

MINUTES OF MEETING OF BOARD OF DIRECTORS
SEPTEMBER 8, 2022

THE STATE OF TEXAS
COUNTY OF HARRIS
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 132

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The Board of Directors (the "Board") of Harris County Municipal Utility District No. 132 (the "District") met in special session, open to the public, at the Atascocita Waste Water Treatment Plant, 5003 Atascocita Road, Humble, TX 77346, and via teleconference, at 3:00 p.m. on September 8, 2022, whereupon the roll was called of the members of the Board, to-wit:

Tim Stine, President - Present
Don House, Vice President - Present
Gregg Mielke, Secretary
Michael Whitaker, Assistant Secretary
Darrell Jamison, Assistant Secretary

All members of the Board were present, thus constituting a quorum. Also attending all or parts of the meeting were Mr. Nick Bailey of BGE, Inc. ("BGE"), engineer for the District; and Ms. Kathleen Ellison and Ms. Madeline Lopez of Norton Rose Fulbright US LLP ("NRF"), attorneys for the District. Mr. Tim Walsh, Head of Construction for Norton Rose Fulbright US LLP, attended via teleconference.

Call to Order. The President called the meeting to order in accordance with notice posted pursuant to law, copies of certificates of posting of which are attached hereto as *Exhibit A*, and the following business was transacted:

1. **Public Comments.** There were no public comments.
2. **Review new construction agreement template.** Ms. Ellison presented to and reviewed with the Board the Agreement for Construction Services template, a copy of which is attached hereto as *Exhibit B*.

Ms. Ellison reviewed the documents pertaining to bidding. She noted the statutory standard for awarding a contract is to the responsible bidder that, in the Board's judgment, will be most advantageous to the District and result in the best and most economical completion of the Owner's proposed improvements. Discussion ensued regarding Article 3.01 D of the Instructions to Bidders, and the Board decided to remove it. Further discussion ensued regarding requiring a mandatory pre-bid. Ms. Ellison said the Board could decide whether to hold a mandatory pre-bid conference for bidders depending on the project.

Mr. Walsh reviewed Article 3.2 of the Agreement for Construction Services concerning the Owner's Representative. Mr. Walsh recommended the Owner's Representative be a third party who is retained by the District to be the eyes and ears of the Board concerning oversight of the construction project. Upon inquiry, Mr. Walsh said he could provide the Board with the names of some persons who act as Owner's Representative in the Houston area.

Mr. Walsh reviewed Article 5.11.2, pertaining to the specific hours of work and days of work. Director Stine noted the expected work hours should be listed before the exceptions. Discussion ensued regarding allowing contractors to work weekends and holidays.

Mr. Walsh reviewed Article 5.21: Indemnification.

Mr. Walsh reviewed Article 7.4: Liquidated Damages and Article 7.5: Economic Disincentives and Incentives. Director Whitaker suggested leaving the dollar amount blank for the economic incentive until the Board decides on an amount.

Mr. Walsh reviewed Article 7.8: Delays and Extensions of Time. He discussed delays caused by adverse weather conditions. Director Jamison expressed concern regarding the response time of 14 days in Article 7.8.1.1, and extensive discussion ensued.

Mr. Walsh reviewed Article 11.1: Safety Precautions and Programs. Discussion ensued regarding requiring the contractor to provide a safety program and whether the District needed its own safety program.

Mr. Walsh reviewed Article 15: Insurance.

Mr. Walsh reviewed Article 18: Claims and Litigation.

Discussion ensued regarding Article 7.6.4 and Article 8.5.3. Mr. Bailey suggested keeping retainage at 10% and removing the reference to reducing retainage to 150% of the remaining work. Ms. Ellison stated she will review the Water Code provisions regarding retainage and make sure the provisions are in compliance. Ms. Ellison stated she will remove the 150%.

The Board directed Ms. Ellison to develop a checklist of items for the Board to decide before each construction project. Mr. Bailey said it could be used at the next meeting in connection with phase 3 of the waterline replacement project.

3. Review district operations, and such other matters as may properly come before it. There were no further reports.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE BOARD, the meeting was adjourned.

* * *

The above and foregoing minutes were passed and approved by the Board of Directors on October 20, 2022.



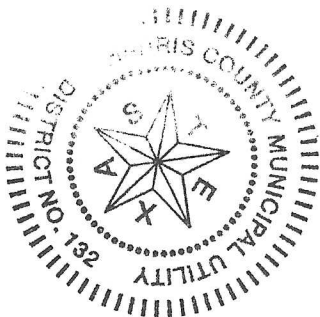
President, Board of Directors

ATTEST:



Secretary, Board of Directors

(DISTRICT SEAL)



HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 132
SPECIAL N O T I C E

In accordance with chapter 551, Texas Government Code and Section 49.063, Texas Water Code, both as amended, take notice that the Board of Directors of Harris County Municipal Utility District No. 132 will meet in special session, open to the public, at the **Atascocita Waste Water Treatment Plant, 5003 Atascocita Road, Humble, Texas 77346**, at **3:00 p.m.** on Thursday, **September 8, 2022**.

1. Receive comments from the public (3 minutes maximum per person);
2. Review new construction agreement template;
3. Review district operations, and such other matters as may properly come before it.

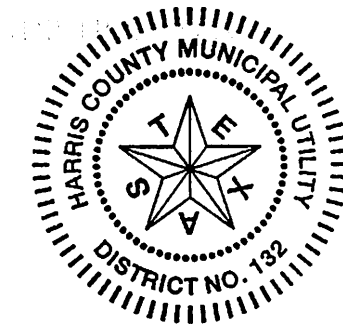


Exhibit A

If, during the course of the meeting covered by this Notice, the Board should determine that a closed or executive session of the Board should be held or is required in relation to any agenda item included in this Notice, then such closed or executive meeting or session, as authorized by the Texas Open Meetings Act, will be held by the Board at the date, hour, and place given in this Notice concerning any and all subjects for any and all purposes permitted by Sections 551.071-551.084 of the Texas Government Code and the Texas Open Meetings Act, including, but not limited to, Section 551.071 - for the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Persons with disabilities who plan to attend this meeting and would like to request auxiliary aids or services are requested to contact the District's paralegal at (713) 651-5589 at least three business days prior to the meeting so that appropriate arrangements can be made.

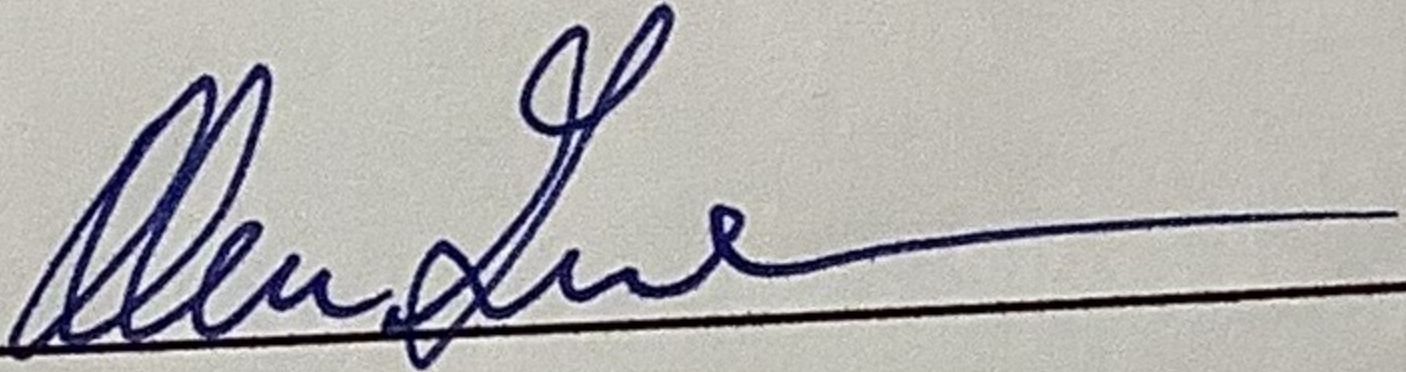
CERTIFICATE OF POSTING NOTICE
OF MEETING OF BOARD OF DIRECTORS

THE STATE OF TEXAS
COUNTY OF HARRIS
HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 132

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I hereby certify that on September 2 2022, I posted the Notice of Meeting of the Board of Directors of Harris County Municipal Utility District No. 132, a true copy of which is attached hereto, in a glass enclosed bulletin board located on the grounds of the District's water plant at 8502 Rebawood, Humble, Texas, within said political subdivision, as required by law.

EXECUTED this 2 day of September 2022.



Jane Maher

From: The Texas Network <support@texasnetwork.com>
Sent: Thursday, September 1, 2022 9:22 PM
To: Jane Maher; Russell Lambert
Cc: Solana Morton
Subject: RE: HCMUD No. 132 Special September Posting

Posted

<https://www.hcmud132.com/meetings/index.html>

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Thank you!

The Texas Network

281-445-3535

281-445-3535 (Text)

281-973-8299 (Fax)

support@texasnetwork.com

<https://texasnetwork.com>

From: Jane Maher <jane.maher@nortonrosefulbright.com>
Sent: Thursday, September 1, 2022 11:45 AM
To: Russell Lambert <russ@texasnetwork.com>
Cc: The Texas Network <support@texasnetwork.com>; Solana Morton <solana.morton@nortonrosefulbright.com>
Subject: HCMUD No. 132 Special September Posting

Hi Russ,

Please post the attached agenda to the website and return the COP at your earliest convenience.

Thanks,

Jane Maher | Senior Paralegal
Norton Rose Fulbright US LLP
1301 McKinney, Suite 5100, Houston, Texas 77010-3095, United States
Tel +1 713 651 5589 | Fax +1 713 651 5246
jane.maher@nortonrosefulbright.com

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AGREEMENT FOR CONSTRUCTION SERVICES

by and between

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 132

(hereinafter referred to as the “Owner”)

and

[CONTRACTOR NAME]

(hereinafter referred to as the “Contractor”)

RELATING TO THE [SPECIFIC PROJECT NAME] (“PROJECT”)

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AGREEMENT FOR
CONSTRUCTION SERVICES

THIS AGREEMENT FOR CONSTRUCTION SERVICES is made and entered into as of the ____ day of _____, 2022, by and between **Harris County Municipal Utility District No. 132** (hereinafter referred to as the "Owner") and **[CONTRACTOR NAME]** (hereinafter referred to as the "Contractor"), with respect to the provision by Contractor of general contracting services for various construction, additions and improvements to **[SUBJECT OF THE PROJECT]** (as further defined herein, the "Project"). The engineer for the Project is **[ENGINEER NAME]** (the "Engineer").

ARTICLE 1
DEFINITIONS

1.1 All terms and phrases defined in this Agreement or elsewhere in the Contract Documents, including the Glossary of Definitions attached hereto as Appendix I shall have the meanings and definitions set forth therein. Terms which have well known technical or construction industry meanings are used in accordance with such recognized meanings, unless otherwise defined herein or elsewhere in the Contract Documents or unless the context clearly indicates a different meaning.

1.2 As defined above, the Project is the **[BRIEFLY EXPLAIN PROJECT]**. The "Project Land" shall mean all of the numerous and continuous tracts of land upon which the Project will be constructed and their adjacent areas. References herein to the "Site" shall mean the specific portion of the Project Land upon which Contractor is actively engaged in Work at a specific time. For the avoidance of doubt, the Site is a subset of the Project Land and the specific location of the Site will change as the Project is constructed.

ARTICLE 2
GENERAL INFORMATION

2.1 THE CONTRACT DOCUMENTS

2.1.1. The Contract Documents consist of the Contract Award Documents, the Agreement Documents, and the Contract Administration Documents.

2.1.1.1 The Contract Award Documents consist of the following:

- i. Invitation to Bidders;
- ii. Instructions to Bidders;
- iii. Addenda to bidding instructions, if any;
- iv. Contractor's Bid;
- v. Contractor's Form 1295.

2.1.1.2 The Agreement Documents consist of the following:

- i. Agreement executed by Contractor and Owner with the following exhibits:
 - (a) Exhibit 1: Glossary of Terms;
 - (b) Exhibit 2: Scope of Work Description and any related clarifications, qualifications and exclusions;
 - (c) Exhibit 3: Completion Dates;
- ii. Performance Bond;
- iii. Payment Bond;
- iv. Maintenance Bond;
- v. Supplemental Terms Pertaining to the Project, if any;
- vi. Standard Specifications;
- vii. Special Specifications.

2.1.1.3 The Contract Administration Documents consist of the following:

- i. all Construction Drawings, including any Addenda thereto ("Addenda");
- ii. Form of Change Order;
- iii. Form of Contractor Affidavit of Partial Payment;
- iv. Form of Contractor Affidavit of Final Payment;
- v. Form of Certificate of Substantial Completion;
- vi. Form of Certificate of Completion;
- vii. Notice to Proceed;
- viii. Construction Schedule;
- ix. any Modifications issued in connection with the Work for the Project.

2.1.2. The Contract Documents form the Contract for Construction and may be collectively referred to herein as the "Contract," the "Contract Documents" and/or the "Agreement." All Contract Documents and Exhibits to this Agreement are fully incorporated into this Agreement by reference and are as fully a part of this Agreement as if repeated in their entirety in this Agreement. The Agreement consists of Articles, Sections, Paragraphs and Subparagraphs, which may be referred to in the body of the Agreement.

2.1.3. A "Modification" is (1) a written amendment to the Contract signed by both parties, (2) a Change Order or (3) a written order for a minor change in the Work issued by the Engineer.

2.1.4. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.

2.1.5. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, either written or oral, except as expressly provided otherwise herein. The Contractor acknowledges that Owner has furnished to it three (3) copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF).

2.1.6. The Contract Documents may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Engineer or (2) between any persons or entities other than the Owner and Contractor. The agreement between the Owner and the Engineer or any agreements between the Owner and any other consultant shall not be construed as part of this Agreement.

2.1.7. Coordination Documents. Contractor acknowledges that in connection with the administration and coordination of the Work and the activities of the various participants on the Project, various documents, charts and related materials may be created and circulated (including a "differentiation document" identifying certain of the respective roles and responsibilities of the Contractor and the various Project participants, together with related documents and correspondence). Contractor agrees that no such document is a Contract Document, unless so defined herein, and that the purpose of all such documents is only to coordinate and administer the communications required among the Project participants. The Contractor's obligations with respect to the performance of the Work shall be as set forth in the Contract Documents, not in any differentiation document or other document or correspondence circulated among the Project participants, unless and only to the extent provided otherwise in a written Modification to this Agreement that is signed by the Owner.

2.1.8. Discrepancies. If, before or during the performance of the Work, the Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable laws, ordinances, codes, rules, regulations or orders of any public authority having jurisdiction ("Laws and Regulations"), (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, (d) any instruction of any Supplier, (e) any differentiation document, or (f) any other document or correspondence circulated among the Project participants, then the Contractor shall promptly report it to the Owner's Representative and the Engineer in writing. The Contractor shall not proceed with the Work affected thereby (except in an emergency) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by a Modification.

2.1.9. If the Contractor performs any construction activity when Contractor knows such activity involves a conflict, error, ambiguity, or discrepancy described in paragraph 2.1.8 without a clarification or interpretation by Engineer or a Modification, the Contractor shall be responsible for such performance and shall be responsible for any attributable costs, and shall not be entitled to any increase in the Contract Price or extension of the Completion Dates on account thereof.

2.1.10. Precedence of Documents. To the extent there is no conflict between the various Contract Documents, the Contract Documents are intended to be read and interpreted harmoniously as a whole, in such a way as to give full meaning and effect to each.

2.1.11. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

2.1.11.1 the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

2.1.11.2 the provisions of any Laws and Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

2.1.12. In the event of a conflict between any of the Contract Documents which is not resolved by the provisions of paragraph 2.1.11, above:

2.1.12.1 a Modification shall take precedence over that portion of any other Contract Document which it modifies;

2.1.12.2 specific qualifications, clarifications or exclusions set forth in any amendment shall govern in regards to the Construction Drawings, Specifications, and/or Addenda qualified, clarified or modified by such qualifications, clarifications or exclusions; and

2.1.12.3 with respect to conflicts or ambiguities between the Construction Drawings and Specifications as to the nature and extent of the Work to be performed, all work necessary for the execution of the Work (whether shown on the Construction Drawings and not described in the Specifications or described in the Specifications and not shown on the Construction Drawings) and any work which is reasonably inferable (consistent with the provisions of this Agreement) as necessary to complete the Work within the limits established by the Contract Documents, shall be considered as part of the Contract Documents and shall be executed by the Contractor in the same manner and with the same character and quality of material as other portions of the Work, without increase in the Contract Price or extension of the Completion Date(s).

2.1.12.4 In the event of duplications or conflicts among the Contract Documents relating to the quality of Work to be performed or the materials and equipment to be provided, the Contractor shall notify the Owner of the duplication or conflict and obtain the Owner's direction as to its resolution before proceeding with any affected Work.

2.2 INTERPRETATION, CORRELATION AND INTENT OF CONTRACT DOCUMENTS

2.2.1. The organization of the Specifications into divisions, sections and articles, if any, and the arrangement of Construction Drawings shall not control the division of

the Work among Subcontractors or in establishing the extent of Work to be performed by any trade or Subcontractor. The Contractor shall be responsible for assigning and/or dividing the Work among Subcontractors as necessary for the full and timely completion of all Work required by any of the Contract Documents, whether or not the Contract Documents specifically identify the trades or type of Subcontractor responsible for each element of the Work or assign or divide each element of the Work to or among different Subcontractors. The failure of the Contract Documents to identify the trade or type of Subcontractor responsible for each element of the Work or to assign or divide the Work to or among different Subcontractors shall not relieve the Contractor of its responsibilities in this regard and shall not entitle the Contractor to any increase in the Contract Price or to any extension of the Completion Date(s).

2.2.2. The Specifications may be of the abbreviated type and include incomplete sentences. Omission of words or phrases such as “the Contractor shall” and “shall be” are intentional. Omitted words or phrases shall be supplied by inference in the same manner as they are when a “note” occurs on the Construction Drawings. Where phrases such as “as selected,” “as directed” or “as approved” are used in the Specifications, they shall mean “as directed, selected or approved by the Owner or Owner’s designee.” Where phrases such as “or equal” or “or approved equal” are used in the Specifications, they shall mean “equal or approved equal as approved by the Owner.”

2.2.3. Construction Drawings are intended to show general arrangement, design and extent of the Work and are partly diagrammatic. As such, they are not intended to be scaled for measurements or to serve as shop drawings, the responsibility for preparation of which shall be entirely the Contractor’s. Large scale Construction Drawings shall take precedence over small scale Construction Drawings; figures, dimensions and noted materials over graphic representations. Construction Drawings prepared by the Engineer shall take precedence in regard to dimensions when in conflict with mechanical/electrical or structural Construction Drawings except for the size of the structural members. Before beginning each part of the Work involving dimensions that depend upon or are affected by existing conditions, the existing conditions shall be verified and shall take precedence over the Construction Drawings with regard to dimensions.

2.2.4. Whenever the Contract Documents designate article, appliance, device or material by name or manufacturer or vendor or proprietary or trade name followed by words “or approved equal,” standard products of manufacturers other than those specified may be accepted only if it is proved to Engineer’s satisfaction that they are equal in design, appearance, strength, durability, usefulness, convenience, and in all other material respects and if the substitute is thereafter approved in writing by the Owner or Owner’s designee, prior to the ordering or use, which approval shall be at the Owner’s or Owner’s designee’s sole and absolute discretion. The Contractor shall be responsible for requesting and obtaining the written approval of the Owner or Owner’s designee in this regard.

2.2.5. The Article, Section and paragraph headings, and other titles and captions used in the Contract Documents, are inserted only for convenience of reference, and are not intended to and shall in no way define, limit, enlarge or prescribe the rights or obligations of the parties, or affect the meaning, construction, scope or extent of any provisions of the Contract Documents.

2.2.6. The non-enforcement of any provisions of the Contract Documents by the Owner shall in no event be construed as a waiver of such provision or any other provision. Any waiver by the Owner of any failure by the Contractor to comply with the Contract Documents must be expressly waived in writing and shall be limited to the specific matter

waived and shall not be construed as a waiver of continued or future failures or defaults. Any delay by Owner in the exercise of remedies shall not be deemed a waiver of those remedies.

2.2.7. If any term or provision of the Contract Documents shall be held to any extent to be invalid or unenforceable, the remaining terms and provisions of the Contract Documents shall nevertheless be valid and shall be enforced to the fullest extent permitted by law.

2.2.8. This Agreement and all of the Contract Documents shall be construed and governed pursuant to the laws of the State of Texas, without reference to its conflict of laws principles.

2.2.9. The persons executing the Contract Documents on behalf of each party hereto represent that they have been authorized to do so and that all corporate, joint venture, partnership or other legal requirements necessary in connection with such authorization have been fulfilled.

2.2.10. All notices, demands or requests provided for or desired to be given pursuant to the Contract Documents must be in writing. All such documents shall be deemed to have been sent when deposited in the United States mail, postage prepaid, certified or registered, and/or deposited with a registered or bonded courier for next day or immediate delivery and/or sent by e-mail (with receipt confirmed) to the then current e-mail address of the intended recipient and/or delivered by hand by an employee of one of the parties hereto to the address set forth herein or to such other address in the United States as a party hereto may hereafter designate in writing delivered in the manner aforesaid.

2.2.11. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

2.2.12. Standards Specifications, Codes, Laws and Regulations.

2.2.12.1 Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws and Regulations in effect at the time of opening of bids, except as may be otherwise specifically stated in the Contract Documents.

2.2.12.2 No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

2.3 OWNERSHIP AND USE OF DOCUMENTS

2.3.1. All Construction Drawings, Specifications and other documents prepared by the Owner, any design or engineering consultant involved with the Project or by any of Owner's Consultants, through which the Work to be executed by the Contractor is described, are the property of the Owner and shall not be used by any person other than the Owner on projects other than the Project unless expressly authorized in writing by the Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Construction Drawings, Specifications and other Contract Documents. The Contractor may retain archival sets of the Contract Documents. All copies of such Construction Drawings, Specifications and other documents, except the Contractor's archival sets, shall be returned or suitably accounted for to the Owner on request, or upon completion of the Work. All Construction Drawings, Specifications and other documents prepared by the Engineer, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Construction Drawings, Specifications and other documents prepared by the Engineer to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project shall not be construed to be a publication or derogation of the Owner's rights with respect to such Construction Drawings, Specifications and other documents. The Contractor shall do all printing or duplication and distribution of such reproducible prints as necessary for the proper performance of the Work.

2.3.2. The Owner shall also own and have the right to use all Construction Drawings, designs, specifications, notes and other design works developed directly by the Contractor or its Subcontractors in the performance of this Agreement and the ideas and designs contained therein (including shop Construction Drawings, wiring diagrams, process control and instrumentation Construction Drawings and equipment Construction Drawings) in connection with the Owner's occupancy, use, maintenance and repair of the Project and for additions, alterations or future construction to the Project, without paying the Contractor (or any Subcontractor) any compensation other than such amounts as are due to the Contractor under this Agreement. Owner agrees that the Contractor shall have no responsibility for any claims, losses or damages arising out of the Owner's use of such Construction Drawings, designs, specifications, notes and other design works developed directly by the Contractor or its Subcontractors pursuant to this Agreement in connection with other projects or future alterations or additions to the construction of this Project, unless the Contractor or applicable Subcontractor is retained to perform the necessary work (including design work) relating to such use.

2.3.3. The provisions of this Section 2.3 will survive final payment, or any termination of the Contract.

ARTICLE 3 ADMINISTRATION OF THE CONTRACT

3.1 COMMUNICATION AND COORDINATION

3.1.1. The Contractor acknowledges and accepts that, throughout the construction of the Project, the Owner, Owner's Representative, Engineer, and other Owner's Consultants may participate in any or all of the activities in connection with the administration of the Work on the Project. The Contractor agrees to maintain close communication and shall

coordinate its activities with the Owner, Owner's Representative, Engineer and Owner's Consultants, as necessary to facilitate the full, timely and proper performance of the Contractor's obligations under the Contract Documents and all Work on the Project. The Owner, Owner's Representative, Engineer, and Owner's Consultants shall at all times have access to the Work wherever the Work is in preparation and progress. The Contractor shall provide facilities for such access.

3.1.2. The Contractor shall be responsible to communicate and coordinate with all city, state and other governmental authorities as necessary to coordinate the Contractor's Work and the timely completion thereof with all governmental requirements associated with the performance of the Work. In this regard, to the extent required by Laws and Regulations, Contractor shall develop, implement and maintain appropriate traffic protection plans and erect and maintain necessary barricades, canopies, fencing and other protections related to Work performed in and around streets and adjacent buildings, if any, for each Site.

3.1.3. During the performance of the Contractor's duties pursuant to the Contract Documents, the Contractor shall, with reasonable attention and consistent with the provisions of this Agreement, study and compare the Contract Documents with each other. Should the Contractor discover any inconsistencies, conflicts or ambiguities within or among the Contract Documents or the information and communications provided to the Contractor by the Owner and/or Engineer, the Contractor shall promptly report such inconsistency, conflict or ambiguity to the Engineer and shall secure written instructions from the Engineer prior to proceeding with any Work affected by or involving such inconsistency, conflict or ambiguity. The Contractor shall be responsible to the Owner for any delay connected with, and for all costs, damages or losses suffered by the Owner as a result of, any Work performed by the Contractor if the Contractor knows that the Contract Documents relating to such Work contain or involve an inconsistency, conflict or ambiguity (unless the Owner has ordered the Contractor to proceed after receiving notice thereof).

3.1.4. In connection with the Contractor's provision of services and performance of Work under the Contract Documents, the Contractor shall meet with the Owner, Owner's Representative, Engineer, and/or other Owner's Consultants, at such reasonable times and places chosen by the Owner, to discuss the results and progress of the Work on the Project and/or of any services or Work then being performed by Contractor, and to discuss and address any problems relating thereto. If requested or required by the Owner, Owner's Representative, Engineer, and/or other Owner's Consultants, the Contractor shall provide the Owner with written reports or recommendations in connection with such meetings. The Contractor shall comply with all decisions or directions rendered or issued by the Owner in any meetings conducted under the Contract Documents. The Contractor shall not be entitled to any compensation in excess of the Contract Price for the Contractor's participation in any meetings, or the Contractor's provision of any written reports, required by this paragraph or any other provision of this Agreement. At any meeting conducted pursuant to this paragraph, the Owner shall have the option, upon reasonable notice, to require the attendance of a corporate officer or principal of the Contractor's firm or any Subcontractor to the Contractor.

3.2 OWNER'S REPRESENTATIVE

3.2.1. The Owner is a political subdivision of the State of Texas and acts through decisions made by its duly elected Board of Directors (the "Board") at public meetings. Due to the impracticability of the Board being able to oversee the Project on a daily basis, the Board may decide to designate a third party as the Owner's representative (referred to herein as the "Owner's Representative") and to authorize the Owner's Representative to act on the

Owner's behalf with respect to the Project. The Owner's Representative shall communicate with the Board and generally serve as the Board's liaison with the Contractor; however, designation of an Owner's Representative shall not affect the Board's right to act directly with respect to Project matters. Any action that may be taken by the Owner's Representative in this Agreement may also be taken by the Owner acting through the Board.

3.2.2. The Owner shall notify the Contractor of its designation of an Owner's Representative in writing promptly following the designation. The notice to the Contractor shall describe any limits on the authority of the Owner's Representative to act on behalf of the Owner and shall be acknowledged by the Contractor. The Owner may designate a replacement Owner's Representative upon three (3) days' prior written notice to Contractor.

3.2.3. Unless otherwise agreed in writing between the parties or otherwise provided in this Agreement, the Owner's Representative shall be responsible for communicating with the Contractor, and Contractor agrees that all communications on the Project shall be directed to and/or include the Owner's Representative. In the event Contractor receives any instructions or approvals, either in writing or orally, by persons other than the Owner's Representative designated pursuant to paragraph 3.2.1, the Contractor shall notify the Owner's Representative of such instructions or approvals and shall not act upon such instructions or approvals until provided with directions from the Owner's Representative.

3.2.4. Contractor acknowledges that, in addition to the Owner's Representative, Owner may retain other persons or entities to act as consultants to the Owner (the "Owner's Consultants") and to assist the Owner, as and when authorized, in the evaluation and observation of certain aspects of the design and construction of the Project. Contractor acknowledges that all of the Owner's Consultants are solely advisors to the Owner and do not have authority to act generally as the Owner's agent, or to act otherwise on behalf of the Owner in connection with the Project, unless expressly so stated in this Agreement or the Contract Documents or later so indicated to the Contractor by the Owner in writing. Contractor specifically understands and agrees that the Owner's Consultants do not have authority to authorize any change in the scope of the Work, increase in the Contract Price or revision to the Completion Dates or schedule (including any interim milestone Completion Date), without the proper and written approval of the Owner.

3.2.5. The Contractor agrees to cooperate fully and to communicate and coordinate with the Owner's Representative with respect to all aspects of the Work as required by the Owner and with respect to all activities or services requested or required by the Owner to be performed by the Owner's Representative in connection with the Project. Notwithstanding anything to the contrary in this paragraph 3.2.5, Contractor is solely responsible for the means and methods of the Work and for the safety of the Project, the Project Land, and each Site.

3.2.6. Contractor hereby acknowledges that the Owner's Representative shall have authority to (i) reject Work which does not conform to the Contract Documents, (ii) stop the Work in order to require the proper execution of the Work or to order the correction of Work which is defective, substandard or not in conformance with the applicable Contract Documents, and (iii) require special inspection or testing of the Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or complete; however, neither the Owner's Representative's authority to act under this paragraph, nor any decision made by it in good faith, either to exercise or not to exercise such authority, shall create any duty or responsibility on the part of the Owner's Representative or Owner to the Contractor, any Subcontractor or Sub-subcontractor, any of their agents or employees, or any other persons performing any of the Work, nor shall it affect or reduce the Contractor's

responsibilities to perform the Work in conformance with the requirements of the Contract Documents and free from defects or deficiencies in materials or workmanship. Owner's Representative does not have authority to direct any change in the Work or to authorize any adjustment to the Completion Dates, any increase in the Contract Price or any other modification to the schedule for the Work or the Contractor's compensation and that all such authority can only be exercised in writing by the Owner.

3.2.7. Contractor acknowledges and agrees that the Owner, Owner's Representative, Owner's Consultants, and Engineer are under no obligation to inspect the Work or to discover defects or deficiencies in the Work. The discovery of or failure to discover any defects, deficiencies or other problems in the Work by the Owner, Owner's Consultants, or Engineer, shall not in any way constitute a waiver or acceptance of any such defect, deficiency or other problem or in any way affect or reduce the Contractor's responsibilities to perform the Work in conformance with the terms of the Contract Documents and free of defects, deficiencies or other problems in materials or workmanship. Contractor shall be solely responsible for all construction means, methods, techniques, sequences or procedures and for all safety requirements, programs, measures and precautions in connection with the Work. In this regard, Contractor acknowledges and agrees that any review, discussion, observation, inspection, approval or comment by Engineer, Owner's Representative, Owner's Consultants, or Owner with respect to such matters and any review, approval or comment by Engineer, Owner's Representative, Owner's Consultants or Owner with respect to any shop drawing or other design detail, specification or engineering calculation shall relate to and reflect only their general information as to the nature and status of the Work being performed and shall not constitute a technical approval or acceptance of (or any assumption of liability or responsibility with respect to) any such drawing, design specification or calculation or any means, methods, techniques, sequences or procedures or safety requirements, programs, measures and precautions, and shall not relieve, affect or diminish in any way Contractor's obligations and responsibilities for such matters as set forth in the Contract Documents.

3.3 ROLE OF ENGINEER

3.3.1. The Engineer will assist the Owner in the administration of the Contract Documents and the Work on the Project as described in the Contract Documents, and will assist the Owner during construction, and from time to time during the warranty and correction period described in this Agreement. The Engineer will assist and consult with the Owner, and is solely an advisor to the Owner, not the Owner's general agent. The Engineer will have authority to act on behalf of the Owner only to the extent expressly provided in the Contract Documents, unless otherwise modified by written instrument in accordance with the provisions of this Agreement. Contractor specifically acknowledges and agrees that the Engineer does not have authority to direct any change in the Work or to authorize any adjustment to the Completion Dates, any increase in the Contract Price or any other modification to the schedule for the Work or the Contractor's compensation and that all such authority can only be exercised in writing by the Owner.

3.3.2. The Engineer will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Engineer will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

3.3.3. The Engineer and Contractor shall deliver a copy of all written communication with one another (including transmittals) to the Owner's Representative.

3.3.4. If so requested by Owner, and based on the Engineer's observations and evaluations of the Contractor's Applications for Payment, the Engineer will review the amounts due the Contractor and will advise the Owner as to the status of the Work and the amounts to be paid to the Contractor pursuant to any Application for Payment.

3.3.5. The Engineer (with the consent of the Owner's Representative) shall have the authority to reject Work which does not conform to the Contract Documents or order the correction of Work that is defective, substandard or not in conformance with the applicable Contract Documents. Whenever, in the reasonable opinion of the Engineer, it is considered necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, the Engineer (with the consent of the Owner's Representative) will have authority to require special inspection or testing of the Work in accordance with the terms of the Contract Documents, whether or not such Work be then fabricated, installed or completed. However, neither the Engineer's authority to act under this paragraph, nor any decision made by it in good faith, either to exercise or not to exercise such authority, shall create any duty or responsibility on the part of the Engineer to the Contractor, any Subcontractor or Sub-subcontractor, any of their agents or employees, or any other persons performing any of the Work, nor shall it affect or reduce the Contractor's responsibilities to perform the Work in conformance with the requirements of the Contract Documents and free from defects or deficiencies in materials or workmanship.

3.3.6. The Engineer will review, approve, reject, make comments and take other action as appropriate with respect to the Contractor's submittals such as shop Construction Drawings, product data and samples, but only for the limited purpose of checking for conformance with information and design concepts expressed in the Contract Documents. The Engineer's action will be taken with reasonable promptness so as to cause no delay in the Work or in the activities of the Contractor, Owner or separate Contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness or other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.3.7. The Engineer may authorize minor changes in the Work not involving a change in the Contract Price or Completion Date(s), and not inconsistent with the intent of the Contract Documents.

3.3.8. The Engineer will conduct inspections to assist the Owner in determining the date of Substantial Completion and the date of Final Completion and the Work overall. In addition to the punch list required of the Contractor under 7.3.2, the Engineer will compile its own, separate list of punch list items and corrections required with respect to the Work, and will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor.

3.3.9. Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution of the Work or the interpretation of the Contract Documents shall be resolved as provided herein.

3.3.10. At its discretion, the Owner may remove or replace the Engineer, in which case the Owner may proceed without an Engineer (and perform construction administration through an Owner's Representative or through any other of the Owner's Consultants) or may substitute another Engineer of the Owner's choosing.

3.4 ROLE OF ENGINEER'S REPRESENTATIVE

3.4.1. The Owner and Engineer may agree to have the Engineer furnish an Engineer's Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work. The Engineer's Representative will be Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding the Engineer's Representative's actions.

3.4.2. The Engineer's Representative's authority and responsibilities may include, but are not limited to, the following:

3.4.2.1 General: Engineer's Representative's dealings in matters pertaining to the Work in general shall be with Engineer, Contractor, and Owner's Representative. Engineer's Representative's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. Engineer's Representative shall generally communicate with Owner or Owner's Representative only with the knowledge of and under the direction of the Engineer.

3.4.2.2 Conferences and Meetings: The Engineer's Representative may attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings, and prepare and circulate copies of minutes thereof.

3.4.2.3 Inspections, Tests, and System Start-ups: The Engineer's Representative may (i) verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof; and (ii) observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

3.4.2.4 Payment Requests: Engineer's Representative may review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

3.4.2.5 Completion: Engineer's Representative may (i) participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected; (ii) participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner's Representative and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied, and (iii) observe whether all items on

the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

ARTICLE 4

SITE ACCESS, CONDITIONS AND REFERENCE POINTS

4.1 ACCESS AND AVAILABILITY OF LANDS

4.1.1. Except as provided herein, the Owner shall provide, as indicated on the Construction Drawings and Specifications, land upon which the Work is to be done, rights-of-way for access to same, and such other lands which are designated for use of the Contractor. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

4.1.2. If required, Contractor shall provide, at its own cost, additional lands and access for temporary construction facilities or storage of materials and equipment.

4.1.3. Contractor shall propose, for the Owner's review and approval, access roads for moving construction personnel and equipment. The access routes are subject to change by the Owner, occasioned by the progress of the work or unforeseen conditions. If routes are changed, Contractor may propose alternate routes. Changes required in haul routes shall not be the basis for extra payment, unless such changes are required by written directive from the Owner.

4.1.4. Contractor shall, whenever possible, keep all construction traffic out of existing neighborhoods. Contractor shall keep haul routes clean at all times to the satisfaction of the Owner and the local governing body having jurisdiction over the haul routes.

4.2 USE OF STREETS

4.2.1. Except where approved otherwise, the Contractor may not hinder or inconvenience travel on streets or intersecting alleys for more than two blocks at any one time. Whenever streets are closed the Contractor shall comply with all Laws and Regulations and place properly worded signs announcing such fact to the public, with proper barricades at the nearest street corners, on both sides of the obstruction. The Contractor shall leave no street or driveway blocked at night. When streets are closed, Contractor shall also notify the Owner's Representative, the Engineer, the Fire Department, law enforcement agencies and any other parties required by Law and/or Regulations. The Contractor shall not block ditches, inlets, fire hydrants, etc., and, where necessary, shall provide temporary drainage.

4.2.2. The Contractor shall remove as soon as practicable, accumulated rubbish and open each block for public use. Use of any portion of a street shall not constitute acceptance of any portion of Work. The Contractor shall backfill and shape trenches across street intersections or driveways for safe traffic at night or, where permitted, span open trenches with steel plates or bridges to permit traffic flow. When driveways are cut, the immediate placement of mats for ingress or egress of vehicles may be directed if undue hardship to property owner would otherwise result and/or the Law requires.

4.3 CONTROL STAKING

4.3.1. The Owner will supply control staking to establish reference points for the Project. The Contractor shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of the Owner. The Contractor shall report to the Owner and Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. The Contractor shall give a minimum of two working days' notice to the survey company employed by the Owner when requesting staking services and a minimum of 4 working hours' notice to the survey company employed by the Owner for cancellation of scheduled staking services. The Contractor will pay for any re-staking charges due to the Contractor's lack of protection for established survey points, and for any charges resulting from the Contractor's improper cancellation of scheduled staking services. The Owner shall have the option to deduct and withhold the amount of any re-staking charges and charges for improper cancellation of scheduled staking services from any monies due to the Contractor or recover such amount from the Contractor or the Contractor's surety at the Contractor's expense.

4.4 UNDERGROUND FACILITIES

4.4.1. Contractor's Responsibilities: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplemental Terms, Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

4.4.1.1 reviewing and checking all information and data regarding existing Underground Facilities at the Site;

4.4.1.2 locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;

4.4.1.3 coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

4.4.1.4 the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

4.4.1.5 the notification of and cooperation with utility companies and agencies.

4.4.1.6 for acquainting themselves with the exact location of existing Underground Facilities and for avoiding conflicts with those Underground Facilities. The Contractor shall provide the actual depth, size, and location of said Underground Facilities to the Engineer to evaluate their impact on the project. Where underground or aboveground utilities, structures, or facilities are damaged, they shall be immediately repaired to the specifications of the owner of the utility. If the owner of the utility elects to make such repairs with their own

forces, the Contractor shall make arrangements as to protect the Owner from all damages.

4.4.2. Notice by Contractor. If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by the Contract Documents), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

4.4.3. Owner's Statement to Contractor Regarding Underground Facility. After seeking such input from the Engineer as it deems appropriate, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, and indicating whether any change in the Construction Drawings or Specifications will be made.

4.4.4. Possible Price and Times Adjustments.

4.4.4.1 Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference constitutes a Material Change or causes an Excused Delay, subject, however, to the following: (i) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question; or (ii) Contractor gave the notice required in paragraph 4.4.2.

4.4.4.2 If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

4.4.4.3 Contractor may submit a Change Order request regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4.4.5. Whenever existing utilities, not indicated on the plans, present obstructions to grade and alignment of pipe, Contractor shall immediately notify the engineer who, without delay, will determine whenever existing improvements are to be relocated or grade and alignment of pipe changed. Where necessary to move services, poles, guy wires, pipelines, or other obstructions, the Contractor will make arrangements with owners of utilities. The Owner will not be responsible for or liable for damages for any delays due to changes made by owners of utilities which hinder progress of any work. The Owner may, at its sole discretion, determine whether to grant any extension of time and/or additional compensation

4.5 SURFACE AND SUBSURFACE REPORTS

4.5.1. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or Construction Drawings of physical conditions relating to existing surface

or subsurface structures at the Site, are known to Owner, unless so stated in the Supplemental Terms.

4.5.2. If provided, any soils report and log of borings is available for Contractor's information only. The report is not a warranty of subsurface conditions, nor is it a part of the Contract Documents. Contractor is expected to examine the Site and such reports and then decide for itself the character of the materials to be encountered.

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

4.5.4. The Contractor acknowledges that any surveys, analyses, testing or other information concerning the conditions at the Project Land and/or the Site provided by the Owner, including any information concerning the condition of the existing structures, surface and subsurface conditions at the Project Land and/or the Site, have not been performed or developed by the Owner but instead by independent contractors retained by the Owner and have been made available to the Contractor for general information only, not as a representation or warranty of the accuracy, completeness or correctness of the information, and are included solely so that the Contractor has access to information available to the Owner. The Contractor shall be entitled to rely reasonably on such information. However, it is expressly understood that the Owner does not warrant or guarantee, and shall not be responsible or liable for, the correctness, accuracy, or completeness of the data or any deduction, interpretation, construction, or conclusion drawn therefrom by the Contractor. Contractor expressly releases Owner from any liability, responsibility or obligations as to the accuracy or completeness of any such information furnished by Owner.

4.6 HAZARDOUS ENVIRONMENTAL CONDITIONS

4.6.1. No reports or Construction Drawings related to Hazardous Environmental Conditions at the Site are known to Owner, unless so specified in the Supplemental Terms.

4.6.2. Reports identifying hazardous environmental condition are not Contract Documents. **Owner and Engineer do not warrant the accuracy or completeness of such documents and disclaim all responsibility and liability for accuracy of investigations and reports prepared by third parties.** Owner and Engineer also disclaim any responsibility for Contractor's interpretation of such reports and tests.

4.6.3. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

4.6.4. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all work in connection with such condition and in any area affected thereby; and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing).

4.6.5. Owner shall promptly consult with Engineer or other Owner's consultants concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

4.6.6. Contractor shall not be required to resume Work in connection with such condition or in any affected area until the affected area is or has been rendered safe for the resumption of work.

4.7 OBSTRUCTION, DIFFICULTY OR CONDITION ENCOUNTERED ON SITE

4.7.1. The Contractor agrees that, in the event an obstruction, difficulty or condition is encountered at the Site, which the Contractor contends was unforeseen and could not be anticipated, the Contractor shall notify the Owner of such condition with reasonable promptness, and in no event later than seven (7) days after its discovery, and thereafter shall meet with the Owner's Representative, Engineer and/or other Owner's Consultants, as so requested by Owner, to discuss recommendations and alternatives for responding to the condition and minimizing its impact on the Contract Price and/or Completion Date(s).

4.7.2. After such review as it determines necessary, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Construction Drawings or Specifications will be made. The Contractor shall perform no Work involving or affected by such condition until after notifying the Owner and receiving specific directions from the Owner as to the performance of such Work.

4.7.3. Such obstruction, difficulty or condition shall include

4.7.3.1 any subsurface or physical condition that: (i) differs materially from that shown or indicated in the Contract Documents or the Technical Data or related documents; or (ii) is of a highly unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work performed at the location, or (iii) is of such a nature as to require a change in the Construction Drawings and Specifications; and

4.7.3.2 a Hazardous Environmental Condition encountered at the Site for which the Contractor is not responsible.

4.7.4. The failure of the Contractor to notify the Owner of any such condition within seven (7) days of its discovery as required by this paragraph shall constitute a waiver by the Contractor of any claim for an increase in the Contract Price and/or extension of the Completion Date(s) as a result of such condition and shall mean that the Contractor shall perform all Work involving or affected by any such condition without any increase in the Contract Price or extension in the Completion Date(s).

4.7.5. Owner acknowledges the Project Land covers a great length of physical space and many tracts of land, and Contractor may not immediately recognize such a condition at the outset of the Project or during an initial visit to the Project Land; even so, Contractor will retain its obligations to notify Owner of such condition within seven (7) days of discovery as such discovery may occur throughout the Project.

4.7.6. If an obstruction, difficulty or condition is one about which the Contractor could not have had knowledge based on the requirements of paragraph 5.2.2, then

the Contractor (provided notice has been timely given as required by this paragraph) shall be entitled, as its sole and complete remedy, to an increase in compensation calculated pursuant to the applicable provisions of this Agreement, together with an extension of the Completion Date(s) measured by the number of days or portions thereof, if any, that the Substantial Completion of the Work is actually delayed as a direct result of the existence of the obstruction, difficulty or condition (provided, however, that if the required extension of time is not granted, the Contractor shall be entitled to the remedies set forth herein).

4.7.7. Except as specifically provided in the Contract Documents, all loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances or natural causes in the prosecution of the same, or from the soil, subsurface, and other conditions, whether naturally occurring or manmade, or from concealed conditions or unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by Contractor at its own cost and expense. Contractor accepts such risk even for circumstances and conditions that differ materially from those indicated in the Contract Documents, geotechnical report, a review of the Site and surrounding areas or other information furnished by or on behalf of Owner. Accordingly, Contractor shall not be entitled to any additional compensation or time associated with unforeseen circumstances or conditions or natural causes except as allowed by the Contract Documents.

ARTICLE 5

CONTRACTOR'S REPRESENTATIONS AND OBLIGATIONS

5.1 THE WORK OF THIS CONTRACT

5.1.1. As used herein the terms "Work" or "work" shall mean, and the Contractor shall be required to perform or provide, all labor, supervision, construction, materials, equipment, special facilities, construction documentation, construction management services, tools, supplies, taxes, and all other property and services necessary to timely and fully perform all construction or other obligations or services set forth in or reasonably inferable from the Contract Documents, in a good and workmanlike manner and in accordance with the requirements of the Contract Documents, and all labor, services, materials or other items necessary to produce fully connected, complete, operational and functional systems and finishes, including all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together and operate properly. In determining what is reasonably inferable from the Contract Documents, all such documents shall be construed together, and shall not be read by separate trade areas or design divisions.

5.1.2. In determining what is reasonably inferable from the Contract Documents and with respect to the services required of the Contractor by this Agreement, the Contractor's services shall be performed in (and measured according to) a manner consistent with those standards of professional skill, care and diligence applicable to a Contractor of comparable experience and knowledge (as represented herein) in similar circumstances. In providing such services, however, the Contractor shall not be responsible for inconsistencies, errors, defects or omissions in the design of the Project or the Engineer's services. Moreover, the Contractor agrees that the Work required under the Contract Documents and this Agreement shall mean and include all work, services, equipment, materials, finishes, requirements and other items reasonably identified or known to the Contractor. In this regard, Contractor acknowledges and agrees that prior to the execution of this Agreement, the Contractor has had various meetings with the Engineer and the Owner to review the Construction Drawings and Specifications as then prepared by the Engineer and to discuss the

scope of the Work required for the Project, to identify and resolve issues and questions regarding, and to clarify the intended nature and character of, the scope of Work for the Project. Contractor agrees that in determining what is reasonably inferable from the Contract Documents the Work shall include any specific items, equipment, materials, finishes and requirements identified to Contractor as being part of the Work as reflected in the applicable meeting minutes and/or reports provided to or prepared by Contractor in connection with such discussions, meetings, consultations and reviews.

5.2 CONTRACTOR REPRESENTATIONS

5.2.1. Experience. The Contractor acknowledges that it has made representations to the Owner in its proposal and subsequent negotiations that it has substantial experience in the general construction and construction management of improvements substantially similar to the Project (including substantially similar projects in and around Harris County, Texas which require compliance with local Laws and Regulations and which require experience seeking approval of projects by local government and quasi-governmental authorities), that the Contractor is duly licensed and/or registered to perform all Work required on the Project as may be required by law, and that the Owner has reasonably relied on such representations in entering into this Agreement with the Contractor.

5.2.2. Knowledge of Site. By executing this Agreement, the Contractor represents that it has visited the Project Land where the Work is to be constructed, has examined carefully all of the Contract Documents, has reviewed all information, data and documents regarding the conditions at the Project Land made available to the Contractor by the Owner prior to the execution of the Agreement and has acquainted itself with all other conditions relevant to the Work, including, but not limited to, delivery requirements and other restraints arising out of relevant easements, if any. Based on the foregoing, the Contractor shall not be entitled to any increase in the Contract Price or to any extension in the Completion Date(s) because of, and assumes full and complete responsibility for and all risk (including risk of loss) in connection with the Work caused by, any obstructions, difficulties or conditions at the Project Land about which the Contractor has knowledge based on the information made available to the Contractor by the Owner prior to the execution of the Agreement and/or based on a reasonably prudent visit to and examination of the Project Land prior to the execution of the Agreement and/or based on facts or circumstances disclosed by the information provided to Contractor by Owner or other conditions discovered at the Project Land and/or the Site by Contractor prior to commencement of the Work.

5.2.3. Independent Contractor. Contractor acknowledges and agrees that it is acting under this Agreement solely as an independent Contractor, and not as a partner, joint venturer or employee of Owner and shall have no authority to act for or bind or obligate Owner in any manner whatsoever, except and only to the extent specifically authorized in writing by the Owner.

5.3 PRECONSTRUCTION PROCEDURES

5.3.1. Preconstruction Conference. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Section 5.4, procedures for handling shop drawings, samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

5.3.2. Designation of Authorized Representatives. At this conference Contractor shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individual shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of Contractor.

5.4 SCHEDULES

5.4.1. No later than fourteen (14) days after execution of the Contract, the Contractor shall prepare and submit for the Owner a Construction Schedule for all of the Work. The Construction Schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for the expeditious and practical execution of the Work and for Substantial Completion of the Project no later than the Completion Date(s) established pursuant to the Agreement (except as such dates may have been modified thereafter pursuant to a Change Order signed by the Owner).

5.4.2. The Construction Schedule shall consist of

5.4.2.1 a preliminary Progress Schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any milestones specified in the Contract;

5.4.2.2 a preliminary Schedule of Submittals; and

5.4.2.3 a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work.

5.4.2.4 A complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication, and the scheduled delivery dates for each item relevant to each aspect of the Work (the "Materials Schedule Report").

5.4.3. The Construction Schedule shall be coordinated with the Owner and Engineer so that all activities connected with the construction of the Project shall be performed in an orderly and timely fashion. The Construction Schedule shall include reasonable allowances for periods of time required for the Owner's and/or Engineer's review and approval and for inspections and approvals by the various governmental authorities having jurisdiction over the Project. If requested by the Owner, the Contractor shall portray the Construction Schedule using the Critical Path Method.

5.4.4. Initial Acceptance of Schedules. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Owner and Engineer as provided below the schedules submitted in accordance with paragraph 5.4.1. The Construction Schedule will be acceptable to Owner and Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Owner or Engineer responsibility for the Construction Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor. Contractor shall have an additional 10 days to make corrections and adjustments and to

complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Owner and Engineer.

5.4.5. Subsequent to the commencement of the construction of the Work, the Contractor shall prepare a schedule report every thirty (30) days in such form, detail and character as approved by the Owner. This monthly report shall be submitted by Contractor with each Application for Payment. Accompanying the report shall be an updated, current Construction Schedule, an updated Materials Status Report and a listing and status report with respect to all Change Orders and Modifications. The Contractor shall deliver a concise, written summary prepared by the Contractor's Project Superintendent identifying and discussing all significant achievements, problems or other events affecting or relating to the Project during the preceding 30 days. The monthly report shall contain a statement by the Contractor's Project Superintendent as to the progress of the Project, and the status of conformance with such Construction Schedule and the Contractor's expectation of completion as compared to the Construction Schedule. The Contractor shall prepare and keep current, for the Engineer's approval, a Schedule of Submittals which shall be coordinated with the Construction Schedule and shall allow the Engineer reasonable time to review submittals.

5.4.6. The Contractor agrees that it shall continually adjust and modify the Construction Schedule as required by this Agreement and shall identify the percentage of completion with respect to each aspect of the Work identified in the Construction Schedule as of the date of that respective schedule, and in order to reflect and account for all events and occurrences encountered in or associated with the performance of the Work which may delay Substantial Completion of the Work and/or preclude the Owner from using all, or any portion of the Project, for its intended purpose on or before the Completion Date(s) (hereinafter referred to as a "Delaying Event"). The Contractor shall notify the Owner with reasonable promptness if and when any such Delaying Event takes place. Further, should such a Delaying Event take place, the Contractor shall meet with the Owner and Engineer, as and when requested, to discuss the situation and identify responses and alternatives which will reduce or eliminate the impact of the Delaying Event and shall modify, revise and adjust the Construction Schedule accordingly, pursuant to the direction of the Owner and shall prioritize the Work on the Project in such a fashion so as to allow the Owner to use as much of the Project as possible for its intended purpose on or before the Completion Date(s). At all times, the Contractor shall cause the Work on the Project to be performed in accordance with the most recent revisions and modifications to the Construction Schedule.

5.5 COMPLIANCE WITH LAWS AND REGULATIONS, PERMITS, AND LICENSES

5.5.1. The Contractor shall give all notices and comply with Laws and Regulations bearing on the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws and Regulations. If the Contractor knows that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Owner in writing, and any necessary changes shall be made by appropriate Modification. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

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

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

5.6 TAXES

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

5.6.2. Except as stated in Section 5.6.1, the Contractor shall pay all Federal, State or local taxes and all sales, consumer, use and similar taxes applicable to the Work (or relating to the performance of any services, furnishing of any materials or ownership, use or

transfer of any property in connection with the Work) which are legally enacted when the Agreement is signed, whether or not yet effective or merely scheduled to go into effect, and all taxes measured by wages of all employees of the Contractor or any Subcontractors as required by law. The Contractor shall be solely responsible and liable for payment of said taxes, and shall indemnify and hold the Owner harmless on account of any such taxes if assessed against the Owner under any authority of law. Contractor acknowledges and agrees that it will coordinate with Owner to ensure that Project purchases are made in a manner appropriate in order to realize available sales tax savings.

5.6.3. Contractor acknowledges and agrees that it is subject as an employer to all applicable unemployment compensation statutes and agrees to indemnify and hold harmless Owner from any and all responsibilities thereunder toward employees of Contractor.

5.6.4. Except as stated in Section 5.6.1, Contractor shall pay all fees, assessments, contributions, and taxes (including, without limitation, all sales taxes, excise taxes, Social Security, Old Age Benefit, fringe benefits and unemployment compensation taxes) upon the material and labor furnished under the Contract Documents as required by any applicable statute, regulation and ordinance, or any union, governmental agency or political subdivision and shall indemnify and hold Owner harmless against any penalty imposed upon Owner as a result of any violations of applicable governmental requirements by Contractor.

5.7 CONSTRUCTION PROCEDURES

5.7.1. The Contractor shall establish on-site lines of authority and communication including but not limited to: (1) scheduling and conducting meetings with Subcontractors prior to the start of Work as necessary to coordinate: (a) Construction Schedule and sequencing of critical Work; (b) delivery schedules and priorities; (c) designation of responsible Subcontractor personnel; (d) procedures and processing of field decisions, submittals, Change Orders, and applications for payment, etc.; (e) requirements for document distribution; (f) procedures for maintaining Construction Drawings and Specifications; (g) use of premises, office, work, and storage areas; (h) temporary facilities and utilities; (i) security procedures; (j) housekeeping procedures; and (k) allocation of space and establishment of guidelines for Subcontractor field offices, work and storage areas, etc. as required; and (2) scheduling and conducting construction progress meetings with Subcontractors as required by the Contract Documents in order, among other things, to: (a) review work progress for compliance with schedule; (b) resolve field conflicts or problems; (c) review off-site fabrication and delivery schedules; (d) monitor construction progress and execute corrective measures and procedures to prevent schedule delays; (e) monitor adequacy of Subcontractor manpower and equipment and execute corrective action as necessary; (f) maintain quality control standards; and (g) review status of requests for proposals.

5.7.2. The Contractor shall establish lines of communication and review and approval procedures with Owner. The Contractor shall: (1) schedule, conduct and maintain minutes of construction progress meetings on a weekly basis, or as otherwise specified by the Contract Documents, to review progress of proposal preparation and construction; (2) establish lines of communication with Owner, Owner's Representative and Engineer to resolve problems with Construction Drawings, proposals or construction in a timely manner; (3) establish guidelines with the Owner for communication with the Engineer; (4) establish satisfactory submission, review, approval, and authorization procedures for Shop Construction Drawings and Samples, monthly applications for payment, etc.; and (5) establish guidelines for communication between Contractor and Engineer.

5.7.3. The Contractor will work cooperatively with the Engineer to timely detect design problems that could affect cost or constructability, to propose effective solutions, to provide reasonably accurate and updated construction cost estimates throughout the construction period, and to closely monitor the cost estimates to ensure, to the greatest extent practicable, that the cost to construct the Project as designed will not exceed the established construction budget.

5.7.4. Beginning with the commencement of construction Work on the Project, the Contractor shall hold progress meetings at the Site with the Owner's Representative and the Engineer's Representative. At such meetings, the progress of the Work shall be reported in detail with reference to the Construction Schedule and all other construction schedules. Each Subcontractor then performing Work on the Project shall have a competent representative present at each weekly meeting to report on the condition of his Work and to receive information regarding the performance of future work by the Subcontractor.

5.7.5. Electronic Transmittals

5.7.5.1 Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, Construction Drawings, information, and graphics, including but not limited to shop drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

5.7.5.2 If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.

5.7.5.3 When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

5.8 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

5.8.1. The Contractor shall submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of any separate Contractors, all shop drawings, product data and samples required by the Contract Documents. Such shop drawings, product data and samples shall be submitted simultaneously to the Owner and Engineer. The Contractor acknowledges and agrees that the Engineer's review of shop drawings will be conducted only after the Contractor has coordinated the shop drawings to indicate field conditions and proposed deviations from the Contract Documents and/or other requirements which affect the requirements of the Contract Documents and only after the Contractor has complied with all other requirements of the Contract Documents relating to the submission of shop drawing submittals. Contractor shall submit separate, specific written notice of any variation to Owner and Contractor and, in the case of shop drawings, shall also make specific notation on each shop drawing submitted for review and approval. All shop drawing submittals shall indicate that the required coordination has been performed. The Contractor shall be responsible for any delays resulting from the failure to provide such coordination. However, if after such coordination is performed an Excused Delay occurs, the Contractor shall not be

responsible for such Excused Delay and shall be entitled to the applicable remedies set forth herein.

5.8.2. By submitting shop drawings, product data and samples, the Contractor represents that the Contractor (or its Subcontractors) has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so, and that Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

5.8.3. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the approval of shop drawings, product data or samples by the Engineer or Owner unless the Contractor has specifically informed the Owner and Engineer in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the shop drawings, product data or samples by such approval.

5.8.4. The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data or samples, to revisions other than those requested by the Engineer on previous submittals. No portion of the Work requiring submission of a shop drawing, product data or sample shall be commenced (including fabrication) until the submittal has been approved. All such portions of the Work shall be in accordance with approved submittals.

5.8.5. The Engineer's notation on shop drawings or other submittals shall not constitute an authorization for additional work or additional cost. If Contractor claims that any such notation represents a Material Change in the Work as defined herein, the Contractor must notify the Owner in the time and manner required by this Agreement. No mark, stamp, or notation on any shop drawing or other submittal shall constitute notice under this Agreement and all such marks, stamps, or notations will be disregarded by Owner and/or Engineer, unless Contractor separately provides notice as required by this Agreement.

5.8.6. Nothing in the Contract Documents:

5.8.6.1 shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity; nor

5.8.6.2 shall create any obligation on the part of Owner to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

5.9 SUPERVISION

5.9.1. The Contractor shall supervise and direct the Work, using appropriate skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, all Subcontractors and their agents and employees, and all other persons performing any of the Work under contract with the Contractor or any Subcontractor.

5.9.2. On-Site Project Manager and Project Superintendent. The Contractor and Owner shall meet and agree on the nature and amount of on-site supervision to be provided by the Contractor for the Project, including the need for and identity of any Project Manager, on-site Project Superintendent and/or on-site Field Engineers. Any Project Manager, Project Superintendent or Field Engineer agreed upon by the Owner and Contractor pursuant to this paragraph shall represent the Contractor on the Site and shall have authority to bind the Contractor with respect to all matters pertaining to the performance of Work on the Project. The Contractor shall not employ any person as Project Manager and/or Project Superintendent and/or Field Engineer unless the Owner agrees to the selection of such person, and shall not replace or transfer any such person without the prior, written approval of the Owner, except in the event that the person designated as the Project Manager or Project Superintendent or Field Engineer is no longer employed by the Contractor, in which event the new person designated as the replacement Project Manager or Project Superintendent or Field Engineer shall be subject to the Owner's approval, which approval shall not be unreasonably withheld.

5.9.3. The Contractor shall provide such assistant superintendents, estimators, and such other support staff necessary to perform the Work in the most appropriate and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

5.9.4. The Contractor agrees that it shall not utilize any employee of the Contractor to perform any Work for the Project against whom the Owner makes reasonable objection based on the quality of Work performed by such person and/or the nature of the working relationship between such person and the Owner, Engineer or Owner's Consultants. In the event Owner makes such reasonable objection to any of the Contractor's personnel, the Contractor agrees that it shall promptly remove such person from the Project and thereafter shall not utilize such person to perform any such services on the Project, unless the Owner later agrees to such use. Any reasonable objection by the Owner pursuant to this paragraph shall not be a basis for an increase in the Contract Price and/or an extension of the Completion Date(s).

5.9.5. The Contractor shall schedule and coordinate the work of all Subcontractors, Suppliers and all other individuals or entities performing or furnishing any of the Work and shall assure that each Subcontractor shall: (1) coordinate the Work of his own employees and subcontractors; (2) conduct his Work to assure compliance with schedules; and (3) coordinate his Work with that of other subcontractors and Work performed by Owner's separate Contractors (consistent with the provisions of Article 11 herein).

5.10 GENERAL REQUIREMENTS

5.10.1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, services, equipment, tools, construction equipment and machinery, transportation, and other facilities and services or temporary distribution of the same necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

5.10.1. The Contractor shall be responsible for arranging for and providing all general services and temporary facilities as required for the proper and expeditious prosecution of the Work including but not limited to all such services and facilities required by the general requirements of the Specifications. The Contractor shall pay all costs for such general services and temporary facilities, unless otherwise specified, until termination of this Agreement.

5.11 LABOR

5.11.1. The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees and the employees of its Subcontractors and other entities performing any of the Work under the direction or supervision of the Contractor and shall not employ in the performance of any portion of the Work any unfit person or anyone not skilled in the task assigned to him.

5.11.2. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, in the absence of any Laws or Regulations to the contrary, Contractor may perform the Work [on holidays, during any or all hours of the day, and on any or all days of the week, at Contractor's sole discretion. However, the Contractor shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for the Owner's Representative or Engineer's services (including the Engineer's Resident Representative, if any), and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due.] [during regular working hours, **7:00 AM** through **6:00 PM**, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday, unless Owner provides written consent thereto. **Legal holidays are defined as follows: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday immediately following Thanksgiving Day, and Christmas Day.**

5.12 PREVAILING WAGE RATES

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

5.12.2. Chapter 2258 of the Texas Government Code also requires that the Contractor and Subcontractors keep an accurate record of the name and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of the Owner.

5.12.3. The minimum wage rates that apply to this Contract are the City of Houston Prevailing Wage Rates in effect at the time bids are received.

5.13 MATERIALS AND EQUIPMENT

5.13.1. All materials and equipment furnished under this Agreement shall be of good quality and new, except as and unless otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence

(including reports of required tests) as to the source, kind, and quality of materials and equipment.

5.13.2. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents. . Manufactured articles, material and equipment shall be supplied, installed, connected, erected, used, cleaned and conditioned as directed by written instructions of the manufacturer.

5.13.3. Should the Contract Documents fail to particularly describe materials or goods to be used, then it shall be the duty of Contractor to request the Engineer to provide clarification. When any material has been approved, no change in brand or make will be permitted unless: (1) Contractor can furnish satisfactory proof that delivery is impossible, and Owner or Owner's designee has approved the proposed substitution in writing, or (2) the material delivered fails to comply with the Contract Documents.

5.13.4. The title of all Work completed and in course of construction and of all materials on account of which any payment has been made shall be in the name of Owner.

5.14 SUBSTITUTE AND "OR-EQUAL" ITEMS

5.14.1. The Contract for the Work, as awarded, is on the basis of materials and equipment specified or described in the Bidding Documents, and those "or-equal" or substitute materials and equipment approved by the Engineer on behalf of the Owner prior to submittal of Bids and identified by Addendum to the Bidding Documents.

5.14.2. If an "or-equal" material or equipment was permitted by the Bidding Documents or any Addendum thereto and is used by the Contractor, Contractor certifies that (i) there will be no increase in cost to the Owner or increase in Contract Times; and (ii) it will conform substantially to the detailed requirements of the item named in the Bidding Documents. The Contractor shall not be compensated for providing data in support of any proposed "or equal" item that is ultimately approved for inclusion in the Work.

5.14.3. If a substitute item of material or equipment was permitted by the Bidding Documents or any Addendum thereto and is used by the Contractor, Contractor certifies that the proposed substitute item will (i) perform adequately the functions and achieve the results called for by the general design; (ii) be similar in substance to that specified, and (iii) be suited to the same use as that specified. The Contractor shall not be compensated for providing data in support of any proposed substitute item that is ultimately approved for inclusion in the Work.

5.14.4. Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute and for making changes to the Contract Documents resulting from the acceptance of each proposed substitute.

5.14.5. Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

5.15 OWNER SUPPLIED ITEMS

5.15.1. The Contractor acknowledges that the Project may include installation, fixturing and related work with respect to certain systems, equipment, hardware, supplies and accessories to be supplied directly by the Owner or separate contractors retained

by the Owner (the "Owner Supplied Items"). The Contractor shall not be responsible for the purchase or delivery of the Owner Supplied Items. However, Contractor shall be responsible to unload, store, uncrate, move, handle, install and otherwise incorporate any specific items of the Owner Supplied Items into the Contractor's Work to the extent required by the Contract Documents and as necessary to complete the Contractor's Work in a full and timely fashion. Contractor shall account for and keep track of, and shall be fully and solely responsible for all storage and handling with respect to all Owner Supplied Items to the extent Contractor is responsible to install any such Owner Supplied Items and shall inspect all such Owner Supplied Items prior to installing or incorporating such Owner Supplied Items as part of the Contractor's Work and shall promptly notify the Owner if the Contractor believes any such Owner Supplied Items are in such condition that they should not be installed or incorporated into the Work or are not delivered in the required condition or quantity. The failure of the Contractor to report any apparent defect or deficiency in any such Owner Supplied Items prior to the installation or incorporation of such Owner Supplied Items into the Work shall constitute an acknowledgement by Contractor that such Owner Supplied Items were fit and proper for installation and construction, except as to defects or deficiencies not then reasonably discernible.

5.15.2. To the extent any of the Owner Supplied Items are to be installed by separate Contractors to Owner, Contractor shall be responsible to coordinate with the applicable vendor of the Owner Supplied Items and to establish rough-in locations and connections for the Owner Supplied Items to be installed, and to coordinate, for each component of the Owner Supplied Items, details pertaining and relevant to the requirements for the installation and assembly of the Owner Supplied Items and the connection to and relationship of such Owner Supplied Items with any other equipment, systems or utilities included as part of Contractor's Work that are to be connected to or used with the Owner Supplied Items so that the Owner Supplied Items can be assembled and installed, and incorporated into and connected with the Contractor's Work, in a safe, proper and complete manner. In this regard, Contractor acknowledges that, subject to the provisions of this paragraph below, if such rough-in locations are commenced or set without proper coordination by the Contractor, these locations may not be adequate or appropriate to fit the installation of the Owner Supplied Items and may result in additional costs and/or time should they need to be changed. Contractor shall be responsible for any extra costs or time caused by Contractor's establishment, commencement or setting of rough-in locations relating to Contractor's Work without first coordinating with the applicable vendors of the Owner Supplied Items on the Project (or for Contractor's failure to comply with the related instructions provided by the applicable vendor of the Owner Supplied Items) and for costs related to changes to any utility or other completed work on the Project (whether performed by Contractor or others) needed to fit and/or hook-up the Owner Supplied Items in such event, except that Contractor shall not be responsible for such costs (or for any failure to coordinate with the applicable vendor of the Owner Supplied Items), if such changes or costs are caused by the failure of the applicable vendor of the Owner Supplied Items to identify the applicable rough in work required to accommodate the applicable Owner Supplied Items in a timely or accurate fashion. In the event Contractor believes that any rough-in location established pursuant to this paragraph is inadequate or inappropriate to accommodate the applicable Owner Supplied Items, Contractor shall notify Owner with reasonable promptness and, if requested, shall provide Owner with recommendations as to how to modify the rough-in locations to make the locations and rough-in adequate and appropriate.

5.16 USE OF SITE AND OTHER AREAS

5.16.1. The Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to

the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. The Contractor shall comply with any directions or restrictions issued by the Owner regarding protecting and securing materials or equipment stored on the Site and shall be responsible for such protection and security, subject to recovery (as allowed herein) from the property insurance provided by the Owner for the Project. The Contractor shall require all persons performing work on the Project to comply with any and all policies and rules established by the Owner relating to access or behavior at the Project Land and/or the Site, including any policies or rules relating to safety, access, ingress, egress, noise, and privacy and confidentiality. The duty of the Contractor to maintain discipline and good order and compliance with the Owner's policies, rules and regulations pursuant to the Contract Documents shall apply to the Contractor's employees and to Subcontractors, sub-subcontractors, materialmen and suppliers, and their respective employees.

5.16.2. Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.16.3. The Contractor shall not damage or endanger any portion of the Work or the work of any separate Contractors by cutting, patching or otherwise altering any such Work. The Contractor shall not cut or otherwise alter the work of any separate Contractors except with the written consent of the Owner.

5.16.4. Contractor shall assume full responsibility for (a) damage to the Site or work of other contractors; (b) damage to any such areas used for Contractor's operations; (c) damage to any land, areas or structures adjacent to or near the Site; and (d) for injuries and losses sustained by the owners or occupants of any such land, areas or structures; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

5.16.5. If a damage or injury claim is made by the owner or occupant of any such land, area or structure because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; (c) notify the Owner of the claim and keep the Owner apprised of its status; and (d) **to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.**

5.16.6. Removal of Debris During Performance of the Work: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from

accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

5.16.7. If Contractor fails to clean up as required by the Contract Documents within 72 hours after written notice, the Owner may do so and the cost thereof shall be charged to Contractor.

5.16.8. Final Clean-Up. For the Work to be considered Finally Complete, Contractor shall remove from and about the Project Land all waste materials and rubbish (and shall remove Contractor's and Subcontractors' tools, construction equipment, machinery and all surplus materials). For the Work to be considered Substantially Complete, Contractor shall remove temporary protections, in addition any other requirements under this Agreement.

5.17 RECORD CONSTRUCTION DRAWINGS; AS-BUILTS; OPERATING AND MAINTENANCE DATA

5.17.1. The Contractor shall maintain at the Site for the Owner one (1) record copy of the Construction Drawings, Specifications, Addenda, Change Orders, Modifications and other records relating to the construction work performed on the Project, in good order and marked currently to record changes and selections made during construction, and in addition shall maintain approved shop drawings, product data, samples and similarly required submittals. Among other things, these marked Construction Drawings shall reflect (i) all deviations from the Construction Drawings made during construction, (ii) details in the work not previously shown on the Construction Drawings (iii) changes to existing conditions or existing conditions found to differ from those shown on the Construction Drawings or related existing Construction Drawings and (iv) the actual installed position of equipment, piping, control valves, openings and stub-outs. These documents shall be made available to the Owner and the Engineer for inspection and review during the course of construction on the Project, as requested by them.

5.17.2. At the conclusion of the Work on the Project, Contractor shall compile and submit to the Engineer and any other Owner's Consultant, as directed by Owner, for its review and correction two (2) hard copies and two (2) digital/electronic copies of the following:

5.17.2.1 neat, clean, well drafted and complete "as built" record drawing. showing all construction work performed for the Project as set in place during construction and revised to show the foregoing information and all changes made during construction from the original drawing; and

5.17.2.2 operating and maintenance manuals, brochures, Construction Drawings and other data for all mechanical, electrical, plumbing, conveying and other such equipment provided by the Contractor as part of Work. This data shall be bound and organized and include all manufacturers' operating and maintenance instructions, original copies of warranties, bonds or service contracts, etc. The data shall identify: (i) the Subcontractor or installer; (ii) the maintenance Contractor, as appropriate; and (ii) local source of supply for parts and replacement; and

5.17.2.3 engineered product care and maintenance data as applicable for Work performed by the Contractor and all Subcontractors. This data shall include manufacturer's recommendation for types of cleaning agents and methods, cautions against detrimental cleaning agents and methods,

recommended schedule for cleaning and maintenance and original copies of warranties, and shall be bound and organized; and

5.17.2.4 all Construction Drawings and Specifications. These Construction Drawings and Specifications shall bear all stamps, signatures, notations, changes, approval, etc. by the appropriate governmental agencies.

5.17.3. The Contractor shall, at no cost to the Owner, review any as-built Construction Drawings prepared by the Engineer to verify that this information has been accurately incorporated into any such as-built Construction Drawings. The Contractor shall be responsible for accurately and completely recording all of the information required by this Section 5.13 on the Contractor's marked set of Construction Drawings.

5.18 AUDIT

5.18.1. The Contractor shall maintain and produce, and shall require Subcontractors to maintain and produce, any and all data which the Owner may request for any purpose of determining the correctness and allowability of the charges made pursuant to this Agreement, including all items in the cost of the Work and in any Change Order (except that these provisions shall not apply to Work contracted on the basis of a lump sum). The Contractor shall keep, and shall require all Subcontractors to keep, such full and detailed accounts as may be necessary to reflect its operations with respect to such charges, and the system adopted shall be such as is satisfactory to the Owner. The Owner, its lenders, accountants, agents and employees, shall be afforded access at all reasonable times to the Contractor's and Subcontractors' books, correspondence, instructions, receipts, vouchers, memoranda, subcontracts, purchase orders and records of all kinds, relating to all Work under this Agreement as well as to changes in the Work and extras. In regard to the foregoing and generally, the Contractor hereby authorizes the Owner, and shall require all Subcontractors to authorize the Owner, to check directly with all Subcontractors, as to the charges for any labor, material and other items appearing in the Contractor's bills rendered to the Owner and the balances due on such charges and to obtain sworn statements and waivers of lien from any such suppliers. Upon completion of the Project, the Owner shall have the right to audit the books and records of the Contractor and its Subcontractors in order to verify the cost of the Work as represented by the Contractor in its Applications for Payment. All records relating to the Project, including all records required by this paragraph, shall be preserved for a period of four (4) years after Final Payment, or for such longer period as may be required by law.

5.19 ADDITIONAL CONTRACTOR DUTIES.

5.19.1. Contractor shall: (1) obtain required governmental approvals and schedule necessary governmental inspections; (2) schedule, coordinate and monitor Subcontractor manpower requirements and material deliveries for adequacy and execute corrective measures as required; (3) maintain daily supervision of construction, resolve field conflicts and problems, enforce conformance to Construction Drawings and Specifications, maintain quality control, monitor periodic cleaning; (4) review required Subcontractor shop drawings, product data and samples for conformance with the Construction Drawings and Specifications, field dimensions, etc. and submit to Owner for necessary approvals; (5) coordinate and expedite Owner's or Engineer's requests for pricing, approvals and Change Orders, and execution of revisions to Work in progress; (6) if requested by Owner, maintain inventory of materials furnished by the Owner; (7) attend weekly job progress meetings with Engineer, Owner's Representative and Owner's Consultants; (8) where allowances have been included in this Agreement for time and material work, approve Subcontractor's daily work

tickets and monitor the Subcontractor's performance; (9) prepare and submit monthly applications for payment; and (10) schedule with Owner and attend punch list inspection upon Substantial Completion, and complete punch list work as required by the Contract Documents.

5.20 MATERIAL CHANGE TO WORK

5.20.1. The description of the Work in further detail by the Engineer or the Owner subsequent to the execution of this Agreement, whether through the issuance of written Specifications, directions or clarifications, the issuance of further and more detailed Construction Drawings or otherwise, shall not entitle the Contractor to any compensation in addition to the Contract Price, or to any extension of the Completion Date(s), unless and only to the extent that such later description constitutes a "Material Change" in the Work, which is defined as any one of the following: (1) a description of the Work that involves work of a materially different nature, character, scope or quality (other than refinement) than that set forth in and/or reasonably inferable from the Design Documents; or (2) a later description of the Work which involves work expressly excluded from the Contract Price as set forth herein; or (3) additional work that is required because of a change in applicable Laws and Regulations after the execution of this Agreement; or (4) additional work that is required because of a differing subsurface or physical condition, as described in paragraph 4.6. Further, the Contractor hereby acknowledges and agrees that it shall not be entitled to any increase in the Contract Price and/or any extension in the Completion Date(s) as a result of any Material Change unless: (1) there is an actual, substantiated increase in the cost of the Work and/or an actual delay in the Substantial Completion of the Work beyond the Completion Date(s) which results from such Material Change; (2) the Contractor makes a claim for an increase in the Contract Price and/or extension of the Completion Date(s) with respect to such Material Change, in writing, with reasonable promptness, and in no event later than seven (7) days after Contractor's receipt of a description of the Work from the Engineer or Owner which it deems to be a Material Change; and (3) either (a) the Owner authorizes the Contractor to proceed with such Work in advance and in writing through a fully executed Change Order or (b) the Contractor is awarded an increase in the Contract Price and/or extension in the Completion Date(s) pursuant to a claim made in the time and manner required by this Agreement. In the event that a Material Change does occur on the Project (which is not resolved through a Change Order executed by the Owner and Contractor), and provided that the Contractor makes a claim for an increase in Contract Price and/or extension of the Completion Date(s) as a result of such Material Change within the time and in the manner required by this paragraph, the Contractor shall be entitled, as its sole and complete remedy, to an increase in compensation calculated pursuant to Section 18.5 herein together with an extension of the Completion Date(s) measured by the actual number of days, or portions thereof, if any, that Substantial Completion of the Work is actually delayed as a direct result of the Material Changes (provided, however, that if the required extension is not granted the Contractor shall be entitled to the remedies set forth herein).

5.20.2. In the event that the Contractor fails to provide notice to the Owner, in writing, within the applicable time limits and as otherwise required by paragraph 5.20.1 above, then the Contractor shall be deemed to have waived any claim that the Design Document at issue constitutes a Material Change and shall perform the Work depicted in said Design Document (and its further refinements) without any increase in the Contract Price and/or Completion Date(s) due to any Material Change not so identified in writing.

5.20.3. The Contractor shall continue (consistent with the provisions of this Agreement) to evaluate and assess the Construction Drawings, Specifications and other design documents or descriptions of the Work prepared by the Engineer for the Project and issued to the Contractor for construction as and when they are issued by the Engineer and shall notify the

Owner and Engineer in writing, within seven (7) days of the Contractor's receipt of any such document, if the Contractor claims that such design document(s) contain a Material Change. With respect to any claimed Material Change, the Contractor shall: (x) identify the specific direction, event, condition or design document which allegedly constitutes the Material Change; (y) state specifically and describe in detail why it allegedly constitutes a Material Change; and (z) identify the amount of the increase in the Contract Price and/or Completion Date(s) that the Contractor claims is needed as a result of the alleged Material Change.

5.21 INDEMNIFICATION

5.21.1. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS BOARD OF DIRECTORS, EMPLOYEES, MANAGERS, REPRESENTATIVES, CONTRACTORS AND ENGINEER (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST EVERY LOSS, ITEM OF DAMAGE, INJURY, EXPENSE, DEMAND, CLAIM, CAUSE OF ACTION, JUDGMENT OR LIABILITY, OF WHATSOEVER KIND OR CHARACTER, WHETHER ARISING IN CONTRACT OR TORT OR UNDER ANY STATUTE, FOR EVERY ELEMENT OF RECOVERY, WHETHER DIRECT OR INDIRECT, INCLUDING SPECIAL AND CONSEQUENTIAL DAMAGES, AND INCLUDING ALL RELATED FEES AND COSTS, TO INCLUDE ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, FOR:

5.21.1.1 (I) BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, ITS AGENT, OR ITS SUBCONTRACTOR OF ANY TIER, EVEN IF SUCH BODILY INJURY OR DEATH IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF ANY STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF THE INDEMNIFIED PARTIES; AND

5.21.1.2 (II) BODILY INJURY TO OR DEATH OF ANY PERSON NOT ENCOMPASSED IN (I), ABOVE, PROPERTY DAMAGE OR ECONOMIC LOSS (INCLUDING LOSS OF USE) CAUSED BY OR ARISING OUT OF ANY NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF ANY STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF THE CONTRACTOR OR ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS OF ANY TIER, IN ANY WAY RELATED TO THIS CONTRACT OR IN CONNECTION WITH THE PERFORMANCE (OR NONPERFORMANCE) OF THE WORK OR OTHER ACTIVITIES OF THE CONTRACTOR OR ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS OF ANY TIER, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF ANY STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF THE CONTRACTOR OR ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS OF ANY TIER.

5.21.2. THIS INDEMNIFICATION OBLIGATION IS IN ADDITION TO ALL OTHER LEGAL, EQUITABLE, OR INDEMNIFICATION REMEDIES AVAILABLE TO THE INDEMNIFIED PARTIES. THIS INDEMNIFICATION OBLIGATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS CONTRACT.

5.21.3. CONTRACTOR DOES HEREBY WAIVE, RELEASE AND FOREVER RELINQUISH AND DISCHARGE THE INDEMNIFIED PARTIES FROM ALL OF CONTRACTOR'S CAUSES OF ACTION ARISING FROM BODILY INJURY OR DEATH OR DAMAGE TO ANY PROPERTY ARISING OUT OF THE WORK, REGARDLESS OF WHETHER THE INJURY OR

DAMAGE IS CAUSED IN FULL OR IN PART BY THE NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED PARTIES. THIS INDEMNITY OBLIGATION IS INTENDED TO COMPLY WITH CHAPTER 151 OF THE TEXAS INSURANCE CODE ANY OTHER APPLICABLE LAW. IT IS AGREED THAT WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE ENFORCEABILITY OF THIS INDEMNIFICATION OBLIGATION, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THIS INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING THIS INDEMNIFICATION OBLIGATION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THIS INDEMNIFICATION OBLIGATION SHALL CONTINUE IN FULL FORCE AND EFFECT.

5.21.4. THIS INDEMNIFICATION OBLIGATION IS INDEPENDENT OF THE INSURANCE REQUIRED HEREIN.

5.22 INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

5.22.1. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.

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

5.22.1.2 Contractor represents and warrants that the Materials and the Work shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such Materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).

5.22.1.3 Contractor represents and warrants to Owner that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Owner shall be free from third party claims of ownership and that Owner's right to own, use or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).

5.22.1.4 Contractor represents and warrants that all processes or methods utilized by Contractor to provide its services to Owner are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all products provided by Contractor to Owner are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall

cooperate fully and promptly with Owner with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Owner in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to Owner, Contractor shall obtain agreements from Contractor's vendors to cooperate in connection with requests for disclosure generated or received by Owner pursuant to the Process Patents Amendment Act of 1988.

5.22.1.5 CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES OR JUDGMENTS SUSTAINED OR INCURRED BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OF OR RELATING TO: (I) CONTRACTORS BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS, EQUIPMENT, OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY OWNER IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL APPLY EVEN IF THE THIRD PARTY ALLEGES OR ESTABLISHES THAT OWNER WAS PARTIALLY NEGLIGENT OR OTHERWISE AT FAULT (E.G., WITHOUT LIMITATION, THAT OWNER WAS NEGLIGENT IN RETAINING CONTRACTOR'S SERVICES AND ACCEPTING MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS FROM CONTRACTOR, OR THAT OWNER WAS NEGLIGENT IN FAILING TO ASCERTAIN WHETHER THE MATERIALS, EQUIPMENT, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS INFRINGED THE RIGHTS OF THIRD PARTIES). IF USE OF ANY PART OF SUCH EQUIPMENT, MATERIAL OR PROCESS IS LIMITED OR PROHIBITED, CONTRACTOR SHALL, AT ITS SOLE EXPENSE, PROCURE THE NECESSARY LICENSES TO USE THE INFRINGING EQUIPMENT, MATERIAL OR PROCESS, OR THE

OWNER MAY, AT ITS OPTION, (1) ALLOW THE CONTRACTOR, WITH THE OWNER'S PRIOR WRITTEN APPROVAL, TO REPLACE SAME WITH SUBSTANTIALLY EQUAL BUT NOT INFRINGING EQUIPMENT, MATERIALS OR PROCESSES, OR MODIFY SAME TO BE NON-INFRINGING; PROVIDED THAT ANY SUCH SUBSTITUTE OR MODIFIED EQUIPMENT, MATERIALS OR PROCESS SHALL MEET ALL THE REQUIREMENTS AND BE SUBJECT TO ALL THE PROVISIONS OF THIS CONTRACT, PROVIDED THAT SUCH REPLACEMENT OR MODIFICATIONS SHALL NOT MODIFY OR RELIEVE THE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS CONTRACT; OR (2) OWNER MAY CANCEL THE CONTRACT.

ARTICLE 6 SUBCONTRACTORS

6.1 DEFINITIONS

6.1.1. As used in this Contract, the term "Subcontractor" shall mean any person or entity who has a direct contract with Contractor to perform a portion of the Work on the Project (including materialmen and suppliers) and all other persons or entities (whether such persons or entities are subcontractors, sub-subcontractors, materialmen or suppliers) who provide materials, labor or services directly or indirectly to or for the Project through or under the supervision of Contractor or its Subcontractors. The foregoing definition shall apply when used in the Contract Documents with respect to any obligation for the Work on the Project or any other obligation or duty owed to the Owner under the Contract Documents, including but not limited to indemnity and warranty obligations, and protection and safety of the Work and adjacent property (but shall not apply to insurance and bonding requirements, which shall extend only to such Subcontractors as are directed by the Owner).

6.2 SELECTION OF SUBCONTRACTORS

6.2.1. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.

6.2.2. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract Documents to do so.

6.2.3. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.

6.2.4. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

6.2.5. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not

require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted them (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

6.2.6. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Order request for such adjustment within 30 days of Owner's requirement of replacement.

6.2.7. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

6.2.8. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

6.3 SUBCONTRACTUAL RELATIONS

6.3.1. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.

6.3.2. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

6.3.3. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.

6.3.4. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. All such agreements between the Contractor and its Subcontractors shall preserve and protect the rights of the Owner under the Contract Documents with respect to the performance of the Work so that the subcontracting thereof will not prejudice such rights.

6.3.5. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

6.3.6. Nothing in the Contract Documents:

6.3.6.1 shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship

between Owner and any such Subcontractor, Supplier, or other individual or entity; nor

6.3.6.2 shall create any obligation on the part of Owner to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

6.3.7. Contingent Assignment of Subcontracts. In the event of the termination of this Agreement by the Owner because of the default of the Contractor, the Owner shall have the right (without any responsibility so to do) to assume the rights and responsibilities of the Contractor under all or some of Contractor's subcontracts, or purchase or rental agreements, which the Owner, in its sole discretion, chooses to assume. While this provision shall constitute a present assignment of Contractor's rights with respect to any and all such subcontract agreements and commitments which Owner so chooses to assume, the Contractor, upon request from Owner, shall promptly execute and deliver to the Owner written assignments of such subcontracts, agreements and commitments which the Owner in its sole discretion so chooses to take by assignment. All of Contractor's agreements with Subcontractors and suppliers shall provide for this assignment.

ARTICLE 7 TIME OF COMMENCEMENT AND COMPLETION

7.1 EFFECTIVE DATE

7.1.1. This Agreement is intended to and shall govern all Work provided by Contractor for the Project, whether initiated or performed prior or subsequent to the execution of this Agreement, and the effective date of this Agreement shall be deemed to be the first date when any such Work was so provided by Contractor.

7.2 COMMENCEMENT DATES

7.2.1. Commencement of Contract Times; Notice to Proceed. The Contract Times will commence to run on the day indicated in the Notice to Proceed.

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

7.3 COMPLETION DATES

7.3.1. The Completion Date(s) for the Project are set forth in Exhibit 3 hereto (except as such dates may be modified hereafter pursuant to a Change Order signed by the Owner).

7.3.2. Contractor shall continuously and diligently perform, forward and prosecute the Work to completion subject only to Excused Delays as defined herein. Timely completion of the Work and the Project are of the essence. In this regard, Contractor shall utilize additional labor, premium time, equipment and material, as necessary, in order to meet the applicable Completion Dates, subject only to Excused Delays. In the event Contractor fails (for reasons other than an Excused Delay) to complete any portion of the Work on time or in accordance with any applicable Completion Dates, Contractor shall, as necessary, take some or

all of the following actions as required to overcome the delay backlog of Work: (i) increase the workforce in quantities and crafts as necessary; (ii) increase the number of hours per shift, shifts per working day, working days per week, the amount of equipment deployed or any combination of the foregoing; and/or (iii) perform any other activities reasonably required by the Owner.

7.3.3. The Completion Date(s) established in this Agreement are not based on any representation to the Contractor as to how the Work will be sequenced, or when, for how long, or in what sequence any manpower assignments or levels will be necessary to perform the Work in accordance with the schedule established for completion of the Work. Contractor shall sequence and direct its Work in such a fashion as to take advantage of any and all available areas to perform its Work at the Site, whenever or for whatever time they are available, and shall increase or decrease its manpower assignments and levels, as appropriate and in whatever fashion may be necessary, to achieve completion of all Work in accordance with the approved schedule and as necessary to complete the Work in accordance with the requirements of the Contract Documents, subject to the Contractor's right to make claim for an extension of the Completion Date(s) and/or an increase in the Contract Price pursuant to the applicable provisions of this Agreement.

7.4 LIQUIDATED DAMAGES

7.4.1. The Contractor and the Owner agree that time is of the essence of this Contract and Contractor's failure to complete the Work by the Completion Date will cause harm to the Owner. The Contractor and the Owner further agree that the harm the Owner would sustain and the actual measure of damages the Owner would incur from the breach are incapable or very difficult to ascertain. Therefore, the Contractor and the Owner agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the Completion Date, Contractor shall be liable to Owner for liquidated damages in the amount of \$150 for such calendar day, which sum the parties agree is a reasonable forecast of the damages the Owner will sustain per day that the Work remains uncompleted and in no way constitutes a penalty. The Owner shall have the option to deduct and withhold said amount from any monies that the Owner owes the Contractor or to recover such amount from the Contractor or the sureties on the Contractor's bond.

7.5 ECONOMIC DISINCENTIVES AND INCENTIVES

7.5.1. Economic Disincentive. The Contractor and the Owner agree that time is of the essence of this Contract. The Contractor acknowledges and agrees that the Owner individually and by and through Owner's constituents will incur substantial losses and damages if the Project is not complete by the Completion Date, including additional costs of Consultants, economic impact to the area of the Owner surrounding the Project, value of time lost in delay, extra fuel expended, increases in accident frequency and severity, and inconvenience to Owner's constituents adjacent to the Project and the general public. Therefore, the Contractor and the Owner agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the Completion Date, Contractor shall be liable to Owner for \$1,000 day in economic disincentive damages pursuant to Section 49.271(e), Texas Water Code. The Owner shall have the option to deduct and withhold said amount from any monies that the Owner owes the Contractor or its sureties or to recover such amount from the Contractor or the sureties on the Contractor's bond.

7.5.2. The Owner shall be entitled to either liquidated damages or economic disincentives, but not both.

7.5.3. Economic Incentive. The Contractor and the Owner further agree that the Owner will pay to the Contractor an incentive payment of \$1,000 for each day up to the total of twenty-five (25) days that the Work is completed prior to the Completion Date, up to a total maximum payment of \$25,000. The Work shall be considered complete for purposes of this paragraph only if the Owner determines in its sole discretion that the entire Work is complete with no items incomplete. Partial occupancy or use of any portion of the entire Work does not constitute compliance with this incentive clause.

7.6 SUBSTANTIAL COMPLETION AND FINAL COMPLETION

7.6.1. As used herein, “Substantial Completion” and/or “Substantially Complete” shall mean that: (1) the Work for the Project has been fully completed in accordance with the Contract Documents except and only for minor items that will not unreasonably affect the Owner’s ability to use the Project for its intended purpose without unreasonable disruption or interference caused by the need to complete any of the Work then remaining to be completed; (2) the Work has been entirely installed, backfilled, passed any relevant hydrotest(s), the temporary hydrotest accommodations have been removed (including without limitation skillets, test flanges, etc.); (3) if so required by the Owner, the Engineer has certified that the Project is complete as required by subclause (1) above; and (4) all operational systems and elements that are part of the Project, including mechanical, are functioning as required by the Contract Documents.

7.6.2. When the Contractor considers that the Project, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Engineer and Owner a comprehensive punch list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the punch list. Failure to include an item on such punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor’s punch list, the Engineer and Owner will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Engineer’s or Owner’s inspection discloses any item, whether or not included on the Contractor’s punch list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion for the Project, complete or correct such item. The Contractor shall then submit a request for another inspection by the Engineer and Owner to determine Substantial Completion of the Project.

7.6.2.1 If the Work requires re-inspection or re-testing by Engineer to determine Substantial Completion of the Project, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payment.

7.6.3. When the Work or designated portion thereof is Substantially Complete, the Owner will authorize the Engineer to prepare a Certificate of Substantial Completion of the Project which shall establish the date of Substantial Completion of the Project, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. The Certificate of Substantial Completion for the Project shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

7.6.4. Upon Substantial Completion of the Work for the Project (or a designated portion thereof, as applicable), the Contractor may submit an Application for Payment for a sum sufficient to increase the total payments to the total amount of the Contract Price, less 150% of such amounts as the Owner shall reasonably determine for Work not yet completed, including all remaining punch list items. The Owner shall not be required to release the 150% withheld pursuant to this paragraph 7.6.4 until Contractor achieves Final Completion, unless and only to the extent required by applicable law.

7.6.5. Punch List Responsibility. The Contractor acknowledges and accepts that during the period when the Contractor is completing its punch list Work, the Owner may be using or preparing to use the Project, and that disputes may arise between the Owner and Contractor as to the responsibility for certain punch list items or other corrective Work (i.e. the Contractor may claim that the punch list item or corrective Work is required due to damage caused by the Owner or its separate Contractors, and not by the Contractor and its Subcontractors, such that the Contractor is not obligated to perform the punch list item or other corrective Work at issue without additional compensation). However, the Contractor hereby expressly agrees to perform (and shall require its Subcontractors to perform) any and all punch list items and/or other corrective Work directed or requested by the Owner, promptly upon notice of such direction or request and irrespective of any dispute as to the Contractor's responsibility for such punch list item or corrective Work, subject only to the Contractor's right to make claim for additional compensation resulting therefrom pursuant to the terms of this Agreement. In the event a timely and proper claim is made by the Contractor for additional compensation as a result of any such punch list item or corrective Work the Contractor shall be entitled to additional compensation to the extent the damage corrected by the Contractor (or its Subcontractor) was caused by the Owner or its separate Contractors, and not by the Contractor, its Subcontractors, their employees or anyone else for whom they may be liable.

7.6.6. Final Completion. As used herein, the term "Final Completion" shall mean the full and proper completion of all of the Work, including but not limited to, completion and/or correction of all punch list items to the satisfaction of the Owner, payment and release of all mechanics, materialmen and like liens, delivery of all warranties and guarantees and assignments thereof, equipment operation and maintenance manuals, delivery of all required as-built and record Construction Drawings and related documents, removal of all rubbish, tools and surplus materials and equipment from the Project Land and correction of all damage at the Project Land or to adjacent property, and final grading of the Project Land so as to leave the Project Land in the condition required by the Contract Documents. Final Payment shall not be made to the Contractor until Final Completion has occurred.

7.6.7. When the Work is Finally Complete, the Engineer shall submit to the Owner a Certificate of Completion along with a recommendation for final payment to the Contractor. At such time the warranties required by the Contract Documents shall commence unless otherwise agreed to in writing by the Owner, and except as to latent defects.

7.7 USE AHEAD OF SCHEDULE

7.7.1. The Owner shall have the right to use ahead of schedule all or any Substantially Completed or partially completed portion of the Work when such use is in its best interest, notwithstanding the time of completion for all of the Work.

7.7.2. After the Owner has taken ownership and use of all or any Substantially Completed portion of the Project under construction, the Contractor shall not disrupt the Owner's use thereof to make corrections in the Work but shall, at the Owner's

discretion, make such corrections at the Contractor's expense in a fashion so as not to disrupt the Owner's use of the area at issue; provided, however, Contractor shall not be responsible for any delays in completion of the Work due solely to Owner's use of a portion of the Work ahead of schedule.

7.8 DELAYS AND EXTENSIONS OF TIME

7.8.1. The Contractor shall be entitled to an extension in the Completion Date(s) as the result of a delay to the extent that such delay is attributable to causes beyond the reasonable control of and could not have been mitigated or avoided by the Contractor, its Subcontractors or any other person or entity performing Work under contract with, on behalf of or under the direction or supervision of the Contractor (referred to herein as an "Excused Delay"). Excused Delays shall include, among other things, delays caused by the act or neglect of the Owner, Engineer, separate Contractor or their employees or agents, or by Material Changes in the Work, or by labor disputes, fire, unusual and unavoidable delay in deliveries or unavoidable casualties.

7.8.1.1 Time taken by the Owner, Owner's Consultants and/or Engineer to review and/or approve shop drawings or other submittals or to respond to requests for information ("RFIs") or the other interpretations or clarifications with respect to the Contract Documents shall not be considered an Excused Delay unless the duration of the review, approval or response time exceeds fourteen (14) days from the actual receipt of the shop drawing, submittal or RFI and not then unless and only to the extent that such failure is in fact the cause of a delay in the completion of the Work beyond the Completion Dates. and only if Contractor was not instructed by Owner (upon receipt of the request), and/or could not implement, an appropriate mitigation of the impact to the schedule (without additional cost, unless such cost was agreed to be paid by Owner). In this regard, in connection with the submission of any shop drawing, submittal, RFI or other request the Contractor shall (i) identify the date when a response is required in order to avoid delaying completion of the Work beyond the Completion Dates, and (ii) explain what the effect will be to the actual date of completion of the Work if a failure to receive such a response (so that Owner can assess whether and to what extent mitigation efforts are necessary based on the nature of the request and the related time required to respond).

7.8.1.2 Delays caused by adverse weather conditions shall not be considered Excused Delays unless the adverse weather condition at issue is more severe than one would reasonably expect to encounter at the Site based on historical conditions over the past fifteen years as established by the National Weather Service; and (ii) the Contractor notifies Owner by telephone voice mail message or email within 1 business day after Contractor becomes aware of the occurrence of the event and the expected impact on the schedule, unless such event renders all communication impossible; and (iii) such adverse weather conditions in fact cause a critical path delay in Contractor's performance of the Work. A delay of a non-time critical activity is not cause for extension of the Completion Dates.

7.8.2. In the event of an Excused Delay, the Contractor shall be entitled to an extension of the Completion Dates, but only to the extent that there is an actual delay to the completion of the entire Work beyond the Completion Dates (delays of only certain trades will not be considered an Excused Delay unless they in turn delay Substantial Completion of the

entire Work for the Project), measured by the number of days, or portions thereof, that the Substantial Completion of the Work is actually delayed by such Excused Delay. Contractor shall not be entitled to an extension of Completion Dates for any delay if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

7.8.3. The Contractor shall not be entitled to an increase in the Contract Price as a result of an Excused Delay or due to any acceleration or other impact to the performance of the Work caused by any Excused Delay (or any action directed by the Owner or Engineer with respect to the time for performance of the Work) except and only in the event of (and provided timely written notice is provided as required by this Agreement): (1) a delay that is the result of a Material Change to, an interference with, or interruption of the Work caused by Owner (or Owner's Consultants, employees, agents or separate Contractors) or Engineer; or (2) an acceleration or other impact to the time for performance of the Work that is directed by the Owner in writing and is required in order to overcome a delay to the completion of the Work that is caused by the interference with or interruption of the Work by the Owner (or Owner's employees, agents or separate Contractors) or Engineer; or (3) an acceleration to the time for performance of the Work that is caused by the failure of the Owner to grant an extension of time that was required to be granted pursuant to the provision of this Agreement. In any such event, the Contractor's sole remedy shall be an increase in compensation calculated pursuant to the applicable provisions of this Agreement, and the Contractor shall be entitled to no additional compensation and shall have no addition or other rights of any kind or nature arising out of or under this Agreement by virtue of any delays, interferences, acceleration or other impact, regardless of their length or nature.

ARTICLE 8

CONTRACT PRICE; PAYMENTS AND COMPLETION

8.1 CONTRACT PRICE

8.1.1. The Owner shall pay the Contractor the Contract Price in current funds in consideration for the Contractor's performance of the Work. The Contract Price shall be an amount equal to the sum of the amounts determined pursuant to the Bid Form, subject to additions and deductions as provided in this Agreement and subject to the limitations set forth below. On the date of execution of this Agreement, the Contract Price is \$_____, consisting of _____.

8.1.2. Depending upon the Bid Documents, the Contract Price or components of the Contract Price may be based on (i) a lump sum, (ii) a unit price for each item of Work listed in the unit price section of the Bid Form, (iii) cash allowances, (iv) cost plus fee, time and materials or other cost based terms, or (iv) a combination of (i), (ii), (iii), and (iv).

8.2 UNIT PRICES

8.2.1. Unit prices represent all-inclusive rates, applicable for the whole duration of the Project and inclusive of all direct and indirect labor, construction equipment for direct labor and subcontractors, and materials necessary for the Work. The Contract Price and/or the Unit Prices will not be increased for any reason, cause or circumstance unless and only to the extent expressly permitted by this Agreement. Costs in excess of the Contract Price and/or the Unit Prices shall be borne and paid for by the Contractor without reimbursement by the Owner.

8.2.2. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

8.2.3. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

8.2.4. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

8.2.5. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before making a final determination thereon (by recommendation of an Application for Payment or otherwise).

8.2.6. Within 30 days of Engineer's written determination of quantities and classifications of Unit Price Work, Contractor may submit a Change Order request seeking an adjustment in the Contract Price if:

8.2.6.1 the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;

8.2.6.2 there is no corresponding adjustment with respect to any other item of Work; and

8.2.6.3 Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense.

8.2.7. If Owner believes that it is entitled to a decrease in Contract Price due to any item of Unit Price Work differing materially and significantly from the estimated quantity of such item indicated in the Agreement, Owner shall notify the Contractor and provide documentation to support its claim. Unless Contractor disputes the claim with documentation of costs, Owner shall be entitled to reduce the Contract Price in such amount.

8.3 COST OF THE WORK

8.3.1. Purposes for Determination of Cost of the Work. The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph are used for two distinct purposes:

8.3.1.1 To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

8.3.1.2 To determine the value of a Change Order, Change Order request, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required

because of the change in the Work or because of the event giving rise to the adjustment.

8.3.2. Costs Included: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 8.3.3, and shall include only the following items:

8.3.2.1 Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

8.3.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

8.3.2.3 Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in Paragraph 8.3.2.

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

8.3.2.5 Supplemental costs including (i) the provision of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work, (ii) cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor, (iii) rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with

rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work, (iv) sales, consumer, use, and other similar taxes related to the Work, if any, and for which Contractor is liable, as imposed by Laws and Regulations, (v) deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses, (vi) losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee, (vii) the cost of utilities, fuel, and sanitary facilities at the Site, (viii) minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work, and (x) the costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

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

8.3.3.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

8.3.3.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

8.3.3.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

8.3.3.4 Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

8.3.3.5 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 8.3.2.

8.3.4. Contractor's Fee. Contractor's fee shall be determined as set forth in the Bid Form or as otherwise agreed upon by Owner and Contractor.

8.3.5. Documentation. Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 8, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

8.4 ALLOWANCES

8.4.1. If applicable, Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

8.4.2. Cash Allowances. Contractor agrees that:

8.4.2.1 the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

8.4.2.2 Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

8.4.3. Contingency Allowance. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

8.4.4. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

8.5 PROGRESS PAYMENTS

8.5.1. Based upon Applications for Payment submitted to the Engineer by the Contractor and recommended for payment by the Engineer, the Owner shall make progress payments, on account of the Contract Price, to the Contractor as set forth herein. Each Application for Payment shall cover the Work performed in the preceding month. Provided an Application for Payment is received by the Engineer not later than the agreed date for the given period and approved by the Engineer, the Owner shall make payment to the Contractor not later than thirty (30) days thereafter of the amounts approved in such Application for Payment, minus applicable retention and Owner set-offs as provided for in this Agreement. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment using the schedule of values established pursuant to Section 5.4.2.4 hereof.

8.5.2. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be calculated by the Work completed in the preceding month less and except (i) the aggregate of previous payments made by the Owner; (ii) amounts for Work that remains uncorrected or for Work which contains defects discovered since the last Application for Payment; (iii) any amounts for which the Contractor has informed the Owner it does not intend to pay a Subcontractor, materialmen, or supplier, or any amounts which the Owner reasonably believes, upon separate information, that the Contractor does not intend to pay a Subcontractor, materialmen, or supplier; and (iv) applicable retainage.

8.5.3. Upon Substantial Completion of the Work, the Contractor may submit an Application for Payment for a sum sufficient to increase the total payments to the total amount of the Contract Price, less 150% of such amounts as the Engineer shall reasonably determine for Work not yet completed, including all remaining punch list items, and less other such amounts to be retained until Final Payment.

8.5.4. Each Application for Payment shall be accompanied by an Affidavit of Partial Payment on a form included in these Contract Documents, without modification (unless approved by Owner in advance and in writing), executed by the Contractor, reflecting the full amount of the payment requested in the Application for Payment, and reflecting Contractor's receipt of payment for all Work that has actually been paid for by the Owner pursuant to all previous Applications for Payment. In addition, each Application for Payment and Affidavit of Partial Payment shall be notarized, if required by the Owner, and supported by such data substantiating the Contractor's right to payment as the Owner may reasonably require, such as any other affidavit, documentation or statement required by any lender to the Owner, schedules of values from Subcontractors, and copies of requisitions and/or invoices from Subcontractors (reflecting retainage as provided for in the Contract Documents). The Owner shall not be required to process an Application for Payment until all information required by this Agreement with respect to any such Application for Payment has been submitted. The Contractor's Applications for Payment may not include requests for payment of amounts relating to alleged changes in the Work that have not been authorized by a Change Order signed by the Owner and may not request payment for amounts that the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason.

8.5.5. Retainage. Owner shall retain ten percent (10%) of the amount requested for each Application for Payment, except and only to the extent as set forth herein or until Final Completion and the time for Final Payment as established by this Agreement. Contractor acknowledges and agrees the: (i) Owner's release, reduction and/or payment of retention is without prejudice to, and with the express reservation of, Owner's rights and remedies, as set forth in the Contract Documents or established pursuant to applicable law, to withhold from and/or set-off against any future payments otherwise due to Contractor and/or any Subcontractor such amounts as are appropriate to protect Owner from damages caused by delayed, defective, deficient or nonconforming Work or any other act, omission, negligence, breach of contract or breach of warranty, and that Owner's release, reduction or payment of retention does not constitute an acceptance of the Work or a waiver or release by Owner of any claims or rights belonging to Owner with respect to such Work or the requirements of the Contract Documents; and (ii) the release, reduction and/or payment of retention by Owner does not establish the date or time for the commencement of any warranties or guarantees with respect to the Work, and that the commencement of any such warranty or guarantee periods will be governed by the other, applicable provisions of this Agreement.

8.5.6. Contractor acknowledges and agrees that the purpose of the retainage withheld by the Owner under this Agreement is to ensure the proper performance of

this Contract and that this performance requires, among other things: (A) proper and full performance of all the Work required by and/or reasonably inferable from the Contract Documents, including completion of punch list items and Work to be completed after Substantial Completion; (B) prompt correction of Work that does not comply with the requirements of the Contract Documents; (C) timely completion of the Work and the provision of adequate labor and supervision to complete the Work within the Completion Dates and in accordance with the current approved schedule for the performance of the Work; (D) timely and full payment of all subcontractors, sub-subcontractors, materialmen and suppliers providing Work on the Project, in the amounts and in the times required by this Agreement; (E) provision of as-built documentation, warranties and guarantees, operation and maintenance manuals and other items required by the Contract Documents upon completion to the Owner and its use of the Project; and (F) proper coordination and integration of the Work provided by each separate trade or Subcontractor with all other Work (which coordination and integration may include Work to be performed by individual trades or Subcontractors after the Substantial Completion of the Work assigned to them). Contractor accordingly agrees that if, after providing Contractor with prior written notice, Contractor fails to correct any breach of this Agreement set forth in such notice, Owner may use the retainage withheld pursuant to this Agreement to pay for any costs and damages incurred by the Owner as a result of the failure of the Contractor or its Subcontractors properly to perform the Agreement, including but not limited to any failure to perform the specific requirements described in this paragraph above.

8.6 DECISIONS TO WITHHOLD CERTIFICATION

8.6.1. Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder for the Work of the Contractor or for the Work of any Subcontractor if and for so long as such party is in material breach of any of the party's obligations hereunder for the Work of the Contractor or under a subcontract, as the case may be or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to an amount sufficient, in the reasonable opinion of the Owner, to cure any such fault or failure of performance by the Contractor or by such Subcontractor, as the case may be, and that if such total holdback amount exceeds twenty percent (20%) of the Contract Price, Contractor may terminate this Agreement immediately.

8.6.2. The Owner may decide to deny or withhold payment to the extent reasonably necessary to protect the Owner, for the reasons set forth below. If the Owner decides not to make payment in the amount of the application, the Owner will so notify the Contractor. If the Contractor and Owner cannot agree on a revised amount, the Owner will make payment for the amount for which the Owner is in agreement. The Owner may decide not to make payment or, because of subsequently discovered evidence or subsequent observations, may nullify payment previously made, to such extent necessary to protect the Owner from loss because of: (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims with respect to which the Contractor is liable to the Owner pursuant to this Agreement or applicable law (unless the Contractor provides the Owner with acceptable security or indemnity from such liability) and with respect to which the Owner, in its reasonable judgment, will not recover promptly from applicable insurance; (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment; (4) damage to the Owner or another Contractor with respect to which the Contractor, in the Owner's reasonable judgment, is liable to the Owner pursuant to this Agreement or applicable law (unless the Contractor provides the Owner with acceptable security or indemnity from such liability) and with respect to which the Owner, in its reasonable judgment, will not recover promptly from applicable insurance; (5) reasonable

evidence that the Work will not be completed within the Completion Date(s) established in this Agreement and that the unpaid balance would not be adequate to cover the established liquidated damages or economic disincentive damages for the anticipated delay; or (6) failure to carry out the Work in accordance with the Contract Documents.

8.6.3. When the reasons for not making payment are satisfied, payment shall be made in response to the next filed Application for Payment.

8.7 PAYMENTS TO SUBCONTRACTORS

8.7.1. The Contractor shall pay each Subcontractor, materialman or supplier, within seven (7) days of the receipt of payment from the Owner (time being of the essence). The Contractor shall, by appropriate agreement with each Subcontractor, materialman or supplier, require them to make payments to sub-subcontractors in similar manner.

8.7.2. The Contractor hereby agrees that the Owner and/or the Engineer may, on request, furnish to a Subcontractor information regarding percentages of completion, requests for payment or amounts applied for by the Contractor and action taken thereon by the Engineer and Owner on account of portions of the Work performed by such Subcontractor. However, neither the Owner, nor Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

8.7.3. Contractor shall indemnify and hold harmless Owner, Engineer and Owner's Consultants and their respective agents and employees from and against all claims, demands, damages, losses and expenses, including, without limitation, attorneys' fees paid or incurred by Owner in connection with the settlement or defense of any claim by a Subcontractor, materialman or supplier, arising out of or in connection with the failure of Contractor to pay as provided herein, any such Subcontractor, materialman, supplier or any other person with whom Contractor has contracted or who is employed directly or indirectly by Contractor, provided Contractor has been paid (subject to any applicable retention or offset), as required by this Agreement, for the Work that is the subject of such claim.

8.7.4. The Contractor warrants that title to all Work covered by an Application for Payment (including all materials, whether or not then incorporated or installed into the Work, subject to the right of the Owner to reject same for failure to conform to the standards of any or all of the Contract Documents) will pass to the Owner no later than its incorporation into the Work or the time of payment by Owner, whichever is earlier, and shall at such time be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Notwithstanding the foregoing, the Contractor shall remain responsible for all damage or loss to any Work, materials or equipment until after Final Completion as required herein.

8.7.5. If any Subcontractor refuses to furnish a release or waiver required by Owner, and or any lender, or any title insurance company to either of them (with respect to Work for which the Owner has made payment to the Contractor in the amounts required by this Agreement) Contractor shall either withhold payment from such Subcontractor or furnish a bond for 150% of the amount claimed and in a form satisfactory to Owner and/or any lender or title insurance company to either of them, to indemnify them against any such lien. In the event a Subcontractor files a mechanic's lien or claim for lien against the Project (and provided Owner has paid Contractor as required by this Agreement for the Work that is the subject of such lien

or claim), Contractor shall cause such lien or claim for lien to be formally released, bonded against or satisfied, and shall reimburse Owner for all costs and expenses, including but not limited to attorneys' fees and bonding and title indemnity expenses, incurred by them in contesting, discharging, releasing or satisfying such lien or claim for lien or defending or otherwise participating in such suit. Owner shall have the right to retain out of any payment then or thereafter to become due to Contractor 150% of the amount claimed in such lien to indemnify Owner completely against the costs of any lien or claim for lien that may appear at such time in favor of any person claiming by, through, or under the Contractor, including, among others, its Subcontractors, which amount shall include reasonable allowances for the projected costs, including but not limited to attorneys' fees to defend any action in connection therewith or deposits which need to be made to have such lien released against the Project. Upon the settlement of such claim, any excess monies held by Owner from such security shall be paid to Contractor, if any. Contractor shall similarly indemnify and protect and defend Owner in respect of any lien or claim for lien in favor of any person claiming by, through, or under it, including, among others, its Subcontractors that may appear after Final Payment has been made by Owner to Contractor in the amounts required by this Agreement. The Contractor shall have the right to contest any lien or claim covered by this paragraph, provided the Contractor has bonded over such lien or claim and the Contractor has agreed in writing to fully indemnify and defend the Owner with respect to such lien or claim.

8.8 FINAL COMPLETION AND FINAL PAYMENT

8.8.1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and when the Owner finds the Work Finally Complete and acceptable under the Contract Documents and this Agreement fully performed, the Owner will process a Final Payment, as required by this Agreement.

8.8.2. Neither Final Payment nor any remaining retained percentage shall become due until the work is Finally Complete, as defined herein, and the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Project, the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been or will be paid or otherwise satisfied, (2) if required by Owner, a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) if required by Owner, a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by the Owner, (5) an executed waiver signed by the Contractor discharging and waiving all known and existing claims, damages, causes of action, suits and/or liens which the Contractor may have against the Owner or the Project and relating to the Work, or the Contract Documents upon receipt of Final Payment, excepting any such claims under Owner's indemnity obligations herein and (6) executed Affidavits of Bills Paid signed by all Subcontractors. The Contractor shall, within seven (7) business days after receipt of Final Payment from the Owner (time being of the essence), submit executed Subcontractor Affidavits of Final Payment from all Subcontractors who have performed Work or supplied any labor, material, equipment or services for the Project. The Owner shall make Final Payment to the Contractor within thirty (30) days after the satisfaction of all requirements in this paragraph and the receipt from the Engineer of a Certificate of Final Completion.

8.8.3. Unless otherwise agreed upon, a progress payment, Final Payment, or partial use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. No payment, nor any partial or entire use of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents. However, acceptance of Final Payment by the Contractor or Subcontractor shall constitute a waiver of all claims by the Contractor and such Subcontractor for payment in connection with the performance of the Work except and only to the extent specifically agreed otherwise by the Owner in writing.

ARTICLE 9 PROPRIETARY INFORMATION

9.1 TREATMENT OF PROPRIETARY INFORMATION

9.1.1. As used herein the term "Proprietary Information" shall mean all information which the Contractor acquires from the Owner, or arises out of the Work on the Project and concerns the present and future plans of the Owner, or pertains to the operations of the Owner's business, or to the use of the Project. (Proprietary Information shall not include information that is or becomes part of the public domain except if through a disclosure in violation of this Agreement.) The Contractor represents to the Owner that it has and employs policies and procedures, including but not limited to notices to its Subcontractors and their respective employees, designed to protect Proprietary Information and to prevent its unauthorized publication and disclosure. The Contractor agrees that the Owner's Proprietary Information shall be subject to such policies and procedures. Specifically, and in addition, the Contractor agrees that it will take reasonable measures to prevent disclosure of such Proprietary Information to any third person and will not use any Proprietary Information other than on the Owner's behalf, except as the Owner may otherwise authorize in writing. The Contractor also agrees to take all reasonable precautions to safeguard any documents which the Owner may supply to it hereunder which contain Proprietary Information. The Contractor may make copies of such documents to the extent and only to the extent necessary for the performance of its obligations hereunder. The Contractor agrees, upon completion of the Project, to return to the Owner or destroy all documents containing Proprietary Information.

9.1.2. All public relations matters arising out of or in connection with the Project shall be the responsibility of and be handled by the Owner. The Contractor shall not make any announcement or publication in connection with the Project without the Owner's prior and written approval. The Contractor shall have the right to include representations of the Project, including photographs of the exterior and interior, among the Contractor's promotional and professional materials, only with the prior and written approval of the Owner.

ARTICLE 10 WORK PERFORMED BY OTHERS

10.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

10.1.1. The Owner reserves the right to perform construction or operations related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Land. If Contractor claims that delay or additional cost is involved because of such action by the Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents. Contractor shall promptly notify the Owner if any such independent action will in any way

compromise Contractor's ability to meet Contractor's responsibilities under this Agreement. When separate contracts are awarded for different portions of the Project or other construction or operations on the Project Land, the term "*Contractor*" in the Contract Documents in each case shall mean the Contractor who is responsible for the separate work.

10.1.2. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate Contractor with the Work of Contractor, who shall cooperate with them. Contractor shall participate with other separate Contractors and the Owner in reviewing their construction schedules when directed to do so. Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The revised Construction Schedule shall then constitute the schedule to be used by Contractor, any separate Contractors and the Owner until subsequently revised. The Owner shall be responsible to Contractor, pursuant to the applicable provisions of this Agreement, for any damage or delays to the Work caused by the Owner's own forces or separate Contractors. In case of disagreement or disputes regarding the scheduling of work by other Contractors or unnecessary interference to the Work caused by lack of cooperation between other Contractors and Contractor, Contractor shall fully cooperate to resolve such disputes with or between other Contractors. Contractor shall provide access to the Work so as to fully cooperate with the Owner and other Contractors in the performance of their respective work.

10.1.3. Contractor shall afford the Owner and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate Contractor's Work and operations with theirs as required by the Contract Documents. If part of Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate Contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner and Engineer any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to report any such apparent discrepancy or defect shall constitute an acknowledgment that the Owner's or separate Contractors' completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor. Contractor shall promptly remedy damage wrongfully caused by Contractor to completed or partially completed construction or to property of the Owner or separate Contractors as provided in this Agreement.

10.1.4. Should Contractor wrongfully delay or cause damage to the work or property of any separate Contractor, Contractor shall, upon due notice, promptly attempt to settle with such other Contractor by agreement, or otherwise to resolve the dispute. If such separate Contractor sues the Owner on account of any delay or damage alleged to have been caused by Contractor, the Owner shall notify Contractor who shall defend such proceedings at Contractor's expense to the extent of Contractor's liability.

ARTICLE 11

PROTECTION OF PERSONS AND PROPERTY

11.1 SAFETY PRECAUTIONS AND PROGRAMS

11.1.1. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. In this regard, the Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to (1) all employees performing any of the Work and

all other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Contractor or any of its Subcontractors, and (3) other property at the Site or reasonably proximate thereto, including trees, light standards, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities. All damage, injury, or loss to any property referred to in (2) and (3) of the precedent clause caused, whether directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier and all other persons or entities performing any of the Work under contract with the Contractor or any Subcontractor, or over whom Contractor or any Subcontractor exercises control, shall be remedied by Contractor at its expense. The Contractor shall comply with the applicable requirements of Owner safety programs of which Contractor receives notice.

11.1.2. Contractor shall develop a written safety program, including provisions for trench safety, applicable to the Site and to the Work, and enforce the safety program to the Work at all times. Further, Contractor shall comply with all applicable laws and regulations, including but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor's employees. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site. Contractor shall have complete and sole responsibility for protecting the safety and health of its employees and subcontractors and all other persons.

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

11.1.4. Contractor shall notify Owner, by telephone with prompt confirmation in writing, of lost time injuries and fatalities that occur on the Site in connection with any work being performed under this Contract and shall provide Owner with reports of injuries and fatalities as Owner shall deem necessary, including, but not limited to, copies of all reports or other documents filed or provided in connection with injuries or fatalities to Surety or Contractor's insurers or the State of Texas.

11.1.5. No provision on this paragraph shall be interpreted as enlarging any legal duty the Owner may have to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or as altering the status of Contractor as an independent contractor.

11.1.6. The Contractor shall include sufficient compensation in his bid for trench and project safety systems in accordance with all applicable local, state, and federal law, including, but not limited to, OSHA and all proposed OSHA rules and regulations published in the Federal Register related to trench and project safety systems if such are more stringent than rules and regulations of official record. All trench and project safety systems shall be designed by the Contractor's Registered Professional Engineer. The Contractor's Registered Professional Engineer shall be registered in the State of Texas.

11.1.7. The Construction Drawings, prepared by the Engineer do not extend to or include designs or systems pertaining to the safety of the Contractor or its employees, agents or representatives in the performance of the Work. The seal of the Registered Professional Engineer(s) on the BID DOCUMENTS AND SPECIFICATIONS OR CONSTRUCTION DRAWINGS or any written explanatory matter thereof, as prepared by the

Engineer does not extend to any such trench or project safety systems that may be necessary in the Contractor's completion of the Work.

11.1.8. THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS AND AGENTS FROM ANY AND ALL DAMAGES, COSTS (INCLUDING WITHOUT LIMITATIONS, LEGAL FEES, COURT COSTS, AND THE COST OF INVESTIGATION), JUDGMENTS OR CLAIMS BY ANYONE FOR PROPERTY DAMAGE, INJURY, OR DEATH TO PERSONS RESULTING FROM THE COLLAPSE OR FAILURE OF TRENCHES CONSTRUCTED UNDER THIS CONTRACT OR THE FAILURE TO PROVIDE SAFETY EQUIPMENT OR SAFETY SYSTEMS UNDER THIS CONTRACT OR THE FAILURE TO USE SUCH SYSTEMS.

CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO AND COVERS THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS' NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS), EITHER BY ACT OR OMISSION, WITH RESPECT TO THE CONTRACTOR'S SAFETY EQUIPMENT OR SYSTEMS, OR THE LACK THEREOF, INCLUDING BUT NOT LIMITED TO INSPECTIONS, FAILURE TO ISSUE STOP WORK ORDERS, AND THE HIRING OF THE CONTRACTOR.

THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION EXTENDS TO THE OWNER AND ENGINEER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, OR AGENTS' NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, OR GROSS) AND WHETHER SUCH NEGLIGENT ACTION OR OMISSION IS SOLE OR CONCURRENT WITH CONTRACTOR AND/OR OTHERS. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL BE SUPPORTED BY CONTRACTUAL LIABILITY INSURANCE AS SPECIFIED IN THE GENERAL AND SUPPLEMENTAL TERMS OF THE CONTRACT.

11.1.9. The Contractor shall give all notices and comply with all applicable Laws and Regulations bearing on the safety of persons or property or their protection from damage, injury or loss. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel, and shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

11.1.10. The Contractor shall provide adequate fire protection equipment and safeguards to protect the Owner's and Contractor's interests in accordance with the Owner's insurance carrier's requirements.

11.1.11. The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and erecting necessary plankings, bridges, shoring, bracing, lights and warning signs necessary for the protection of streets, adjacent property and the public. Contractor shall also notify owners and users of adjacent property, Underground Facilities and utilities. In addition, the Contractor shall also provide scaffolds, tarpaulins and similar items, as may be requested by the Owner in the event the Owner uses all or part of the Project prior to

Substantial Completion, to protect the Owner's equipment and employees, and shall, if necessary, seal off its Work from the Owner's work so as not to interfere with the Owner's business operations. During the progress of the Work, the Contractor shall protect all finished Work as soon as same is erected and shall maintain such protection until such time as no longer required.

11.1.12. The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, except damage or loss attributable to the acts or omissions of the Owner, Engineer, any separate Contractors or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, subject to the Contractor's right of recovery from the property insurance procured by Owner pursuant to this Agreement.

11.1.13. The Contractor shall prepare and submit to the Owner an emergency action plan to protect the safety of persons and property in the event of emergencies. In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion and consistent with the emergency action plan, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in this Agreement.

11.2 TRAFFIC AND OTHER SAFETY MEASURES

11.2.1. If the Work occurs on, near, or adjacent to any street, alley, or public place or where construction creates hazard to property, traffic, or public safety, the Contractor shall furnish and maintain suitable barricades, warning signs, lights and other safety items or mechanisms and remove same when no longer necessary. The Contractor shall be responsible for all phases of traffic control according to the guidelines as set forth in Manual on Uniform Traffic Control Devices and per all Laws and Regulations.

ARTICLE 12 DEFECTIVE WORK AND CORRECTION OF WORK

12.1 TESTING

12.1.1. The Contractor acknowledges that the Owner, through the Engineer, Owner's Representative and/or other Owner's Consultants, will schedule and conduct certain independent tests and inspections of the Work on the Project (as set forth in the Contract Documents), in order, among other things, to determine the compliance of the Work with the Contract Documents. The Contractor shall cooperate and coordinate with such tests and inspections, and shall require all Subcontractors to so cooperate and coordinate regarding the scheduling and performance of such tests and inspections and any and all access to the Work required in connection therewith. The Contractor shall not be entitled to any increase in the Contract Price and/or any extension of the Completion Date(s) as a result of the Contractor's participation in or cooperation and coordination with such testing or inspection except to the extent of any Excused Delays caused by the failure of the Owner, Engineer, Owner's Representative and/or other Owner's Consultants to schedule and conduct such tests and inspections with reasonable promptness.

12.1.2. The Owner shall pay for the costs of procuring and conducting the independent tests and inspections referred to in paragraph 12.1.1 above, except that if any such test or inspection reveals that any portion of the Work is defective or deficient or is otherwise not

in conformance with the Contract Documents and as a result further testing and inspection is required by the Owner to determine that such Work is corrected and made to conform to the Contract Documents, then the Contractor shall be fully and solely responsible (without increase in the Contract Price) for all costs and expenses associated with any such further testing or inspection.

12.2 DEFECTIVE WORK

12.2.1. It is Contractor's obligation to assure that the Work is not defective.

12.2.2. Engineer has the authority to determine whether Work is defective, and to recommend to Owner to reject defective work.

12.2.3. Owner, either directly or through the Engineer, shall give Contractor prompt notice of all defective Work of which Owner or Engineer has actual knowledge.

12.3 CORRECTION OF WORK

12.3.1. Promptly after receipt of written notice of defective Work, the Contractor shall promptly correct all Work whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the additional services of the Engineer made necessary thereby. The Contractor shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected under this paragraph, unless removal is waived by the Owner. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

12.3.2. In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities due to the defective Work, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payment.

12.3.3. If the Contractor has not commenced and continued to correct defective or non-conforming Work within seven (7) days after notice to do so from the Owner, then the Owner may correct it in accordance with the provisions of this Agreement. The Contractor shall bear the cost of making good all work of the Owner or any separate Contractors retained by either of them which is destroyed or damaged by such correction or removal.

12.4 ACCEPTANCE OF DEFECTIVE WORK

12.4.1. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If

the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due to the Contractor. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

12.5 UNCOVERING WORK

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

12.5.2. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

12.5.3. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

12.5.4. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due the Contractor.

12.5.5. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Order request within 30 days of the determination that the Work is not defective.

12.6 OWNER'S RIGHT TO STOP THE WORK

12.6.1. If the Work is defective and Contractor fails to promptly take action to correct or remove the defective Work, the Owner, by a written order signed by the Owner's Representative or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

12.7 OWNER'S RIGHT TO TAKE CORRECTIVE OR REMEDIAL ACTION

12.7.1. If Contractor fails within a reasonable time after written notice from Owner, either directly or through the Engineer, to correct defective Work, or to remove and replace defective 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, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency, without prejudice to any other remedy the Owner may have.

12.7.2. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

12.7.3. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Section 12.7 will be charged against Contractor as set-offs against payments due under Article 8. 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.

12.7.4. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Section 12.7.

12.7.5. The rights stated in this section shall be in addition to and not in limitation of any of the rights of Owner granted in the Contract Documents or at law or in equity.

ARTICLE 13 WARRANTIES AND GUARANTEES

13.1 WARRANTIES OF CONTRACTOR

13.1.1. Contractor represents and warrants to Owner that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that the Work will be in conformance with the Contract Documents and free from faults and defects in material and workmanship not inherent in the work required. In addition, the Contractor guarantees that all Work will be free from failure or defect as a result of ordinary usage for a period of one (1) year from the date of Final Completion or any longer period specified in the Contract Documents. All Work not conforming to these standards, as determined by Owner, shall be considered defective. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The foregoing warranties shall survive any termination of this Agreement or expiration of the Contract Documents.

13.1.2. Contractor hereby agrees, at its own expense and cost including but not limited to the cost of any services required from the Engineer, to make all repairs, removal or replacements necessitated by defects in materials or workmanship supplied under the terms of the Contract Documents during the warranty period provided in paragraph 13.1.1. Contractor shall bear the cost of making good all work of Owner or any separate Contractors destroyed or damaged by such correction or removal. Contractor also agrees to hold Owner harmless from liability of any kind arising from damages due to said defects. Contractor shall make all repairs and replacements promptly upon receipt of written orders from Owner's Representative. If Contractor fails to make the repairs and replacements promptly, Owner may do so, and Contractor shall be liable for the costs thereof, including, but not limited to the cost of services by the Engineer made necessary by such failure.

13.1.3. If Contractor does not proceed with and diligently pursue the correction of defective or non-conforming work within seven (7) days after written notice from Owner, Owner may remove such defective or non-conforming Work and may in connection

therewith store the materials or equipment at the expense of Contractor, and Owner shall have all remedies available to it under the Contract Documents and at law or in equity.

13.1.4. Nothing contained in paragraphs 13.1.1 through 13.1.3 shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents. The establishment of the time period of one (1) year after Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and shall not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations or responsibility for damages suffered by Owner other than specifically to correct the Work. Contractor's obligations under paragraphs 13.1.1 through 13.1.3 shall survive the termination of this Agreement or expiration of the Contract Documents. The guarantees required by this Article shall not be construed to modify or limit, in any way, any rights or actions which the Owner may otherwise have against the Contractor, or any other obligations which Contractor might have, by law or statute, or in equity, or under the Contract Documents or otherwise, which shall be limited only by the relevant statute of limitations.

13.1.5. All guarantees or warranties of equipment or materials furnished to the Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of, and are hereby assigned to, the Owner. If any manufacturer or supplier of any equipment or material furnishes a guarantee or warranty for a period in excess of one (1) year from the date of Final Completion, the Contractor's warranties, as provided herein and in the Contract Documents, shall be deemed to extend for like period as to such equipment or material. If the Contractor desires to use or operate any equipment furnished or installed by the Contractor or its Subcontractors prior to the date of Final Completion, it shall first receive the approval of the Owner and provide the Owner with an extended warranty for such equipment so that such equipment will be warranted for one (1) year after the date of Final Completion notwithstanding such earlier use.

13.1.6. Promptly after receipt of written notice thereof, the Contractor shall correct any defects in material or workmanship which exist prior to or during the period of any warranty or guarantee provided herein and any damage to other Work or property caused by such defects or the repairing of such defects, at Contractor's own expense and without cost to the Owner, and without interruption to the Owner's use.

13.1.7. Maintenance Bond. Nothing herein shall limit the Owner's rights under the Maintenance Bond furnished in connection with the Work.

ARTICLE 14

BONDS

14.1 BONDS

14.1.1. Contractor shall furnish a performance bond consistent with the requirements of Chapter 2253.021, Texas Government Code, for the sole protection of the Owner, in the amount of the Contract Price and conditioned on the faithful performance of the Work in accordance with the Contract Documents. Contractor shall furnish a payment bond consistent with the requirements of Chapter 2253.021, Texas Government Code, solely for the

protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a subcontractor to supply public work labor or material in the amount of the Contract Price. Contractor shall furnish a maintenance bond for the protection of the Owner, in the amount of the Contract Price and conditioned on the Contractor repairing any and all defects in the Work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Contractor in performing the Work, occurring within a period of one year beginning on the date of termination of the performance bond.

14.1.2. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

14.1.3. Contractor shall deliver to Owner such bonds as Contractor may be required to furnish when Contractor delivers the executed counterparts of the Agreement to Owner.

14.2 SURETY

14.2.1. Contractor shall obtain the required bonds from duly authorized and nationally recognized surety companies, authorized to do business in the State of Texas to issue bonds in the required amounts. The surety companies selected by the Contractor shall be rated as "A-" or better by Best's Key Guide (latest edition) and shall be satisfactory to the Owner.

14.2.2. If the surety company does not have a rating in Best's Key Rating Guide and is eligible to participate in the surety bond program of the Small Business Administration, the bonds issued by such surety, in addition to the criteria set out herein, also must meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury with respect to bonds, for federal jobs, including specifically the rules rated to the underwritten limitation.

14.2.3. The surety company issuing bonds must be authorized to do business in the State of Texas as evidenced through the State Board of Insurance; and be authorized to issue bonds in the amount required for the contract.

14.2.4. The agent, and the agency, executing the bonds must hold an appointment from the surety company to execute bonds on its behalf and bind each surety, and such appointment must be recorded in the office of the State Board of Insurance.

14.2.5. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

14.2.6. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 17.

14.2.7. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

14.3 BID BONDS

14.3.1. All bid bond requirements, if any, are addressed in Instructions to Bidders.

14.4 SOLE BENEFIT

14.4.1. The performance and maintenance bonds are for the sole benefit of the Owner and may be enforced at the option of the Owner.

ARTICLE 15 INSURANCE

15.1 CONTRACTOR'S INSURANCE

15.1.1. Contractor shall purchase and maintain, at Contractor's sole cost and expense, the insurance indicated below issued by insurance companies that are duly licensed or authorized in the State and have a minimum A.M. Best's rating of A-VII. Contractor shall deliver to Owner four (4) copies of the certificates of such insurance policies (at the same time Contractor delivers the executed counterparts of the Agreement), with copies to each named insured and additional insured (as identified in the Supplemental Terms or elsewhere in the Contract), specifying that such insurance will not be canceled or modified until at least thirty (30) days' written notice has been given to Owner. The limits of liability for the insurance required by this Article 16 shall provide coverage for not less than the following amounts or greater where required by applicable laws:

FORM OF COVERAGE	LIMITS OF LIABILITY
(ALL INSURANCE POLICIES MAINTAINED BY CONTRACTOR ARE SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE)	
Statutory Worker's Compensation and Employer's Liability	Employer's Liability - \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit, and \$1,000,000 bodily injury by disease each employee.
Commercial General Liability	General aggregate – \$2,000,000 Products-Completed Operations Aggregate – \$1,000,000 Personal and Advertising Injury – \$1,000,000 Each occurrence (Bodily Injury and Property Damage) – \$1,000,000
Business Automobile liability, including non-owned and hired car liability	\$1,000,000 combined single limit for bodily injury and property damage as to each accident or occurrence.

Excess/Umbrella Liability Coverage	\$2,000,000 per occurrence, \$2,000,000 in the aggregate
Contractor's Pollution Liability	N/A per occurrence, N/A in aggregate unless required in Supplemental Terms

15.1.2. Additional Insureds. The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner, Owner's Consultant, the constituent partners of Owner and their respective partners, directors, officers, shareholders, employees, affiliates, subsidiaries, and agents and representatives, as their interests may appear, Engineer and any individuals or entities identified in the sub-paragraphs below,, as additional insured ("Additional Insureds") and the insurance afforded to these Additional Insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements. Specifically, in addition to Owner and Engineer, Contractor shall include as additional insureds the following: (i) **Harris County Municipal Utility District No. 132, its directors, employees and consultants;** (ii) **BGE, Inc.;** (iii) _____, as the Owner's Representative.

15.1.3. Failure of Owner to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

15.1.4. All policies of liability insurance required under the terms of this Section 16.2 shall be on an "occurrence" form, and such coverage shall be maintained for the full period when all Work required under this Agreement is to be provided. The liability policies maintained by the Contractor shall include Owner and all Additional Insureds, and Contractor shall provide at least thirty (30) days' prior written notice given to the Owner of policy cancellation or non-renewal. Commercial General Liability and umbrella/excess liability policies of insurance required under the terms of this Section 15.1 shall include a "Per Project" aggregate endorsement covering this project. Contractor shall furnish to Owner, in duplicate, certificates of such insurance policies prior to the start of construction.

15.1.5. Certificates of Insurance showing such coverages to be in force shall be filed with the Owner prior to the commencement of the Work and renewals furnished prior to expiration of any coverage herein. If the Contractor shall fail to deliver any required certificates of insurance to Owner within forty-eight (48) hours of demand, Owner may obtain such insurance and Contractor agrees to repay Owner on demand all amounts paid therefor, or Owner may deduct all payments made in procuring such insurance from any money due or to become due to Contractor under this Agreement. The limits of insurance required by Section 15.1 may be provided by any combination of base policy coverage and associated excess coverage.

15.1.6. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 17. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

15.1.7. All policies of liability insurance required under the terms of this Article 16 shall remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

15.1.8. All policies of liability insurance required under the terms of this Article 16 shall be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

15.1.9. The coverage requirements for each of Contractor's Worker's Compensation Insurance, Commercial General Liability Insurance, Automobile Liability Insurance, Excess/Umbrella Liability Insurance, Pollution Liability Insurance (if applicable), and Property Insurance must be met by such respective policies, and not by reference to excess or umbrella insurance provided in other policies:

15.2 PROVISIONS CONCERNING WORKER'S COMPENSATION INSURANCE

15.2.1. For the purposes of this subsection 15.2.1 only:

15.2.1.1 A certificate of coverage is defined as: a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission (the "TWCC"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project. Duration of the project is defined as includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

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

15.2.2. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, §401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.

15.2.3. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

15.2.4. 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 the Owner, showing that the coverage has been extended.

15.2.5. The Contractor shall obtain from each person providing services on the project, and provide to the Owner:

15.2.5.1 a certificate of coverage, prior to that person beginning work on the project, so that the Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and

15.2.5.2 no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

15.2.6. The Contractor shall retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

15.2.7. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

15.2.8. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.

15.2.9. The Contractor shall contractually require each person with whom it contracts to provide service on a project to:

15.2.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011 (44) for all its employees providing services on the project, for the duration of the project;

15.2.9.2 provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

15.2.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

15.2.9.4 obtain from each other person with whom it contracts, and provide to the Contractor: (i) a certificate of coverage, prior to the

other person beginning work on the project; and (ii) a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

15.2.9.5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

15.2.9.6 notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project; and

15.2.9.7 contractually require each other person with whom it contracts to perform as required by paragraphs (i) - (vii), with the certificate of coverage to be provided to the person for whom they are providing services.

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

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

15.3 CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURANCE

15.3.1. Contractor's Commercial General Liability Insurance shall be occurrence-based, shall cover all operations by or on behalf of Contractor, shall cover against claims for damages due to bodily injury, personal injury and/or property damage, and shall include the following coverage and endorsements:

15.3.1.1 Coverage against claims for bodily injury, personal injury and property damage.

15.3.1.2 Contractual liability coverage for liability assumed under an "insured contract."

15.3.1.3 Independent contractors coverage.

15.3.1.4 Owner and Engineer included as additional insured endorsement (CG 2010 or its reasonable equivalent).

15.3.1.5 Waiver of Transfer Right of Recovery Against Others in favor of the Owner (endorsement CG 2404 or its reasonable equivalent).

15.3.1.6 Products and completed operations coverage. Such insurance shall be maintained for three years after final payment. Contractor shall furnish Owner and each other additional insured (as identified in the Supplemental Terms or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

15.3.1.7 Severability of interest.

15.3.1.8 Underground, explosion, and collapse coverage.

15.4 CONTRACTOR'S AUTOMOBILE LIABILITY INSURANCE

15.4.1. Contractor's Automobile Liability Insurance shall be occurrence-based and shall include the following coverage and endorsements:

15.4.1.1 Non-owned and hired car liability.

15.4.1.2 Waiver of Subrogation endorsement.

15.4.1.3 Additional Insured endorsement.

15.5 CONTRACTOR'S EXCESS/UMBRELLA LIABILITY INSURANCE

15.5.1. Contractor's Excess/Umbrella Liability Insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

15.6 CONTRACTOR'S POLLUTION LIABILITY INSURANCE

15.6.1. If applicable, Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

15.7 CONTRACTOR'S PROFESSIONAL LIABILITY INSURANCE

15.7.1. If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance in an amount acceptable to Owner. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

15.8 CONTRACTOR'S PROPERTY INSURANCE

15.8.1. Installation Floater Insurance. Contractor shall provide and maintain Installation Floater Insurance for property under the care, custody, or control of Contractor. The

Installation Floater Insurance shall be a broad form or “all risk” policy providing coverage for all materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work. Coverage under the Contractor’s installation floater will include:

15.8.1.1 any loss to property while in transit,

15.8.1.2 any loss at the Site, and

15.8.1.3 any loss while in storage, both on-site and off-site.

15.8.2. The Owner, the Contractor, the Engineer and all Subcontractors shall be insureds or named insureds under the Installation Floater Insurance policy.

15.8.3. Coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable. The Contractor will be solely responsible for any deductible carried under this coverage and claims on materials, supplies, machinery, fixture, and equipment that will be incorporated into the Work while in transit or in storage. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

15.8.4. Contractor’s and Subcontractors’ owned and/or leased vehicles, equipment and materials will not be covered by Owner’s property insurance.

15.9 INSURANCE TO BE PURCHASED BY SUBCONTRACTORS

15.9.1. Contractor may require each Subcontractor to procure and maintain such insurance as Contractor may direct. However, Contractor expressly acknowledges and agrees that the failure of Contractor to require any Subcontractor to procure or maintain (and/or the failure of any Subcontractor in fact to obtain) any insurance, or to do so in any amount or coverage, shall not in any way affect, reduce, relieve or diminish Contractor’s responsibility or liability to Owner for the acts or omissions of Contractor or any Subcontractors in connection with the Work or the Contract Documents. Should any Subcontractor engage a sub-subcontractor, the same conditions applicable to the Subcontractor under this Agreement shall apply to each sub-subcontractor.

15.10 OWNER’S LIABILITY INSURANCE

15.10.1. The Owner shall be responsible for the purchase and maintenance of Commercial General Liability Insurance which will protect Owner from claims which may arise out of or as a result of normal operations and maintenance of the Project.

15.11 PARTIAL OCCUPANCY OR USE BY OWNER

15.11.1. If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, then Owner (directly, if it is the purchaser of the builder’s risk policy, or through Contractor) will provide notice of such occupancy or use to the builder’s risk insurer. The builder’s risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder’s risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder’s risk insurance.

15.12 ADDITIONAL INSURANCE

15.12.1. Contractor shall be responsible, at Contractor's sole cost and expense to procure any other insurance or any increase of the limits of liability required above which the Contractor deems necessary for Contractor's own protection, or on account of statute.

15.13 EFFECT OF CARRYING INSURANCE

15.13.1. The carrying of any insurance described herein shall in no way be interpreted as relieving the Contractor or any Subcontractor of any responsibility or liability under this Agreement, except to the extent of the waiver of subrogation contained in Section 15.14 below.

15.14 WAIVER OF SUBROGATION

15.14.1. All policies purchased in accordance with this Article 15 or any other property insurance, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder.

15.14.2. The Owner and the Contractor (and Contractor shall require that all Subcontractors) waive all rights against (1) each other and each other's Subcontractors, agents, officers, directors, shareholders and employees; (2) the Engineer, and separate Contractors, if any, and their subcontractors, sub-subcontractors, agents and employees; and (3) any other person or entity using any portion of the Project with Owner's knowledge and consent for damages caused by fire or other perils but only to the extent actually paid by insurance obtained pursuant to this Article 15 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as loss payee. The Owner or the Contractor, as appropriate, shall require of the Engineer, separate Contractors, and Subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this paragraph.

15.14.3. The Owner and Contractor waive all rights against each other and the Subcontractors for loss or damage to any equipment used in connection with the Project but only to the extent actually paid by any property insurance applicable to this Agreement. The Contractor shall require similar waivers from all Subcontractors.

15.14.4. If the policies of insurance referred to in this section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the holders of such policies will cause them to be so endorsed at their expense.

ARTICLE 16 CHANGES IN THE WORK

16.1 CHANGES

16.1.1. Changes in the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement, by Change Order or order for a minor change in the Work, subject to the limitations stated in this Article 16 and elsewhere in the Contract Documents. The Owner reserves the right to make any changes, deletions or additions to the Work, in whole or in part, that the Owner may deem desirable provided that if such changes constitute a Material Change and/or an Excused Delay, then Contractor shall be

entitled to an increase in the Contract Price and/or an extension of the Completion Dates as set forth in this Agreement.

16.1.2. A Change Order shall be based on agreement between the Owner and Contractor. An order for a minor change in the Work may be issued by the Engineer alone.

16.1.3. Contractor agrees to immediately perform the work that is the subject of any Change Order diligently and without delay. Changes in the Work shall be performed under applicable provisions of the Contract Documents, unless otherwise provided in the Change Order.

16.1.4. A change to the Contract Price or any Completion Date shall be made only pursuant to a Change Order. Accordingly, no course of conduct or dealing between the parties shall be the basis of any claim to increase any amounts due under the Contract Documents or a change in any Completion Date or other time period for which the Contract Documents provide.

16.2 CHANGE ORDERS

16.2.1. A Change Order shall be in the form included in the Contract Documents and is a written instrument signed by the Owner and Contractor containing: (i) a change in the Work; (ii) the amount of the adjustment in the Contract Price, if any; and (iii) the extent of the extension of any of the Completion Dates, if any.

16.2.2. A Change Order signed by Contractor indicates its agreement therewith, including any adjustment in the Contract Price or extension of the Completion Dates set forth therein. Specifically, Contractor agrees that the amount of any increase in the Contract Price set forth in any Change Order signed by Contractor includes full compensation to Contractor for all Work required in connection with the Change Order and full compensation for all acceleration, delay, cumulative impact, loss of efficiency, inconvenience, increased supervision, overhead, profit, or other costs, expenses or damages which have been or may be incurred by Contractor as a result of the issuance of the Change Order and/or the performance of any Work required in connection with the Change Order.

16.3 CHANGE ORDER REQUESTS AND CLAIMS

16.3.1. Notwithstanding any other provision of this Agreement, Contractor acknowledges and agrees that the mere submission of a claim or a request for a Change Order by Contractor does not entitle Contractor to any increase in the Contract Price or to any extension of any of the Completion Dates, and does not entitle Contractor to stop or slow down any portion of the Work based upon such submission, and that the Owner fully reserves all of the Owner's rights and positions with respect to any claim or Change Order request submitted by Contractor. Specifically in this regard, Contractor agrees that notwithstanding the submission of a claim or Change Order request, Contractor shall proceed diligently and promptly to prosecute and perform all Work involved with or affected by any claim or Change Order request submitted by Contractor (and shall implement and follow any directions or instructions given by the Owner in connection therewith), even if the Owner does not agree that the Work that is the subject of the claim or Change Order request constitutes a change to the Work required by this Agreement and/or does not agree that the claim or Change Order request entitles Contractor to any increase in the Contract Price and/or extension of any of the Completion Dates and/or does not agree as to what increase and/or extension is required thereby. If the Owner does not agree with a claim or Change Order request submitted by

Contractor, Contractor shall be entitled to make a claim as permitted by the provisions of this Agreement, and in the event said claim is later determined to be valid, Contractor shall be entitled to an increase in the Contract Price calculated pursuant to the provisions of Section 18.5 herein. Contractor shall be responsible to Owner for all damages, cost or expenses incurred by Owner as a result of any failure by Contractor to prosecute the Work fully, properly, promptly, and diligently because of Contractor's submission of a claim or Change Order request.

ARTICLE 17

RIGHT TO STOP WORK AND TERMINATE THE CONTRACT

17.1 OWNER'S RIGHT TO STOP WORK

17.1.1. The Owner, with or without cause, and in its sole and absolute discretion, may order the Contractor at any time to stop the Work upon written notice given to the Contractor, signed by the Owner's Representative or by an agent specifically so empowered by the Owner in writing.

17.1.2. This right shall be in addition to and not in restriction or derogation of any of Owner's other rights under this Agreement, nor shall the exercise of this right by Owner relieve the Contractor of any responsibilities and obligations under or pursuant to the Contract Documents. The right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

17.1.3. To the extent that any order to stop work issued by the Owner pursuant to this section is not attributable to the fault, negligence, breach of contract or breach of warranty of the Contractor or its Subcontractors, such order shall be considered a suspension of the Work and Section 17.2 of this Agreement shall apply to such suspension.

17.2 SUSPENSION BY THE OWNER FOR CONVENIENCE

17.2.1. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part, for such period of time as the Owner may determine. An adjustment to the Contract Price and/or Completion Date(s) shall be made, pursuant to and to the extent required by this Agreement, for any suspension, delay or interruption ordered by the Owner without cause, except that no adjustment shall be made to the extent: (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Agreement. If Owner suspends the Work for a period greater than ninety consecutive days, Contractor may terminate this Agreement pursuant to paragraph 17.5 of this Agreement.

17.3 OWNER'S RIGHT TO TERMINATE THE CONTRACT

17.3.1. The Owner may terminate this Agreement, with or without cause, upon ten (10) days' written notice to the Contractor. In the event of termination, with or without cause, Contractor hereby agrees to cooperate with Owner, including without limitation, turning over Project records, delivering copies of all subcontracts and facilitating assignment thereof, and turning over all materials purchased by Contractor for the Project.

17.3.2. In the event the Owner terminates this Agreement without cause subsequent to the commencement of construction Work on the Project by the Contractor, the Contractor shall be entitled to compensation only for the Work performed by the Contractor and pursuant to the applicable provisions of this Agreement, up to and including the date of termination. Such compensation shall be due and payable to the Contractor thirty (30) days after such termination. The Owner agrees that acceptance of such Work shall not be unreasonably withheld. Further, in the event the Owner so terminates this Agreement without cause the Owner agrees to pay for services, materials and supplies ordered prior to the date of termination, for use in connection with the Project and necessary for the reasonable discharge of the Contractor's responsibilities under this Agreement, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by the Contractor without cost or penalty upon notice of termination. In addition to the foregoing, if the Contractor is so terminated without cause, the Owner shall pay the Contractor for the reasonable costs of clean-up, removal of debris and removal of equipment, trailers and machinery used at the Site of the Project incurred as a result of the termination.

17.3.3. In the event the Owner terminates this Agreement with cause, the Contractor shall not be entitled to any further compensation and shall be liable to the Owner for all costs and damages (including attorneys' fees and court costs, the costs of completing and/or correcting the Work required of the Contractor pursuant to the Contract Documents and all damages incurred by the Owner as a result of the Contractor's failure to complete the Work within the time and manner required by the Contract Documents) incurred by the Owner as a result of the negligence, errors, omissions or breach of contract of the Contractor, its Subcontractors and any other persons or entities for whom the Contractor may be liable pursuant to the terms of this Agreement.

17.3.4. After all such damages have been paid to the Owner by the Contractor (or deducted from any amounts then retained by the Owner pursuant to this Agreement), Owner shall pay the surety or the Contractor, as applicable the amount, if any, remaining due to the Contractor for the Work performed by the Contractor, pursuant to the provisions of this Agreement, up to and including the date of termination.

17.3.5. Any termination by the Owner pursuant to this paragraph 17.3.5 that is later determined to be unjustified or without cause shall be treated as a termination without cause pursuant to this Agreement and Contractor's remedies for such termination shall be limited to those set forth in paragraph 13.2.2, above.

17.3.6. As used herein the term "with cause" shall mean any action taken by the Owner because of: (1) any failure by the Contractor to comply in a full, timely and proper manner with the requirements of this Agreement and/or any other Contract Document; or (2) any breach of warranty or breach of contract relating to the Project; or (3) any circumstance in which the Contractor (a) is insolvent or bankrupt; (b) is otherwise unable to pay its debts as they become due; (c) has made an assignment for the benefit of creditors or has petitioned or applied to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; (d) shall have any such petition or application referred to in subsection (c) above filed or any such proceeding commenced against it in which an order for relief is entered or adjudication or appointment is made and which remains undismissed for a period of thirty (30) days or more; (e) any act or omission that indicates its consent to, approval of, or acquiescence in any petition, application, or proceeding in bankruptcy, or order for relief, or the appointment of a custodian, receiver, or trustee for all or any substantial part of its

properties; or (f) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more.

17.3.7. If Owner has terminated this Agreement for cause, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Section.

17.4 PERFORMANCE BOND

17.4.1. The Owner may but is not required to enforce its rights under the Performance Bond provided in connection with the Work. If the Owner elects to enforce such rights, the provisions of Section 13.3 shall be deemed modified to the extent necessary to allow the Owner to make a claim on the Performance Bond.

17.5 TERMINATION BY THE CONTRACTOR

17.5.1. Subject to any further rights of Contractor under Texas law, in the event the Owner fails to make payment to the Contractor, within sixty (60) days after such payment is due, pursuant to the applicable provisions of this Agreement, for Work performed by the Contractor and accepted by the Owner, the Contractor may, upon seven (7) days additional written notice to the Owner, stop the Work until payment of the amount owing has been received. In such event, the Contractor shall not be responsible for any delay to the completion of the Work caused by such stoppage and the Completion Date(s) will be extended accordingly. Further, in the event the Owner fails to make payment to the Contractor within ninety (90) days after such payment is due or suspends Work for more than ninety (90) days, the Contractor may, upon seven (7) days additional written notice to the Owner, terminate this Agreement. The termination shall then take effect without further notice to the Owner. Owner has the right to cure its default by making payment as required by this Agreement or revoking its suspension of Work prior to the expiration of the seven (7) day notice period, which shall effectively eliminate all grounds for termination based upon Contractor's failure to receive payment pursuant to this Agreement.

17.5.2. In the event of termination pursuant to paragraph 17.5.1, the Contractor shall be entitled to compensation only for the Work performed by the Contractor for the Project subject to the limitations set forth in this Agreement, up to and including the date of termination. The Owner agrees that acceptance of such services shall not be unreasonably withheld. Further, in the event of such termination, the Owner shall be liable for services, materials and supplies ordered prior to the date of termination by the Contractor, for use in connection with the Project and necessary for the reasonable discharge of the Contractor's responsibilities under this Agreement, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by the Contractor without cost or penalty upon notice of termination. In addition to the foregoing, if the Contractor terminates this Agreement pursuant to this paragraph, the Owner shall be responsible to the Contractor for the reasonable costs of clean-up, removal of debris and removal of equipment, trailers and machinery used at the Site of the Project incurred as a result of the termination.

17.6 SOLE REMEDY

17.6.1. The Contractor's sole and exclusive rights in the event of termination shall be those set forth in paragraphs 17.5.2 above, and the Contractor shall be entitled to no additional compensation or damages and shall have no additional or other rights of any kind, type or nature arising out of or under this Agreement by virtue of any termination of this Agreement, regardless of the circumstances or reasons relating to such termination. Payment by the Owner to the Contractor of any monies pursuant to this Article 17 shall not constitute a waiver of any remedies which the Owner may otherwise have against the Contractor for any failure of the Contractor to perform in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable to the other for any special, indirect, incidental, punitive or consequential loss or damages, including but not limited to loss of use, cost of capital, loss of goodwill, lost revenues or loss of profits. For the avoidance of doubt, "consequential" damages shall not include damages directly resulting from Contractor's negligence, including without limitation increased construction costs, additional general conditions, costs to complete, or other direct damages.

ARTICLE 18 CLAIMS AND LITIGATION

18.1 DEFINITIONS

18.1.1. As used herein, a "claim" is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of any Contract Document, an increase in the Contract Price, an extension of the Completion Date(s), any other payment of money, damages or costs or an extension of time or other relief with respect to the terms of this Agreement or the Work performed on the Project. The term "claim" also includes all other disputes and matters in question between the Owner and Contractor arising out of or relating to this Agreement or the Project. All claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

18.2 LIMITATION ON CLAIMS BY CONTRACTOR

18.2.1. Notwithstanding any other provision of this Agreement, the Contractor shall not be entitled to make any claim for any increase in the Contract Price or for any extension of the Completion Date(s) or for any other costs, expenses, damages or relief of any kind or nature regardless of the asserted cause unless the Contractor has made such claim in writing to the Owner: (1) no later than the date established by the applicable provisions of this Agreement; or (2) if no such date has been established no later than fourteen (14) days (time being of the essence) after the first occurrence of the event giving rise to such claim or within fourteen (14) days after the Contractor is first able, through the exercise of reasonable diligence, to recognize the condition giving rise to the claim, whichever is later. The failure to make any such claim in writing and within the time limits established by this paragraph (time being of the essence) shall mean that the claim has been waived by the Contractor, and that the Contractor shall be precluded from any recovery of any kind in connection with the occurrence or condition giving rise to said claim and that the Contractor shall perform all Work required by or in connection with any such event or condition without any increase in the Contract Price and/or any other increase in compensation or other damages of any kind or nature. In the case of a continuing cause of delay, only one claim is necessary.

18.3 INJURY OR DAMAGE TO PERSON OR PROPERTY

18.3.1. If either party to this Agreement suffers injury or damage to person or property because of an act or omission of the other party, or of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time after the occurrence giving rise to the injury or damage which forms the basis of the claim. The notice shall provide sufficient detail to enable the other party to investigate the claim. If a claim for additional cost or time related to any injury or damage is to be asserted by Contractor, it must be filed as provided in paragraph 18.2.1 above.

18.4 LITIGATION

18.4.1. All claims, disputes or other matters in question between the parties to this Agreement, arising out of or relating to the Project, this Agreement, the Contract Documents or the breach thereof, shall be decided by litigation in any court of competent jurisdiction located within Harris County, Texas. No claim, dispute or other matter in question between the parties to this Agreement, arising out of this Agreement or the breach thereof, shall be submitted to arbitration except upon the subsequent, mutual and written agreement of the parties. However, if so requested by either party, the Owner and the Contractor agree to submit any dispute between the Owner and Contractor to nonbinding mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association to be conducted in Harris County, Texas. The parties agree that any mediation so requested by either party, (or any litigation or other dispute resolution proceeding agreed to by the parties) may include, by consolidation, joinder or other appropriate motion, any additional person or entity not a party to this Agreement, including the Engineer and any Subcontractors or sub-subcontractors on the Project, provided such person or entity is substantially involved in a common question of fact or law arising out of or relating to the same transaction or subject matter involved in such litigation or proceeding.

18.5 RECOVERY FOR CLAIMS

18.5.1. The Contractor agrees that its sole and complete remedy with respect to any successful Claim (including but not limited to claims based on changes to the Work, changed conditions or delay, impact or acceleration) shall be the actual increased cost of the Work, if any, incurred by the Contractor as a result of the occurrence or condition giving rise to the claim (calculated pursuant to Article 8 and Section 16.3 herein, as applicable) plus 10% for profit and overhead. This amount shall be considered inclusive of all delay, acceleration, impact or other costs allegedly incurred as a result of such occurrence or condition and no additional damages or costs shall be recovered by the Contractor.

18.6 ATTORNEYS' FEES

18.6.1. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1 NO WAIVER

19.1.1. The failure of Owner to notify the Contractor of any default under the Contract Documents shall not be deemed to be an acceptance by Owner of any such default by Contractor or construed to be a waiver of any term, covenant, or condition set forth in the Contract Documents, nor of Owner's right to declare a default for any such default or subsequent breach, and the failure of Owner to insist upon strict performance of any of the terms, covenants, or conditions of the Contract Documents, or to exercise any option in the Contract Documents in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such terms, covenants, conditions or options, but the same shall be and remain in full force and effect.

19.2 SUCCESSORS AND ASSIGNS

19.2.1. The Owner and the Contractor each binds itself and its successors and assigns to the other party hereto, and to the successors and assigns of such other party in respect to all covenants, agreements and obligations contained in this Agreement. However, the Contractor shall not assign this Agreement or any money due or to become due hereunder without the prior and written consent of the Owner. Similarly, an assignment by operation of law of the Contractor's interest herein shall be ineffective without the consent of the Owner.

19.3 SEVERABILITY

19.3.1. In case any one or more provisions set forth in the Contract Documents or the application thereof to any person or circumstances shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality, or unenforceability shall not affect any other provision of the Contract Documents or the application of such provisions to other persons or circumstances, and the Contract Documents shall be enforced to the greatest extent permitted by law. If, in Owner's judgment, such invalidity, illegality or unenforceability materially alters this Agreement, the Owner shall have the right to terminate this Agreement in accordance with the provisions set forth herein.

19.4 NO THIRD PARTY BENEFICIARIES

19.4.1. The Contract Documents are not intended, and shall not be deemed or construed, to confer any rights, powers or privileges on any person, firm, partnership, corporation or other entity not a party hereto except as may be expressly provided herein to the contrary.

19.5 MODIFICATIONS TO BE IN WRITING

19.5.1. No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever other than by a written Modification hereof as defined in paragraph 2.1.3 above and no evidence shall be introduced in any proceeding of any other waiver or modification.

19.6 COUNTERPARTS

19.6.1. The Contract Documents may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts shall constitute one and the same agreement. Fax and PDF signatures are valid.

19.7 RIGHTS AND REMEDIES

19.7.1. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner shall constitute a waiver of any right or duty afforded to Owner under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement by the Contractor except as may be specifically agreed by the Owner in writing.

19.7.2. No partner, member, officer, employee, representative, consultant or agent of Owner shall be personally liable to the Contractor under any term or provision of this Agreement for payment obligations of the Owner or otherwise, or because of any breach of this Agreement. The Contractor agrees to look solely to the assets of Owner for the satisfaction of any liability of Owner hereunder.

19.8 CONTRACTOR STATE LAW CERTIFICATIONS

19.8.1. Compliance with Laws Prohibiting Contracts with Companies Boycotting Israel. As a condition of this Agreement, pursuant to Chapter 2271, Texas Government Code, and solely for purposes relating to Chapter 2271, Texas Government Code, the Contractor represents and warrants that at the time of this Agreement, it is not a Company that boycotts Israel and further agrees that it will not boycott Israel through the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this Section have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended. For purposes of this paragraph, "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

19.8.2. Compliance with Laws Prohibiting Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations. As a condition of this Agreement, pursuant to Chapter 2252, Texas Government Code, and solely for purposes relating to Chapter 2252, Texas Government Code, the Contractor represents and warrants that it is not a Company that: (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 2270 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code; or (ii) is listed by the Texas Comptroller of Public Accounts under Section 2270.0201 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this Section has the meaning assigned to such term in Section 2252.151 of the Texas Government Code. For purposes of this paragraph, "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association whose securities are publicly traded, including a wholly owned subsidiary,

majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

19.8.3. Compliance with Laws Prohibiting Contracts with Companies that Boycott Energy Companies. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, as amended, the Contractor hereby verifies that neither it nor its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Owner to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, "boycott energy companies," a term defined in Section 2274.001(1), Texas Government Code by reference to Section 809.001, Texas Government Code, shall mean, without an ordinary business purpose, 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 with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above."

19.8.4. Compliance with Laws Prohibiting Contracts with Companies that Discriminate Against a Firearm Entity or Firearm Trade Association. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, as amended, the Contractor hereby verifies that neither it nor its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The terms "discriminates against a firearm entity or firearm trade association" and "discriminate against a firearm entity or firearm trade association" have the meaning assigned to the term "discriminate against a firearm entity or firearm trade association" in Section 2274.001(3), Texas Government Code (as added by SB 19).

19.8.5. Compliance with Lone Star Infrastructure Protection Act. If under this Contract, Contractor is granted direct or remote access to the control of critical infrastructure, excluding access specifically allowed for product warranty and support, Contractor verifies, pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 2116, 87th Legislature Regular Session), that neither Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, nor any of its sub-contractors (i) is owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia or any designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, of any designated country; and (ii) is headquartered in China, Iran, North Korea, Russia or a designated country. The term "designated country" means a country designated by the Governor as a threat to critical infrastructure under Section 113.003 of the Texas Business & Commerce Code. The term "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

19.8.6. Preservation of Records. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract. The Contractor represents and warrants that, to the extent the Contract represents a contract for goods or services within the meaning of

Section 552.371 of the Texas Government Code, as amended, the Contractor will (i) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Owner through the term of the Contract, (ii) promptly provide to the Owner any contracting information related to the Contract that is in the custody or possession of the Contractor on request of the Owner, and (iii) upon completion of the term of this Contract, either (a) provide at no cost to the Owner all contracting information related to the Contract that is in the custody or possession of the Contractor or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Owner. The term “contracting information” as used in this paragraph means information related to the Contract in Contractor’s custody or possession, including:

19.8.6.1 information in a voucher or the Contract relating to the receipt or expenditure of public funds by the Owner;

19.8.6.2 solicitation of bid documents relating to the Contract with the Owner;

19.8.6.3 communications sent between the Owner and Contractor during the solicitation, evaluation, or negotiation of the Contract;

19.8.6.4 documents, including bid tabulations, showing the criteria by which the Owner evaluated Contractor or potential contractors responding to a solicitation and, if applicable, an explanation of why Contractor was selected; and

19.8.6.5 communications and other information sent between the Owner and Contractor related to the performance of the Contract or work performed thereunder on behalf of the Owner.

19.8.7. No Notice of Non-Compliance. Contractor declares that it has not received from a governmental body a notice of noncompliance with a provision of Subchapter J, Chapter 552, Texas Government Code, or, if such a notice has been received, Contractor has taken adequate steps to ensure future compliance with such subchapter and has provided or upon request will provide documentation of same.

19.8.8. Interested Party Disclosures. Pursuant to Texas Government Code Section 2252.908 (the “Interested Party Disclosure Act” or the “Act”), the Owner may not award the Contract to a bidder unless the bidder provided to the Owner a completed, signed and notarized TEC Form 1295 which has been assigned a certificate number by the Texas Ethics Commission (the “TEC”). Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website at <https://www.ethics.state.tx.us>, assigned a certificate number, printed, signed and provided to the Owner. Contractor represents that it submitted the TEC Form 1295 with its bid.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and date first above written.

**HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 132**

“Owner”

By: _____

(Printed Name and Title)

“Contractor”

By: _____

(Printed Name and Title)

Exhibit 1

GLOSSARY OF DEFINITIONS

Addenda shall mean revised Construction Drawings, Specifications or other documents issued by Owner to supplement, clarify and/or provide further support to the previously issued Construction Drawings and Specifications.

Additional Insureds shall have the meaning set forth in paragraph 15.1.2 of this Agreement.

Agreement shall have the meaning set forth in paragraph 2.1.2 of this Agreement.

Application(s) for Payment shall mean an application for payment prepared by the Contractor of amounts claimed due under the Agreement and in the form required by the applicable terms of the Agreement.

Certificate of Completion shall have the meaning as set forth in paragraph 7.6.7 of this Agreement.

Change Order shall have the meaning set forth in paragraph 16.2.1 of this Agreement.

Claim shall have the meaning set forth in paragraph 18.1.1 of this Agreement.

Completion Date(s) shall have the meaning set forth in Exhibit 3 (except as such dates may be modified hereafter pursuant to a Change Order signed by the Owner).

Constituent of Concern shall mean asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

Construction Drawings shall mean the Construction Drawings listed in Exhibit 2 and any addenda or amendments thereto.

Construction Schedule shall mean the original construction schedule prepared by the Contractor in a form satisfactory to the Owner and Engineer pursuant to paragraph 5.4.2 and any updated construction schedule which compares and identifies all changes or revisions made to the original construction schedule and all preceding updated construction schedules with regard to the Work.

Contract shall have the meaning set forth in paragraph 2.1.2 of this Agreement.

Contract Documents shall have the meaning set forth in paragraph 2.1.1 of this Agreement.

Contract Price shall mean that amount more fully described in Section 8.1.1.

Contractor shall have the meaning set forth in the introductory paragraph of this Agreement.

Delaying Event shall have the meaning set forth in paragraph 5.4.6 of this Agreement.

Design Documents shall mean the Construction Drawings, Specifications and other documents related to design of the Project.

Engineer shall have the meaning set forth in the introductory paragraph of this Agreement.

EPA shall mean Environmental Protection Agency.

Excused Delay shall have the meaning set forth in paragraph 7.8.1 of this Agreement.

Final Completion shall have the meaning set forth in paragraph 7.3.5 of this Agreement.

Final Payment shall mean the final payment made by Owner to Contractor pursuant to the terms and limitations of Section 8.5 of this Agreement.

Hazardous Environmental Condition shall mean the presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

Indemnified Parties shall have the meaning set forth in paragraph 5.21.1 of this Agreement.

Laws and Regulations or **Laws or Regulations** shall mean any applicable laws, ordinances, codes, rules, regulations or orders of any public authority having jurisdiction.

Material Change(s) shall have the meaning set forth in paragraph 5.20.1 of this Agreement.

Modification(s) shall have the meaning set forth in paragraph 2.1.2 of this Agreement.

Notice to Proceed shall mean a written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

OSHA shall mean Occupational Safety and Health Administration.

Owner shall have the meaning set forth in the introductory paragraph of this Agreement.

Owner Supplied Items shall have the meaning set forth in paragraph 11.2.1 of this Agreement.

Owner's Consultants shall mean persons or entities other than the Owner's Representative or Engineer retained by the Owner to act as consultants on the Project.

Owner's Representative shall have the meaning set forth in paragraph 3.2.1 of this Agreement.

Project shall have the meaning set forth in the introductory paragraph of this Agreement.

Project Land shall mean all of the numerous and continuous tracts of land upon which the Project will be constructed and their adjacent areas where the Contractor is permitted to store or stage the Work and/or any materials, equipment or tools.

Progress Schedule shall mean a schedule prepared and maintained by Contractor describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

Proprietary Information shall have the meaning set forth in paragraph 9.1.1 of this Agreement.

RFI or Request for Information shall have the meaning set forth in paragraph 7.8.1.1 of this Agreement.

Schedule of Submittals shall mean a schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.

Schedule of Values shall mean a schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

Scope of Work Description shall have the meaning set forth in paragraph 1.2 of this Agreement and as set forth in Exhibit 2 to this Agreement.

Site shall mean the specific portion of the Project Land upon which Contractor is actively engaged in Work at a specific time.

Specification(s) shall mean the General Specifications and any special specifications included within the Contract Documents as listed in Exhibit 2, and any addenda or amendments thereto.

State shall mean the State of Texas.

Subcontractor(s) shall have the meaning set forth in paragraph 6.1.1 of this Agreement.

Substantial Completion and/or **Substantially Complete** shall have the meaning set forth in paragraph 7.6.1 of this Agreement.

Supplier shall mean a manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated into the Work by Contractor or a Subcontractor.

Technical Data shall mean those items expressly identified as Technical Data in the Supplemental Terms, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Article IV hereof.

Underground Facilities shall mean all underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

Work shall have the meaning set forth in paragraph 5.1.1 of this Agreement.

Exhibit 2:SCOPE OF WORK DESCRIPTION / SPECIFICATIONS AND CONSTRUCTION DRAWINGS

I. SCOPE OF WORK DESCRIPTION

- The Work to be provided by Contractor pursuant to this Agreement generally consists of the following:

II. CONSTRUCTION DRAWINGS

- The Construction Drawings applicable to the Work are those prepared and issued by _____ on the dates set forth below as amended by addenda (if applicable), and any addenda or amendments thereto:

Item #	Sheet #	Title	Date	Addendum #	Date
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III. SPECIFICATIONS

- The Specifications applicable to the Work are the General Specifications and any special specifications attached as exhibits to this Contract those prepared and issued by _____ on the dates set forth below, and any addenda or amendments thereto:

Item #	Division	Description	Date
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EXHIBIT 3: Completion Dates

Final Completion of the Work shall be achieved not later than [] days after the date of the Notice to Proceed.

Attention: Pursuant to Texas Government Code § 2252.908, unless you are a publicly traded entity or a wholly owned subsidiary of same, you must be able to provide **Harris County Municipal Utility District No. 132** (the "District") with printed and signed copies of a completed disclosure of interested parties form (Form 1295) and a certificate of filing at the time of the District's execution of the contract. Failure to do so will result in the District's inability to execute the contract. To complete the disclosure of interested parties form, or for further information, please visit the Texas Ethics Commission's website at <https://www.ethics.state.tx.us>

Date: _____

INVITATION TO BIDDERS

Sealed Bids, in duplicate, addressed to **Board of Directors, Harris County Municipal Utility District (MUD) No. 132**, will be received at the office of BGE, Inc., 10777 Westheimer, Suite 400; Houston, Texas, 77042 (Phone: 281-558-8700) until **Time Local Time, Day of Week, Date** at which time all bids will be opened and publicly read for the furnishing of all material, equipment, labor and supervision necessary or incidental to **"Construction of Water Line Replacement Phase 3 for Harris County MUD No. 132, Harris County, Texas"**

Scope of Project:

The contractor is to furnish and install approximately _____ linear feet of 12-inch PVC water line, _____ linear feet of 8-inch PVC water line, _____ linear feet of 6-inch PVC water line and _____ linear feet of 4-inch PVC water line, including all steel casing, as shown on drawings, fittings, valves, connections, fire hydrant assemblies and associated appurtenances. Construction shall be all trenchless.

Bids received after the closing time will be returned unopened.

A mandatory pre-bid conference will be held on **Day of Week, Date**, at **Time Local Time**, at the office of BGE, Inc., 10777 Westheimer, Suite 400; Houston, Texas, 77042 (Phone: 281-558-8700).

Each Bid must be accompanied by a bid bond or a certified or cashier's check, acceptable to the Owner, in an amount not less than **five percent (5%)** of the total amount bid, as a guarantee that the successful bidder will enter into the Contract and execute the Bonds on the forms provided and provide the required insurance certificates within 7 days after the date Contract Documents are received by the Contractor.

Copies of the bidding documents may be obtained from www.CivcastUSA.com, search: _____. Bidders must register on this website to view and/or download specifications, plans, soils report and environmental reports for this project. There is **NO** charge to view or download documents.

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

HARRIS COUNTY MUD NO. 132

INSTRUCTIONS TO BIDDERS

ARTICLE 1 — DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the Contract Documents. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. Issuing Office – The office from which the Bidding Documents are to be issued.
 - B. Owner - the Owner is understood to be Harris County Municipal Utility District No. 132.
 - C. Owner's Representative –
 - D. Engineer –BGE, Inc.

ARTICLE 2 — COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents may be viewed at the Issuing Office or obtained at www.civcastusa.com.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 In making copies of Bidding Documents available on the above terms, Owner and Engineer do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 — QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within **five (5) days** of Owner's request, Bidder shall submit (a) written evidence establishing its qualifications such as financial data, previous experience, and present commitments, and (b) the following additional information:
- A. Evidence of Bidder's authority to do business in the state of Texas.
 - B. Bidder's state or other contractor license number, if applicable.
 - C. Subcontractor and Supplier qualification information; coordinate with provisions of Article 12 of these Instructions, "Subcontractors, Suppliers, and Others."
 - D. Evidence that Bidder has successfully completed 4 projects similar to this Work in scope and in magnitude of cost in the Houston area within the last 3 years.
- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

- 3.04 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 — SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 Site and Other Areas

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 Existing Site Conditions

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplemental Terms identify:

- a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.
- b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
- d. Technical Data contained in such reports and drawings.

2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely has been identified and established in the Supplemental Terms. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

3. If the Supplemental Terms do not identify Technical Data, the default definition of Technical Data set forth in the Contract Documents will apply.

- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner or others.

- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding

Documents due to differing or unanticipated subsurface or physical conditions appear in Sections 4.4, 4.5, and 4.7 of the Agreement. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Sections 4.6 and 4.7 of the Agreement.

4.03 Site Visit and Testing by Bidders

- A. Bidder shall conduct the required Site visit during normal working hours and shall not disturb any ongoing operations at the Site.
- B. Bidder is not required to conduct any subsurface testing or exhaustive investigations of Site conditions.
- C. Bidder shall contact Owner's Representative (or if unavailable, the Engineer) for information regarding access to the Site.
- D. On request and to the extent Owner has control over the Site and schedule permitting, the Owner's Representative will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner's Representative will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- E. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- F. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 Other Work at the Site

- A. Reference is made to the Supplemental Terms for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 — BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
- B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;
- E. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- F. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- G. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;
- H. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- I. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 — PRE-BID CONFERENCE

- 6.01 A **[mandatory]** pre-bid conference will be held at the time and location stated in the Invitation or advertisement to bid. Representatives of Owner and Engineer will be present to discuss the Project. **A principal of each prospective bidder is required to attend and participate in the conference.** Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

ARTICLE 7 — INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer through www.civcast.com. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda to all parties recorded as being a plan holder. Questions received less than **72 hours** prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 — BID SECURITY

- 8.01 Each Bid must be accompanied by Bid security made payable to Owner in an amount of **five percent (5%)** of Bidder's total amount bid and in the form of a certified check, bank money order, or a Bid bond issued by a surety meeting the requirements of Section 14.2 of the Agreement.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 7 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Notice of Award of the Contract or sixty-first (61st) days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within 7 days after the Bid opening.

ARTICLE 9 — CONTRACT TIMES

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

ARTICLE 10 — LIQUIDATED DAMAGES AND ECONOMIC DISINCENTIVES AND INCENTIVES

- 10.01 Provisions for liquidated damages, economic disincentives and economic incentives are set forth in Sections 7.4 and 7.5 of the Agreement.

ARTICLE 11 — SUBSTITUTE AND "OR-EQUAL" ITEMS

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those "or-equal" or substitute of

materials and equipment subsequently approved by Engineer prior to submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an “or-equal” or substitute unless written request for approval has been submitted by Bidder and has been received 72 hours prior to date for receipt of Bids. Each such request shall comply with the requirements of Section 5.14 of the Agreement. The burden of proof of merit of the proposed item is upon Bidder. Engineer’s decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

- 11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

ARTICLE 12 — SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.
- 12.03 Bidders are required to disclose their list of the Subcontractors or Suppliers proposed for any part of the work.
- 12.04 If requested by Owner, Successful Bidder shall provide experience with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may request apparent Successful Bidder to submit an acceptable substitute without an increase in price.
- 12.05 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next most responsible Bidder that, in the Board’s judgment, will be most advantageous to the Owner and result in the best and most economical completion of the Owner’s proposed improvements and proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 6.2 of the Agreement.

ARTICLE 13 — PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents.

- A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, bid item, alternate, adjustment unit price item, and unit price item listed therein.
 - B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- 13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership’s address for receiving notices shall be shown.
- 13.04 A Bid by a limited liability company shall be executed in the name of the company by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the company and the company’s address for receiving notices shall be shown.
- 13.05 A Bid by an individual shall show the Bidder’s name and address for receiving notices.
- 13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture’s address for receiving notices shall be shown.
- 13.07 All names shall be printed in ink below the signatures.
- 13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.10 The Bid shall contain evidence of Bidder’s authority and qualification to do business in the State of Texas, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder’s state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 — BASIS OF BID

14.01 Lump Sum

- A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

14.02 Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.

- B. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity” (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Section 8.2 of the Agreement.
- C. 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.

14.03 Allowances

- A. For cash allowances, the Bid price shall include such amounts as the Bidder deems proper for Contractor’s overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Section 8.4 of the Agreement.

ARTICLE 15 — SUBMITTAL OF BID

- 15.01 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation “BID ENCLOSED.”
- 15.02 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 16 — MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner as a Bid is required to be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 — OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 — BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 — EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner may reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, not to be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner may reject the Bid as nonresponsive. Owner also reserves the right to waive all defects and irregularities in bidding or the bidding process except time of submitting a Bid.
- 19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder that, in the Board's judgment, will be most advantageous to the Owner and result in the best and most economical completion of the Owner's proposed improvements.
- 19.03 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 19.04 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 20 — BONDS AND INSURANCE

- 20.01 Articles 14 and 15 of the Agreement, as may be modified by the Supplemental Terms, sets forth Owner's requirements as to performance, payment, and maintenance bonds as well as insurance requirements. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by the required original bonds, as well as original insurance documents.

ARTICLE 21 — SIGNING OF AGREEMENT

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within **seven (7) days** thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement

(and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner.

ARTICLE 22 — SALES AND USE TAXES

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

ARTICLE 23 — INTERESTED PARTY DISCLOSURES (FORM 1295)

- 23.01 Pursuant to Texas Government Code Section 2252.908 (the "Interested Party Disclosure Act" or the "Act"), the Owner may not award the contract to a bidder unless the bidder has provided to the Owner a completed, signed and notarized TEC Form 1295 which has been assigned a certificate number by the Texas Ethics Commission (the "TEC"). Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website at <https://www.ethics.state.tx.us>, assigned a certificate number, printed, signed and provided to the Owner. The TEC Form 1295 must be submitted with the contractor's bid. Neither the Owner nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither has an obligation nor undertake responsibility for advising any Bidder with respect to the proper completion of the TEC Form 1295. Publicly traded corporations or their subsidiaries are exempted from this requirement.

ARTICLE 24 — LABOR CLASSIFICATION AND MINIMUM WAGE SCALE

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

- 24.02 The Statute likewise requires that the Contractor and Subcontractors keep an accurate record of the name and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of the Owner.
- 24.03 The minimum wage rates that apply to this Contract are specified below. Contractor and Subcontractors shall review and ascertain such wage rates and pay at least such minimum rates.
- 24.04 Labor Classification and Minimum Wage Scale: Bidder should use the latest edition of the City of Houston Prevailing Wage Rates in effect at the time bids are received.

ARTICLE 25 — ADDITIONAL REQUIREMENTS

- 25.01 Compliance with Laws Prohibiting Contracts with Companies Boycotting Israel. As a condition of the Agreement, pursuant to Chapter 2271, Texas Government Code, and solely for purposes relating to Chapter 2271, Texas Government Code, the Contractor will be required to represent and warrant that at the time of the Agreement, it is not a Company that boycotts Israel and further agrees that it will not boycott Israel through the term of the Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this Section have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended. For purposes of this paragraph, “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 25.02 Compliance with Laws Prohibiting Contracts with Companies Engaged in Business with Iran, Sudan or Foreign Terrorist Organizations. As a condition of the Agreement, pursuant to Chapter 2252, Texas Government Code, and solely for purposes relating to Chapter 2252, Texas Government Code, the Contractor will be required to represent and warrant that it is not a Company that: (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 2270 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code; or (ii) is listed by the Texas Comptroller of Public Accounts under Section 2270.0201 or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” as used in this Section has the meaning assigned to such term in Section 2252.151 of the Texas Government Code. For purposes of this paragraph, “Company” means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association whose securities are publicly traded, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.
- 25.03 Compliance with Laws Prohibiting Contracts with Companies that Boycott Energy Companies. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, as amended, the Contractor will be required to verify that neither it nor its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, boycott energy companies and will not boycott energy companies during the term of the Agreement. The foregoing verification is required to be made solely to enable the Owner to comply with

such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, “boycott energy companies,” a term defined in Section 2274.001(1), Texas Government Code by reference to Section 809.001, Texas Government Code, shall mean, without an ordinary business purpose, 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 with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.”

- 25.04 Compliance with Laws Prohibiting Contracts with Companies that Discriminate Against a Firearm Entity or Firearm Trade Association. To the extent the Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, as amended, the Contractor will be required to verify that neither it nor its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The terms “discriminates against a firearm entity or firearm trade association” and “discriminate against a firearm entity or firearm trade association” have the meaning assigned to the term “discriminate against a firearm entity or firearm trade association” in Section 2274.001(3), Texas Government Code (as added by SB 19).
- 25.05 Compliance with Lone Star Infrastructure Protection Act. If under this Contract, Contractor is granted direct or remote access to the control of critical infrastructure, excluding access specifically allowed for product warranty and support, Contractor is required to verify, pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 2116, 87th Legislature Regular Session), that neither Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, nor any of its sub-contractors (i) is owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia or any designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, of any designated country; and (ii) is headquartered in China, Iran, North Korea, Russia or a designated country. The term “designated country” means a country designated by the Governor as a threat to critical infrastructure under Section 113.003 of the Texas Business & Commerce Code. The term “critical infrastructure” means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.
- 25.06 Preservation of Records. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid, and the selected Contract represents and warrants that, to the extent the Agreement represents a contract for goods or services within the meaning of Section 552.371 of the Texas Government Code, as amended, the Contractor will (i) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner through the term of the Agreement, (ii) promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of the Owner, and (iii) upon completion of the term of this Agreement, either (a) provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of

the Contractor or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner. The term “contracting information” as used in this paragraph means information related to the Agreement in Contractor’s custody or possession, including:

(a) information in a voucher or the Contract relating to the receipt or expenditure of public funds by the Owner;

(b) solicitation of bid documents relating to the Contract with the Owner;

(c) communications sent between the Owner and Contractor during the solicitation, evaluation, or negotiation of the Contract;

(d) documents, including bid tabulations, showing the criteria by which the Owner evaluated contractor or potential contractors responding to a solicitation and, if applicable, an explanation of why contractor was selected; and

(e) communications and other information sent between the Owner and contractor related to the performance of the Contract or work performed thereunder on behalf of the Owner.

25.07 No Notice of Non-Compliance. Contractor must declare that it has not received from a governmental body a notice of noncompliance with a provision of Subchapter J, Chapter 552, Texas Government Code, or, if such a notice has been received, Contractor has taken adequate steps to ensure future compliance with such subchapter and has provided or upon request will provide documentation of same.

BID

Bid for “**Construction of [Water Line Replacement Phase 3] for Harris County MUD No. 132, Harris County, Texas,**”

Harris County MUD No. 132

c/o BGE, Inc.
10777 Westheimer, Suite 400
Houston, Texas 77042

CONTRACTOR: _____

(Legal Name of Company)

ADDRESS: _____

County: _____

TELEPHONE: _____

FAX: _____

EMAIL: _____

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

Bidder accepts all of the terms and conditions of the Invitation to Bidders and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for **sixty (60) days** after the day of Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within **seven (7) days** after the date of Owner's Notice of Award.

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

Bidder has examined, carefully studied, and understands all the terms and conditions set forth in the Bidding Documents and the following Addenda receipt of all which are hereby acknowledged:

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

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

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

If this bid is accepted by Owner, Bidder will commence work within **seven (7) days** after written Notice to Proceed or acceptance of this bid.

If this Bid is accepted, Bidder agrees that the Work will be completed and ready for final payment in accordance with Exhibit 3 of the Agreement within [] **calendar days** from the date of the Notice to Proceed.

Bidder accepts the provisions of the Agreement as to **liquidated damages or economic disincentives** in the event of failure to complete the Work within the times specified in the Agreement.

The prescribed Bid Security in the form of a **Cashier's Check or Bid Bond** is attached to and made a condition of this Bid.

List name and addresses of subcontractors with whom the Bidder, if awarded the contract, will subcontract for performance of any of the work or by itself.

Percentage of Work:	_____
Percentage of Work:	_____
Percentage of Work:	_____
Percentage of Work:	_____

Terms used in this Bid which are defined in the Contract Documents will have the meanings indicated in the Contract Documents.

SUBMITTED on _____, 20_____.

State Contractor
License No. _____

INDIVIDUAL:
(individual) _____ (Seal)
doing business as _____
Business Address _____
Business Phone _____

PARTNERSHIP:
By (firm) _____ (Seal)
(General Partner) _____
Business Address _____
Business Phone _____

CORPORATION:
By (corp.) _____ (Seal)
State of Incorporation _____
By (person authorized) _____
Title _____

Attest (Secretary) _____
Business Address _____
Business Phone _____
Date of Qualification _____

to do business is _____

JOINT VENTURE:

By (name) _____ (Seal)

Address: _____

By (name) _____ (Seal)

Address: _____

Address & Phone No. for official communications:

Surety Company:

State of incorporation: _____

Local agent: _____

Agent's address: _____

Agent's telephone: _____

Insurance Carrier:

State of incorporation: _____

Local agent: _____

Agent's address: _____

Agent's telephone: _____