delay, and Owner and Contractor will meet no later than three (3) business days after cessation of the event to establish a proposed new Project Schedule for the Project. Any claimed Force Majeure Delay attributable to industry-wide delays or disruptions in manufacture or delivery of materials or equipment required for the Work shall be supported by the following documentation:

- (a)** By copies of purchase orders for Delayed item(s) indicating date ordered by Contractor/Subcontractor and date of purchase order receipt by Supplier;
- (b)** If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, by providing records of dates Contractor forwarded submittal(s) to Owner's Representative, dates Owner or Principal Architect/Engineer returned submittal(s) to Contractor, and dates submittal(s) were forwarded to Manufacturer or Supplier;
- (c)** By copies of document(s) from Manufacturer or Supplier, on Manufacturer's or Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s);
- (d)** By copies of correspondence between Contractor / Subcontractor and Manufacturer or Supplier indicating Contractor / Subcontractor's efforts to expedite item(s); and
- (e)** If item(s) are being purchased by a Subcontractor, by providing correspondence, meeting notes, etc., that reflect Contractor's efforts with the Subcontractor to expedite delivery of the item(s).

12.1.4 The Contractor will only be entitled to an extension of time for Delays that can be demonstrated by the Contractor through critical path analysis as causing Delay, and only for any Delay caused by Force Majeure, Changes ordered in the Work by the Owner through Change Order or Change Directive which justify additional time, or other Delays as described in Section 10.5. No extension of time shall relieve Contractor or Surety on its performance Bond from all of

Contractor's obligations hereunder which shall remain in full force and effect.

12.2 Weather Delays:

12.2.1 Contractor may be granted an extension of time because of "Unusual Inclement Weather", as defined below. However, the Contractor will not be granted an extension of time for "Normal Rain Days", as defined below.

12.2.2 "Unusual Inclement Weather" is defined as a rain event, or extreme temperatures, high winds, hail or lightning, which occurs at the Site and is of sufficient magnitude to prevent Contractor from performing units of Work critical to maintaining the Master Project Schedule on a day when Work is scheduled to be performed and is otherwise capable of being performed, and which is beyond the Normal Rain Days as defined in Section 12.2.3 below.

12.2.3 Baseline Rain Day Determination. "Normal Rain Days" are based on U.S. Weather Bureau Records available for the most immediate area of the Site of the Work, and are included in Owner's Project Schedule, are not a justification for an extension of time, and are broken down by the number of calendar days in each month as follows:

January	7 days	July	6 days
February	6 days	August	7 days
March	7 days	September	6 days
April	7 days	October	7 days
May	8 days	November	6 days
June	8 days	December	6 days

12.2.4 Not used.

12.2.5 Rainfall will be measured with the Owner's Representative's approval at the Site using an approved rain gauge or with the Owner's Representative's approval at the nearest operational public weather data collection facility to the Site.

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

13.1 Notice of Defects: All Defective Work may be rejected, corrected or accepted as provided in Article 13. Contractor must give Owner, Owner's Representative, and Principal Architect/Engineer prompt notice of any Defective Work of which Contractor has actual knowledge. Prompt notice of all Defective Work of which Owner, Owner's Representative, Owner's CMT Consultant, or Principal Architect/Engineer has actual knowledge may be given to Contractor. Payment may be withheld by the Owner for identified Defective Work until such time as the Owner, Owner's Representative, or

Principal Architect/Engineer has determined the Defective Work has been corrected such that it complies with all applicable Contract requirements.

13.2 Access to Work: Owner, Owner's Representative, Owner's CMT Consultant, Principal Architect/Engineer, Principal Architect/Engineer's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at reasonable times for observing, inspecting and testing. Contractor shall provide them proper and safe conditions for such access, and advise them of Contractor's site safety procedures and programs so that they may comply therewith as applicable.

13.3 Tests and Inspections:

13.3.1 Contractor shall give at least twenty-four (24) hours advance notice of readiness of the Work for all required inspections, tests or approvals, and shall coordinate and cooperate with inspection and testing personnel to facilitate the required inspections or tests.

13.3.2 Owner shall employ and pay for 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 Section 13.3.3 and 13.3.4 below;
- .2 for costs incurred with tests or inspections conducted pursuant to Section 13.4.3 below shall be paid as provided in Section 13.4.3;
- .3 for reinspecting or retesting Defective Work; and
- .4 as otherwise specifically provided in the Contract Documents.

All testing laboratories shall meet the requirements of ASTM E-329.

13.3.3 If Legal Requirements require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of any governmental entity or public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish Owner's Representative the required certificates of inspection or approval.

13.3.4 Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for Owner's, Owner's CMT Consultant's, Owner's Representative's, and Principal Architect/Engineer's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to Contractor's purchase thereof for incorporation in the Work.

13.4 Uncovering Work:

13.4.1 If any Work that is to be inspected, tested or approved is covered by Contractor without prior written concurrence of Owner's Representative, or if any Work is covered contrary to the written request of Owner's Representative, Contractor must, if requested by Owner's Representative,

uncover and recover the Work at Contractor's expense, except as provided in Section 13.4.2.

13.4.2 Uncovering Work as provided in Section 13.4.1 shall be at Contractor's expense unless Contractor has given Owner's Representative timely notice of Contractor's intention to cover the same and Owner's Representative has not acted within five (5) working days of receipt of such notice.

13.4.3 If Owner's Representative considers it necessary or advisable that permissibly covered Work be observed, inspected or tested, Contractor shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, Contractor shall pay or otherwise bear all claims, costs, losses and damages arising out of or resulting from such uncovering, exposure, observation, inspection and testing and satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). If, however, such Work is not found to be Defective, Contractor shall, subject to Section 13.4.1, be allowed an increase in the Contract Amount or an extension of the Contract Time Requirements (including Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction.

13.5 Owner May Stop the Work:

13.5.1 If the Work is Defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, 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 or obligation on the part of Owner to exercise this right for the benefit of Contractor or any Surety or other party.

13.5.2 If Contractor fails to correct Defective Work or submit a plan that is satisfactory to Owner for taking corrective action, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated, or Owner may take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not stop Calendar or Working Days charged against the Contract Time Requirements.

13.6 Correction or Removal of Defective Work: If required by Owner, Contractor shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner or Owner's Representative, remove it from the Site and replace it with Work that is not defective. Contractor shall correct or remove and replace Defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of Defective Work. Contractor shall pay all claims, costs, losses and damages arising out of or resulting from such correction or removal (including but not limited to all costs of repair or replacement of Work of others, and all costs of reinspecting and/or retesting such Defective Work).

13.7 Corrective period:

13.7.1 If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by Legal Requirements or by the terms of any applicable special guarantee or express warranty required by the Contract Documents or by any specific provision of the Contract Documents (including but not limited to Section 14.11.2), any Work, including Work performed after the Substantial Completion date, is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

- (a) correct such Defective Work, or, if it has been rejected by Owner, remove it from the Site and replace it with Work that is not Defective, and
- (b) satisfactorily correct or remove and replace any damage to other Work or the work of others, or damage to other property, whether personal or real property, resulting from the correction, removal or replacement of such Defective Work.

Such one (1) year or longer period will renew and recommence for Work requiring correction upon the completion of correction of such Work.

13.7.2 If Contractor does not promptly comply with the terms of Owner's corrective action instructions, or in an emergency where Delay would result in unreasonable risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages arising out of or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid or otherwise borne by Contractor.

13.7.3 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the corrective period for that item will still start to run from the date of Substantial Completion of the Work.

13.7.4 If correction of Defective Work will affect the function or use of the facility, Contractor shall not proceed with correction of Defective Work without prior coordination with and approval of Owner.

13.7.5 The obligations of the Contractor to perform warranty and corrective work will survive the acceptance of the Work and any termination of the Contract.

13.7.6 Owner will utilize the "Warranty Item Form" a copy of which is attached hereto for the purpose of providing written notice of defects discovered during the corrective period. Contractor will acknowledge receipt of the notice by dating, signing, completing and returning the form to Owner when the defect is corrected, including such information on or attached to the form to describe the nature of the repairs or corrections that were made. If the defect cannot be corrected within seven (7) Calendar Days of receipt of notice, Contractor shall promptly provide a written explanation to Owner (or Owner's Representative) describing the repairs or other correction needed and the time required to complete the repairs or other correction.

- 13.7.7** Establishment of the required period for correction of Work as described in Subsection 13.7.1 above relates only to the specific obligation of the Contractor to correct defects in Work discovered during the corrective period, and has no relationship to the time within which any obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to any failure by Contractor to have complied with its obligations under the Contract Documents.
- 13.7.8** All Manufacturer and extended Manufacturer warranties shall be assigned to Owner as a condition of Final Completion.
- 13.8 Acceptance of Defective Work:** If, instead of requiring correction or removal and replacement of Defective Work, Owner decides to accept it, Owner may do so. Contractor shall pay or otherwise bear all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the diminished value of the Defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner after a calculation by Owner of the diminution in value of the Defective Work.
- 13.9 Owner May Correct Defective Work:** If Contractor fails within a reasonable time after Written Notice of Owner to correct Defective Work, or to remove and replace rejected Work, 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 (7) calendar days' Written Notice to Contractor, correct any such deficiency. If, in the sole discretion of the Owner, significant progress has not been made by Contractor during this seven (7) calendar day period to correct the deficiency, the Owner may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, Owner may proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work, and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, its agents and employees, Owner's other contractors, Principal Architect/Engineer and Principal Architect/Engineer's consultants access to the Site or any such offsite storage facility to enable Owner to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by Owner in exercising such rights and remedies will be paid or otherwise borne by Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. 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. Contractor shall not be allowed an extension of the Contract Time Requirements (including Milestones), or entitled to make any claim for damages resulting from any Delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Application for Progress Payment:

- 14.01.1** No more often than once a month, Contractor shall submit to Owner or if directed by Owner, to Owner's Representative, for review an Application for Payment, in a form acceptable to Owner, filled out and signed by Contractor covering the Work completed as of the last day of the month for which an Application for Payment is being made. Application for Payment shall be accompanied by such supporting documentation as is required by the Contract Documents. The Application for Payment shall constitute Contractor's representation that the Work has been performed in accordance with the Contract Documents, has progressed to the point represented in the Application for Payment, and that title to all Work has passed or will pass to Owner free and clear of all claims, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Contractor's receipt of payment, whichever occurs earlier.
- 14.01.2** Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives, if the Change Directive does not provide for an adjustment to the Contract Amount, or if the changes in the Work are not yet included in Change Orders.
- 14.01.3** Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or Manufacturer or Supplier because of a dispute or other reason.
- 14.01.4** If payment is requested on the basis of materials or 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 be accompanied by such bills of sale, data and other information satisfactory to Owner and Owner's Representative substantiating Owner's title to such materials or equipment or otherwise protecting Owner's interests therein. Payment on account of such materials or equipment will not include any amount for Contractor's overhead or profit or relieve Contractor of its obligation to protect and install such materials or equipment in accordance with the requirements of the Contract and to correct or restore damaged or Defective Work and shall in no event exceed eighty five percent (85%) of the line item valuation for such materials or equipment in the Schedule of Values. If materials or equipment are stored at another location, at the direction of the Owner they shall be stored in a bonded and insured facility, accessible to Owner's Representative and Principal Architect/Engineer, CMT Consultant, and Owner, and shall be clearly marked as property of Owner. Contractor shall insure such materials and equipment while so stored and in transit to the Site. Title to materials delivered to the Site of the Work or a staging area will pass to Owner upon payment by Owner without the necessity for further documentation. Risk of loss for all such materials and equipment will not pass to Owner until final payment.
- 14.01.5** In making progress payments, ten percent (10%) of the approved amount shall be retained until final completion and acceptance of the Contract Work. However, if the Owner at any time after fifty percent (50%) of the

work has been completed finds that satisfactory progress is being made, Owner may authorize any of the remaining progress payments to be made in full. Also, if the Contractor has achieved Substantial Completion of the Work and the Owner finds the amount retained to be in excess of the amount adequate for the protection of the Owner, Owner, at its sole discretion, may release to the Contractor all or a portion of such excess amount. The Owner is not obligated to pay interest on amounts retained except as provided in the Agreement. The interest rate to be paid on such retainage shall be the rate of interest paid by the Owner's depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein.

14.01.6 Applications for Payment shall include the following documentation:

- .1 an updated Project Schedule and narrative;
- .2 an Affidavit of all bills paid to Subcontractors and Suppliers in the Monthly Subcontractor Payment Reporting Form included in the Specifications;
- .3 conditional waivers and releases from Contractor upon progress and final payments, in the forms included in the Specifications; and
- .4 a Contractor's Monthly Report;

14.02 Contractor's Warranty of Title: 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 free and clear of all claims no later than the time of payment to Contractor.

14.03 Review of Applications for Progress Payment:

14.03.1 Contractor shall submit its Application for Payment to the Owner's Representative not later than three (3) days after the first day of each month. The Owner's Representative will, within seven (7) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for Payment for processing by Owner, or return the Application for Payment to Contractor indicating Owner's Representative's reasons for refusing to recommend payment. In the latter case, Contractor shall make the necessary corrections and resubmit the Application for Payment.

14.03.2 Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative, based upon Owner's Representative's on-site observations of the executed Work and on Owner's Representative's review of the Application for Payment and the accompanying schedules and other information, that to the best of Owner's Representative's knowledge, information and belief:

- .1 the Work has progressed to the point indicated; and
- .2 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, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for unit price Work, and to any other qualifications stated in the recommendation).

14.03.3 By recommending any such payment, Owner's Representative will not be deemed to have represented that:

- .1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;
- .2 examination has been made to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Amount;
- .3 Contractor's construction means, methods, techniques, sequences or procedures have been reviewed; or
- .4 that 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 from Contractor.

14.04 Decisions to Withhold Payment:

14.04.1 Owner may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

- .01 Defective Work not remedied;
- .02 third party Claims filed or reasonable evidence indicating probable filing of such Claims;
- .03 failure of Contractor to timely or properly make payments to Subcontractors or for labor, materials or equipment;
- .04 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
- .05 damage to Owner or another contractor for which Contractor is responsible;
- .06 reasonable evidence that the Work will not be completed within the Contract Time Requirements, and that the unpaid balance would not be adequate to cover actual or liquidated damages or economic disincentives for the anticipated Delay;
- .07 failure of Contractor to submit a Schedule of Values in accordance with the Contract Documents;
- .08 failure of Contractor to submit a submittal schedule in accordance with the Contract Documents;
- .09 failure of Contractor to submit and update the construction Project Schedule in accordance with the Contract Documents;
- .10 failure of Contractor to maintain a record of changes on drawings and documents;
- .11 failure of Contractor to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of Owner;
- .12 Contractor's neglect or unsatisfactory prosecution of the Work, including failure to clean up;
- .13 property damage claims that are the responsibility of the Contractor; or
- .14 failure of Contractor to comply with any provision of the Contract Documents.

14.04.2 When the above reasons for withholding payment are remedied or no longer exist, Contractor shall resubmit a statement for withheld amounts. Payment will be made within forty-five (45) calendar days of receipt by

the Owner of an approved Application for Payment, subject to Article 14.05 and Government Code, Section 2251.025(b).

14.05 Delayed Payments: Owner shall endeavor to, but shall not be obligated to, make payment to Contractor within thirty (30) calendar days of receipt of an Application for Payment in acceptable form, including all supporting documents and information required. However, Contractor agrees that should Owner fail to make payment to Contractor of the sum due on any such Application for Payment within forty-five (45) calendar days after the day on which Owner received the Application for Payment, then Owner will pay to Contractor, in addition to the sum due on such Application for Payment, interest thereon at the rate specified in Government Code, Section 2251.025(b) from date due until fully paid, which shall fully liquidate and shall be Contractor's sole and exclusive remedy for any injury to or damages incurred by Contractor arising out of such delay in payment.

14.06 Arrears: No money shall be paid by Owner upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to the Owner for taxes; and the Owner shall be entitled to counterclaim and automatically offset against any such debt, claim, demand or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand or account after said taxes are due, shall affect the right of Owner to so offset said taxes, and associated penalties and interest if applicable, against the same.

14.07 Substantial Completion:

14.07.1 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify Owner's Representative and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner, Owner's Representative or the Principal Architect/Engineer does not consider the Work substantially complete, Owner's Representative will notify Contractor giving reasons for that position. After performing any required Work, Contractor shall then submit another request for Owner's Representative to determine Substantial Completion. If Owner considers the Work substantially complete, Owner's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which Contractor shall complete or correct the punch list items, and shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, warranties, corrective periods, and insurance.

Failure to include an item on the punch list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If a Certificate of Occupancy or Certificate of Compliance is required by governmental entities or public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered to have achieved Substantial Completion. The certificate of Substantial Completion shall be signed by Owner and Contractor to evidence acceptance of the responsibilities assigned to them in such certificate.

- .1** For water and wastewater lines construction, Substantial Completion means, in addition to the definition at Section 1.072, that the Work, including all testing and disinfection, have been completed and accepted and the line(s) placed into service. A certificate of Substantial Completion may not be issued. Work that remains after Substantial Completion could include the final pavement of roadways, adjustment of structures to final grade and re-vegetation. Owner's Representative will issue a notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted as having achieved Substantial Completion.
- .2** For water and wastewater lines construction that includes roadway construction and/or reconstruction, a certificate of partial Project Substantial Completion may be given for the Work described and deemed substantially complete per Article 14.07.1.1, exclusive of any Project roadway construction and/or reconstruction. Having received a certificate of partial Substantial Completion on the water and wastewater lines construction, a certificate of Substantial Completion of the entire or balance of the Project may be given when the roadway construction and/or reconstruction is found to be substantially complete as per Article 14.07.1.3. The requirements of Article 14.08 Partial Utilization, shall also apply.
- .3** For roadway construction and/or reconstruction, Substantial Completion means, in addition to the definition at Section 1.072, that the Work, including the final surface course, all permanent traffic control devices (pavement markings, signs, etc.), punch list items, and final cleanup has been completed, accepted, and placed into service, and, any street lighting conduit that has been installed, lowered or relocated must be inspected for usability by, and must have received written approval from, the Owner as well as having been completed, accepted, and placed into service. A certificate of Substantial Completion may not be issued. Work that remains after Substantial Completion could include final clean up. The Owner's Representative will issue a notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted as having achieved Substantial Completion.
- .4** Substantial Completion shall also comprise the completion of Work associated with the Project so that the utilities, systems, equipment, and/or facilities are operating properly and functioning per their intended use, as designed. Work that can be completed between Substantial Completion and Final Completion includes finish work such as cleanup, finish painting, landscape repairs, and final documentation. However, Contractor shall provide all Owner required equipment and system operation and maintenance training and Manufacturer certifications, and shall submit all spare parts and final O&M Data in order for Substantial Completion to be deemed achieved.

14.07.2 Owner shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but Owner will allow Contractor

reasonable access to complete or correct items on the punch list and perform and complete warranty or corrective work.

14.07.3 Unless otherwise provided in the Contract Documents, for all periods prior to the issuance of a Certificate of Substantial Completion for the Project or for any designated area within the Project, the Contractor shall be responsible for the cost of all temporary and permanent utility charges necessary to maintain the progress and quality of the construction Work which is under the Contractor's control.

14.07.4 Unless otherwise provided in the Contract Documents, for all periods prior to the issuance of a Certificate of Substantial Completion for the Project or for any designated area within the Project, the Contractor shall be responsible for the cost of all temporary structural support systems necessary for the safe execution of the Work. Such systems shall be the sole responsibility of the Contractor.

14.08 Partial Utilization: Use by Owner, at Owner's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) Owner 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, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

14.08.1 Owner at any time may request Contractor to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor shall certify to Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. Contractor at any time may notify Owner's Representative that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. The provisions of Sections 14.7.1 and 14.7.2 will apply with respect to notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted.

14.08.2 Such partial utilization must be authorized to the extent required by any governmental entities or public authorities having jurisdiction over the Work.

14.08.3 Warranty and corrective period requirements for such partial utilization shall be in accordance with Section 13.7.3 above.

14.09 Final Inspection: Upon Written Notice from Contractor that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Contractor and provide Written Notice 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. Owner's Representative, Principal Architect/Engineer, CMT Consultant and other third party consultants and any other governmental entity or public authority with jurisdiction over the Project may assist Owner in the inspection and testing of the Work and Contractor agrees to and shall cooperate with any such consultants or authorities with respect to any such inspections and tests.

14.10 Final Application for Payment: Contractor may make application for final payment following the procedure for progress payments after Contractor has completed all such corrections to the satisfaction of Owner (and Owner's Representative) and delivered the following documents:

- 14.10.01** Affidavit by Contractor certifying the payment of all debts and claims;
- 14.10.02** Architect's/Engineer's Certificate of Completion;
- 14.10.03** Three (3) complete final operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;
- 14.10.04** Record documents (as provided in Section 6.10);
- 14.10.05** Complete releases or waivers (satisfactory to Owner) of all claims arising out of or filed in connection with the Work;
- 14.10.06** Certificate evidencing that insurance required by the Contract, if any, will remain in force after final payment and through the warranty and corrective periods and any longer period of time required by the Contract;
- 14.10.07** Non-Use of Asbestos Affidavit (After Construction) and lead based paints;
- 14.10.08** TPDES records in accordance with Section 6.07.4;
- 14.10.09** Consent of Surety, if any, to final payment; and
- 14.10.10** Any other documentation required by the Contract Documents.

14.11 Final Payment and Acceptance:

14.11.1 If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative and Owner are satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, Owner's Representative will recommend the final Application for Payment and thereby notify the Owner, who, if it accepts such recommendation, will pay to Contractor the balance due Contractor under the terms of the Contract. If the sole remaining unfinished item

to complete the Work is the reestablishment of vegetation, Owner has the right to require Contractor to execute and deliver to Owner a re-vegetation letter with a reasonable fiscal amount posted via an irrevocable, callable on demand letter of credit issued by a financial institution acceptable to Owner and at no cost to Owner to ensure completion of this item, as a condition of final payment. This Work must be accomplished within one hundred twenty (120) Calendar Days of the date of Final Completion of the Work. When the permanent erosion control has been established, Owner will initiate an inspection for final acceptance of the erosion controls. If the re-vegetation is not completed within the one hundred twenty (120) Calendar Days, Owner, at its option, may draw upon and complete the Work using the proceeds of the postedre-vegetation letter of credit.

14.11.2 Owner will issue a certificate of Final Completion to Contractor which establishes the Final Completion date. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation, and Contractor has executed the above-described re-vegetation letter of credit to ensure completion of this item, the Owner will issue a certificate of conditional acceptance to Contractor which establishes the Final Completion date.

14.11.3 Final payment is considered to have taken place when Contractor or any of its representatives negotiates Owner's final payment check, whether labeled final or not, for cash or deposits the check in any financial institution for its monetary return.

14.12 Waiver of Claims by Contractor: The making and acceptance of final payment will constitute A waiver of all claims by Contractor against Owner other than those previously made in writing and still unsettled at the time of the final payment.

14.13 Contractor's Payment Obligations Contractor will pay the Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from Owner on account of their work. Contractor will impose similar requirements on the Subcontractors to pay those parties with whom they have contracted. Contractor will defend and indemnify Owner from and against any claims for payment by any such parties.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 Owner May Suspend Work Without Cause: At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than one hundred twenty (120) calendar days by Written Notice to Contractor, or such longer period of time as agreed to in writing by Owner and Contractor. Contractor shall promptly resume the Work upon Owner's written direction to proceed. Contractor shall be allowed an adjustment in the Contract Amount or an extension of the Contract Time Requirements, or both, directly attributable to any such suspension if Contractor makes an approved Claim therefor as provided in Articles 10.5 and 12.1.

15.2 Owner May Terminate Without Cause: Upon seven (7) calendar days' Written Notice to Contractor, Owner may, without cause and without prejudice to any right

or remedy of Owner, elect to terminate the Contract. In such case, Contractor shall be paid (without duplication of any items):

- 15.2.1** for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination;
- 15.2.2** for reasonable demobilization costs;
- 15.2.3** for reasonably anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on unperformed Work or unabsorbed overhead, or lost opportunity; and
- 15.2.4** for all costs reasonably incurred in settlement of terminated contracts with Subcontractors, Manufacturers, Suppliers and others, including for reasonably anticipated profits on completed and accepted Work not previously paid and not included in separate pay items calculated to date of termination but not for anticipated profit on unperformed Work or unabsorbed overhead, or lost opportunity. Contractor agrees to negotiate in good faith with Subcontractors, Manufacturers, Suppliers and others to mitigate its and Owner's costs.

15.3 Owner May Terminate With Cause:

- 15.3.1** Upon the occurrence of any one or more of the following events (each, a "default"):
 - .1** if Contractor persistently fails to perform the Work in accordance with the Contract Documents;
 - .2** if Contractor disregards Legal Requirements;
 - .3** if Contractor disregards the authority of Owner or Owner's Representative;
 - .4** if Contractor makes fraudulent statements;
 - .5** if Contractor fails to maintain a work force adequate to accomplish the Work within the Contract Time Requirements;
 - .6** if Contractor fails to make adequate progress and endangers successful completion of the Contract; or
 - .7** if Contractor otherwise breaches any provision of the Contract Documents;

Owner may, after giving Contractor (and the performance bond Surety, if any) seven (7) calendar days Written Notice, terminate in whole or in part the Contract or the Contractor's right to perform Work. Owner, at its option, may proceed with negotiation with Surety for completion of the Work. Alternatively, Owner may exclude Contractor from the Site and take possession of the Work (without liability to Contractor for trespass or conversion), 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 finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by Owner arising out of or resulting from the Contractor's default and Owner's completion of the Work,

including attorneys' fees and other expenses and additional Owner's Architect/Engineer fees and other expenses in connection with such completion, Owner shall pay Contractor only for the value of unpaid, conforming Work performed by Contractor prior to such termination up to but not more than such excess. If such claims, costs, losses and damages exceed such unpaid balance, Contractor or Surety shall pay the difference to Owner upon demand. In the event that a termination for cause is found to be wrongful, the termination shall be deemed converted to a termination without cause as set forth in Section 15.2 and Contractor's remedy for wrongful termination shall be exclusively limited to the recovery of the payments permitted for termination without cause as set forth in Section 15.2.

15.3.2 Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor and Surety then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

15.4 Contractor May Stop Work or Terminate: If through no act or fault of Contractor, the Work is suspended for a period of more than one hundred and twenty (120) calendar days by Owner or under an order of court or other governmental entity or public authority, or such longer period of time as agreed to in writing by Owner and Contractor, or (except during disputes) Owner's Representative fails to forward to Owner for processing any properly prepared and submitted Application for Payment within seven (7) calendar days after it is submitted, or (except during disputes) Owner fails for forty-five (45) calendar days after it is submitted to pay Contractor any sum finally determined by Owner to be due, then Contractor may, upon forty-five (45) calendar days' Written Notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Section 15.2. The provisions of this Section 15.4 are not intended to preclude Contractor from making a Claim under Articles 11 and 12 for an increase in Contract Amount or Contract Time Requirements or otherwise for expenses or damage directly attributable to Contractor's stopping Work pursuant to this Section.

15.5 Discretionary Notice to Cure: In its sole discretion, Owner may, but is not required to, provide a Notice to Cure to Contractor and its Surety to cure an event of default described in Section 15.3.1 above and/or an anticipatory breach of contract and, if required by Owner, the Contractor and Surety shall attend a meeting with Owner, regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. If issued, the Notice to Cure will set forth the time limit by which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, Contractor shall prepare a report describing its program and measures to accomplish the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The Contractor's report must be delivered to Owner at least three (3) days prior to any requested meeting with the Owner and Surety.

15.6 Bankruptcy: If Contractor declares bankruptcy or is adjudged bankrupt or makes an assignment for the benefit of creditors or if a receiver is appointed for the benefit of creditors or if a receiver is appointed by reason of Contractor's insolvency, Contractor may be unable to perform this Contract in accordance with the Contract

requirements. In such an event, Owner may demand Contractor or its successor in interest provide Owner with adequate assurance of Contractor's ability to perform in accordance with the terms and conditions of the Contract. If Contractor fails to provide adequate assurance of performance to Owner's reasonable satisfaction within ten (10) days of such a request, Owner may terminate the Contract or the Contractor's right to perform Work for cause or without cause, pursuant to Sections 15.2 or 15.3 above. If Contractor fails to provide timely adequate assurance of its performance and actual performance, Owner may prosecute the Work with its own forces or with other contractors on a time and material or other appropriate basis and the cost of which will be charged against the Contract balance or otherwise borne by Contractor.

15.7 Duty to Mitigate: In the event of any termination or suspension under this Contract, the Contractor agrees to and shall take all reasonable actions to mitigate its damages and any and all claims for damages which may be asserted against the Owner.

15.8 Responsibility during Demobilization: While demobilizing, the Contractor will take all necessary and reasonable actions to preserve and protect the Work, the Site and other property of the Owner or others at the Site.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Filing of Claims:

16.1.1 All Claims by Contractor shall be made by Written Notice delivered to Owner within fifteen (15) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after Written Notice of Claim is delivered by Contractor and shall represent that the adjustment claimed covers all known monetary amounts and/or extensions of time to which Contractor is entitled.

16.1.2 Within thirty (30) calendar days of receipt of notice of the amounts and/or time extensions sought by the Claim with supporting data, Owner's Representative and Contractor shall meet to discuss the Claim, after which a written offer of settlement or written notification of no settlement offer may be made to Contractor. If Contractor is not satisfied with any proposal presented, Contractor shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party along with a written request to re-evaluate the Claim; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

16.2 Alternative Dispute Resolution:

16.2.1 If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies except that nothing herein shall preclude the Owner from seeking injunctive or other extraordinary relief in a court of competent jurisdiction prior to the completion of the following procedure. Owner reserves the right to include the Owner's Representative, Principal Architect/Engineer and/or the CMT Consultant as a party. Similarly, Contractor agrees to participate at its own

cost in similar dispute resolution procedures for any dispute between Owner and any such other parties, and Contractor agrees to require its Subcontractors to participate in the following procedures in any dispute between Owner and Contractor, upon Owner's written request, if in Owner's sole discretion the participation of Contractor and/or any Subcontractor is necessary to the resolution of any such dispute.

16.2.2 Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) Calendar Days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an owner, officer, or employee of each organization) with the authority to negotiate and settle the dispute on behalf of their organization. If a previously involved senior level decision maker is unavailable due to the size of the Contractor's organization or any other reason, the Contractor shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations and resolution of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) Calendar Days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2.3 Mediation:

- .1** If the procedure described in 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. Owner and Contractor agree to select within thirty (30) calendar days a mediator trained in mediation skills, and experienced in the mediation of construction disputes, to assist with resolution of the dispute. Owner and Contractor agree to act in good faith in the selection of the mediator and to give all due consideration to qualified individuals nominated to act as mediator. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to ask the American Arbitration Association to select a qualified individual, which selection shall be binding on the parties. If the dispute is technical in nature, the mediator appointed by the American Arbitration Association shall be qualified by at least ten (10) years' experience in construction, engineering, and/or public works projects. If a party refuses to participate in the selection of a mediator or refuses to attend a scheduled mediation, the other party may pursue other remedies available to it.
- .2** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all parties for the exchange of points of view and (iii) separate meetings between the mediator and each party to the dispute for the formulation of resolution alternatives. The parties agree to participate in mediation in good faith for up to thirty

(30) calendar days after the date of the first mediation session, unless mutually agreed otherwise. Should the parties fail to reach a resolution of the dispute through mediation, then the parties may pursue other remedies available to them.

ARTICLE 17 – MISCELLANEOUS

- 17.1 Computation of Times:** When any period of time is measured in the Contract Documents in 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 legal holiday, such day will be omitted from the computation.
- 17.2 Venue; Choice of Law:** Venue for any suit at law or in equity involving the Contract or the parties' relationship created by it shall lie exclusively in Montgomery County, Texas. The Contract and any disputes arising out of it shall be construed in accordance with and governed by the laws of the State of Texas, without regard to its conflict of laws principles. Any claims or causes of action arising under or in conjunction with this Contract shall be brought in a court of competent jurisdiction in Montgomery County, Texas. In the event of litigation relating to this Contract or the performance or nonperformance of Work hereunder, the Contractor and the Owner voluntarily and irrevocably consent to the jurisdiction of the applicable courts in Montgomery County, Texas, and hereby waive any argument that such a forum is inconvenient.
- 17.3 Extent of Contract:** This Contract represents the entire and integrated agreement between the Owner and Contractor with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, representations or agreements, whether written or oral, and each party disclaims any reliance upon any such prior or contemporaneous negotiation, representation or agreement.
- 17.4 Remedies Cumulative:** Except as limited by this Contract, remedies provided for herein are cumulative, and in addition to and not in lieu of those provided by law or available in equity.
- 17.5 Severability:** If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid or unenforceable, then such word, phrase, clause, sentence or provision shall be deemed severed herefrom and the remainder of this Contract shall remain in full force and effect.
- 17.6 Independent Contractor:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. Contractor is an independent contractor and Contractor's work and services shall be those of an independent contractor. Without limiting the generality of the foregoing, Contractor agrees and understands that the Contract does not grant any rights or privileges to any employee of Contractor, its Subcontractors or Suppliers which are established for employees of Owner.
- 17.7 Prohibition of Gratuities:** Owner may, by Written Notice to Contractor, terminate the Contract without liability if Owner determines that gratuities were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of Owner with a view toward securing the Contract or securing

favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is terminated by Owner pursuant to this provision, Owner shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Contractor in providing such gratuities, to the extent Contractor attempted to charge Owner for same or included any such costs in the Contract Amount.

17.8 Prohibition Against Personal Interest in Contracts: No officer, employee, independent consultant, or elected official of Owner who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision shall render the Contract voidable by Owner.

17.9 Owner's Right to Audit:

17.9.1 "Records" means all records generated by or on behalf of Contractor and each Subcontractor and Supplier of Contractor, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Contract, including, without limitation:

- .01** accounting records;
- .02** written policies and procedures, contractor daily diaries, and pay reports;
- .03** subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.);
- .04** original estimates and estimating work sheets;
- .05** correspondence;
- .06** Change Order files (including documentation covering negotiated settlements);
- .07** back charge logs and supporting documentation;
- .08** general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;
- .09** subcontracts, purchase orders or other agreements between Contractor and any Subcontractor or Manufacturer, or Supplier;
- .10** records necessary to evaluate Contract compliance, Change Order pricing, and any Claim submitted by Contractor or any of its payees;
- .11** SWP3 Documentation;
- .12** job cost reports; and
- .13** any other Contractor record that may substantiate any charge or claim related to this Contract.

17.9.2 Contractor shall allow Owner's agent or its authorized representative to inspect, audit, and/or reproduce, or all three, all Records generated by or on behalf of Contractor and each Subcontractor and Manufacturer or Supplier, upon Owner's written request. Further, Contractor shall allow Owner's agent or authorized representative to interview any of Contractor's employees, all Subcontractors and all Manufacturers and Suppliers, and any of their respective employees.

17.9.3 Contractor shall retain all its Records, and require all its Subcontractors and Manufacturers and Suppliers to retain their respective Records, during the

performance of this Contract and for three (3) years after final payment or any termination, until all audit and litigation matters that Owner has brought to the attention of Contractor are resolved, or as otherwise required by law, whichever is longer. Owner's right to inspect, audit or reproduce Records, or interview employees of Contractor or its respective Subcontractors or Manufacturers and Suppliers exists during the performance of this Contract, and for three (3) years after final payment or any termination, until all audit and litigation matters that Owner has brought to Contractor's attention are resolved, or as otherwise required by law, whichever is longer, and at no cost to Owner.

- 17.9.4** Contractor must provide sufficient and accessible facilities during its normal business hours for Owner to inspect, audit or reproduce Records, or all three, and to interview any person about the Records.
- 17.9.5** Contractor shall insert these requirements in each written contract between Contractor and any Subcontractor, Manufacturer or Supplier and require each Subcontractor, Manufacturer and Supplier to comply with these provisions.
- 17.10 Survival of Obligations:** All representations, indemnifications, warranties and guarantees made in, required by or provided pursuant to the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.
- 17.11 No Waiver:** The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No provision of this Contract will be deemed waived whatsoever unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, shall not constitute a waiver of or estoppel against the right to do so.
- 17.12 Condition Precedent to Right to Sue:** Notwithstanding anything in the Contract Documents to the contrary, the Contractor must have provided at least 90 days prior written notice of a claim for damages as a condition precedent to the right to sue on the Contract.
- 17.13 WAIVER OF THE RIGHT TO JURY TRIAL. OWNER AND CONTRACTOR HEREBY, KNOWINGLY, IRREVOCABLY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY CLAIM, CAUSE OF ACTION, PROCEEDING OR COUNTER CLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. HOWEVER, THIS WAIVER OF JURY TRIAL SHALL NOT APPLY TO LITIGATION WHICH MAY BE INITIATED BY ANY THIRD PARTIES.**
- 17.14 Attorneys' Fees and Costs.** If Contractor brings any suit against Owner and Contractor does not prevail in such suit, Contractor shall be liable for all attorneys' fees and costs incurred by Owner as a result of such suit.

"Prevail" as used in this Section 17.14 means the Contractor recovers a judgment against Owner for at least eighty percent (80%) of all relief sought by Contractor in Claims against Owner in the Written Notice(s) as provided in Section 16.1.1 above, and the judgment is greater than any relief offered to Contractor by Owner in any written settlement offer.

END OF GENERAL CONDITIONS TERMS

WARRANTY ITEM NO. _____ (PROJECT NAME)

The General Conditions of the Contract require that Defects be corrected within seven (7) days after written notice is received.

TO: _____
name/ address / telephone / fax / email

ATTENTION OF: _____

FROM: _____
project manager name / address / telephone / fax / email

PROJECT: _____
name / location / CIP ID number

END DATE OF WARRANTY OR CORRECTIVE PERIOD: _____

SUBJECT: _____

If checked, the defect requires immediate attention. The Contractor has been called.

If checked, the Owner has been asked to consult with the Contractor on the defect.

PLEASE CORRECT THE FOLLOWING ITEM(S):

DATE OF REQUEST _____ **SIGNATURE** _____

Project Manager

_____ Phone No. _____

_____ Phone No. _____

_____ Phone No. _____

RESPONSE FROM Contractor: DATE CORRECTION WAS MADE: _____
--

The Contractor must endeavor to correct the defect within seven (7) calendar days after written notice is received. If the defect cannot be corrected by that time, Contractor shall provide a written explanation to the Owner describing the repairs or other correction needed and the time required to complete the repairs or corrections.

Description of corrections made:

DATE OF REPLY: _____ **SIGNATURE:** _____

PRINTED NAME: _____

When the repair/correction is complete, the contractor should return a copy to each of the following:

_____ Phone No. _____

_____ Phone No. _____

_____ Phone No. _____

END OF SECTION

4812-4844-0915, v. 1-6602-9900, v. 4-6602-9900, v. 3-6602-9900, v. 2

SECTION 00 73 43
WAGE SCALE FOR CONSTRUCTION

- 1.1 Contractor and its Subcontractors must pay the general prevailing wage rates for building construction for each craft or type of worker or mechanic employed in the execution of any building construction or repair under the Contract in accordance with Chapter 2258 of the Texas Government Code. The San Jacinto River Authority ("SJRA") has determined the prevailing wage rate in the locality in which the work is being performed, which is set forth in Exhibit "A".
- 1.2 In bidding, Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the Contract and determined that such classifications in Exhibit "A" include all necessary categories to perform the work under the Contract.
- 1.3 If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit with its bid a request to the San Jacinto River Authority to use an additional labor classification not listed in Exhibit "A" and specify the proposed new classification. The SJRA shall determine whether a proposed classification is already covered in Exhibit "A", and, if it is, specify which classification is appropriate. The SJRA's decision is conclusive. If the SJRA decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered by Exhibit "A". Such determination must be decided in accordance with procedures established by the SJRA, and in compliance with Chapter 2258 of the Texas Government Code.
- 1.4 Contractor must not use any labor classification not covered by Exhibit "A" until such classification is established and approved for use by the SJRA.

A Contractor or Subcontractor who violates Chapter 2258 of the Texas Government Code must pay to the SJRA \$60 per each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates set forth in Exhibit "A".
- 1.5 The SJRA may withhold money required to be withheld under Chapter 2258 of the Texas Government Code from the final payment to Contractor or earlier payments if the SJRA makes a determination that there is good cause to believe that Contractor has not complied with these provisions and Chapter 2258 of the Government Code, in which

case the SJRA may withhold the money at any time subsequent to the finding by the SJRA.

- 1.6 Contractor and Subcontractors must keep records as required by Chapter 2258 of the Government Code, and specifying:
- (1) the name and classification of each worker employed under the Contract; and
 - (2) the actual per diem wages paid to each worker, and the applicable hourly rate.
- The records must be open at all reasonable hours for inspection by the officers and agents of the SJRA.
- 1.7 The prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.8 The hourly cost of salary for non-exempt workers for labor in excess of 40 hours per worker per week, shall be calculated at 1.5 times the worker's base pay, plus 1.0 times fringe benefits, for the applicable craft and level.

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EXHIBIT "A"

LABOR CLASSIFICATIONS AND PREVAILING WAGE RATES
 FOR
 CONSTRUCTION
 2019

**Building Construction Projects- (Does not include single family homes or
 apartments up to and including 4 stories)**

County Name: Montgomery County

Wages based on DOL General Decision: TX180312 01/12/2018 TX312

CLASSIFICATION	RATE	FRINGES
Asbestos Worker/Heat & Frost Insulator (Duct, Pipe and Mechanical System Insulation)	\$24.15	\$13.29
Boilermaker	\$28.00	\$22.35
Carpenter:		
Excludes Acoustical Ceiling Installation, Drywall Hanging, Form Work and Metal Stud Installation	\$18.81	\$2.10
Batt. Installation Only	\$14.87	\$0.73
Electrician:		
Excludes Low Voltage Wiring and Installation of Alarms	\$32.25	\$9.14
Alarm Installation Only	\$17.97	\$3.37
Low Voltage Wiring Only	\$18.00	\$1.68
Elevator Mechanic	\$41.28	\$32.645+a+b
Power Equipment Operator:		
Cranes	\$34.85	\$9.85
Ironworker:		
Structural	\$27.15	\$5.66
Ornamental	\$23.27	\$7.12
Reinforcing	\$12.10	
Glazier	\$19.12	\$4.41
Plasterer	\$19.92	\$1.00
Plumber	\$35.60	\$11.04
Pipefitter:		
Including HVAC Pipe Installation	\$33.30	\$12.26
Excludes HVAC Pipe Installation	\$26.73	\$11.13
Sprinkler Fitter (Fire Sprinklers)	\$22.17	\$9.70
Sheet Metal Worker:		
Excludes HVAC Duct and Unit Installation	\$27.72	\$13.70
HVAC Duct Installation Only	\$20.17	\$4.77
HVAC Unit Installation Only	\$19.67	\$2.24
Acoustical Ceiling Mechanic	\$16.41	\$3.98
Bricklayer	\$19.86	
Caulker	\$15.36	
Cement Mason/Concrete Finisher	\$13.37	

Drywall Finisher/Taper	\$16.30	\$3.71
Drywall Hanger and Metal Stud Installer	\$17.45	\$3.96
Floor Layer (Carpet)	\$20.00	
Form Worker	\$13.13	
Insulator – Batt. Installation Only	\$14.87	\$0.73
Laborer:		
Common or General	\$10.20	
Mason Tender - Brick	\$13.37	
Mason Tender – Cement/Concrete	\$10.50	
Pipelayer	\$12.94	
Roof Tearoff	\$11.28	
Landscape and Irrigation	\$9.49	
Lather	\$19.73	
Operator:		
Backhoe/Excavator/Trackhoe	\$16.17	
Bobcat/Skid Steer/Skid Loader	\$13.93	
Bulldozer	\$20.77	
Drill	\$16.22	\$0.34
Forklift	\$15.64	
Grader/Blade	\$13.37	
Loader	\$13.55	\$0.94
Mechanic	\$17.52	\$3.33
Paver (Asphalt, Aggregate, and Concrete)	\$16.03	
Roller	\$16.00	
Painter (Brush, Roller and Spray, Excludes Drywall Finishing/Taping)	\$16.77	\$4.51
Roofer	\$15.40	
Tile Finisher	\$12.00	
Tile Setter	\$16.17	
Truck Driver:		
1/Single Axle Truck	\$14.95	\$5.23
Dump Truck	\$12.39	\$1.18
Flatbed Truck	\$19.65	\$8.57
Semi-Trailer Truck	\$12.50	
Water Truck	\$12.00	\$4.11
Waterproofofer	\$14.39	
Welders – Receive rate prescribed for craft performing operation to which welding is incidental.		
a. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.		

END OF SECTION