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**PORT OF PORT LAVACA - POINT COMFORT**

*Providing Calhoun County Industries with Direct Deep-Draft Access to Global Markets*

# Bid Documents

## BEAN TRACT WETLANDS CREATION PROJECT

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AUGUST 2022

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# **REQUEST FOR PROPOSALS**

## Request for Proposals

Sealed Bids for the **BEAN TRACT WETLANDS CREATION PROJECT** addressed to the **CALHOUN PORT AUTHORITY** (herein called Owner or CPA) shall be received at 2313 F. M. 1593 South, Point Comfort, Texas 77978, until **9:00 A.M., FRIDAY, September 09, 2022**. All Proposals shall then be opened and read aloud immediately thereafter. Proposals received after the specified date and time shall be returned to the bidder unopened.

Said Sealed Proposals shall be submitted on blank forms provided, shall be sealed in separate envelopes per Instructions to Bidders, and shall be clearly marked "**BEAN TRACT WETLANDS CREATION PROJECT, CALHOUN PORT AUTHORITY – BID OPENING: 9:00 A.M., FRIDAY, September 09, 2022.**" Proposals shall be for the furnishing of all labor, materials, equipment, plant and superintendence, and for performing the specified Work.

Proposal Documents may be examined at the Owner's Office located at 2313 FM 1593 South, Point Comfort, Texas 77978, Monday through Friday between the hours of 8:30 a.m. and 4:00 p.m.

A Proposal Documents Package may be obtained in electronic format from the Owner at:

Felicia F. Harral, P.E.  
Director Engineering Services  
Calhoun Port Authority  
Cell: (361) 746-1035  
[ffh@calhounport.com](mailto:ffh@calhounport.com)

A **Pre-Bid Conference** will be held on **Friday, August 19, 2022 (10:00 AM)** at the Port Administrative Offices located at 2313 FM 1593 South (Gate 2), Point Comfort, Texas 77978.

The Owner reserves the right to reject any and all bids and to waive informalities in bidding. In case of ambiguity or lack of clearness in stating prices in any Bid, the Owner reserves the right to consider the most advantageous construction thereof, or to reject the Bid. The Award shall be made to the responsible Bidder submitting the lowest, qualified, acceptable Bid who, in the opinion of the Owner, offers the Bid in the best interests of the Owner.

The Calhoun Port Authority is an equal opportunity employer without regard to race, color, sex, age, religion, national origin, handicap, or limited English proficiency.

Calhoun Port Authority  
Calhoun County, Texas

# **BID PACKAGE CHECKLIST**

## **Bid Package Checklist**

The following checklist is provided to assist you in submitting a proper and complete bid.

### **General:**

Is the envelope containing the bid properly identified on the outside as a "SEALED BID", with Project Name, Date, and Time of the Bid Opening clearly marked?

### **Bid Proposal:**

Submitted in duplicate on the prescribed form?

Properly signed?

Acknowledged all addenda on page 2?

Are the list of subcontractors and major suppliers included?

Are all figures legible?

Are the extensions of the unit and total bid price correct?

Has the person signing the bid proposal initialed all erasures or corrections?

### **Bid Bond (or Certified Check):**

Proper amount (5% of the greatest amount of bid)?

Signed by both the Bidder and the Surety?

### **Exclusions / Exceptions:**

**NOTE:** Exclusions/Exceptions to the Bid Documents may be grounds for a declaring a bid as Non-Responsive.

**INSTRUCTION TO PROSPECTIVE  
BIDDERS**

# Instructions to Prospective Bidders

## 1. LOCATION OF PROJECT

The project is located at Calhoun Port Authority (Owner), Point Comfort, Lavaca Bay, Calhoun County, Texas.

## 2. GENERAL DESCRIPTION OF PROJECT

The work to be accomplished under the provisions of these Contract Documents consists of furnishing all machinery, equipment, labor, and supervision for construction of a 14-acre leveed wetland mitigation site with road access as described in the Technical Specifications and shown on the Drawings in accordance with U.S. Army Corps of Engineers (USACE) Permit No. SWG-2016-01066.

## 3. PREPARATION OF BIDS

Bids shall be submitted, in duplicate, upon the prescribed forms. Bids shall be prepared in compliance with the requirements of the Notice to Bidders, these instructions, and the instructions printed on the prescribed forms. All blank places on the Proposal Form must be filled in as noted, in ink, in both words and figures, with amounts extended and totaled, and no changes shall be made in the phraseology of the forms or of the items mentioned therein. In case of any discrepancy between the written amounts and the figures, the written amount shall govern. Any bid may be deemed irregular which contains any omission, erasure, alteration, addition, irregularity of any kind, or items not called for, or which does not contain prices set opposite to each of the several items in the Proposal Form, or in which any of the prices are obviously unbalanced, or which shall in any manner fail to conform to the conditions of the Notice to Bidders. The bidder shall sign his Proposal on the blank space provided, therefore. If a partnership or corporation makes the bid, the name and address of the partnership or corporation shall be shown, together with the name and address of the partners or officers. If the bid is made by a partnership, it must be acknowledged by one of the partners; if made by a corporation, it must be acknowledged by one of the officers thereof accompanied by Corporate Seal. In order to ensure consideration, the Proposal must be enclosed in a sealed envelope plainly identified by the name of the Project, addressed to the Owner as prescribed in the Notice to Bidders, and accompanied by the prescribed Bid Security.

## 4. QUALIFICATION OF BIDDERS

To demonstrate qualifications to perform the Work, Bidder must submit as part of the Bid Package a signed Statement of Qualification on the form provided herein or similar. The Owner reserves the right to request a Financial Statement of any Bidder being actively considered for award of this contract.

The Owner will use a multi-step sealed bidding process for the Project. The evaluation criteria will be as expressed in the Instruction to Bidders for the Project. Bidders must submit their offers in two separate, sealed envelopes, each plainly marked: **BEAN TRACT WETLANDS CREATION PROJECT**. The outside of the envelopes shall be addressed to **CALHOUN PORT AUTHORITY, 2313 F. M. 1593 South, Point Comfort, Texas 77978**. The envelopes must also bear on the outside the name of the bidder, the bidder's legal address and any applicable licensing number.

### Evaluation of Responses and Award of Contract

- **All Rights Reserved:** The Owner reserves the right to accept or reject any or all Responses and waive formalities to best serve the interests of the Owner. Moreover, in case of ambiguity or lack of clearness in any Response, the Owner reserves the right to consider the most advantageous construction of, or to reject, the Response. By way of example only:



- Responses not conforming exactly to the Bid / Proposal Documents may be rejected.
- Responses not incorporating the Owner forms required by the Bid / Proposal Documents may be rejected.
  - Responses which, in the opinion of Owner, contain extreme variations (with respect to the overall price or the price of individual item / items) from the engineer's or designer's estimate or from other Responses received, may be rejected.
  - If more than one Response from an individual, firm, partnership, corporation, or joint venture, or combination thereof under the same or different names is submitted, all such Responses may be rejected.
  - The Owner may cancel the entire Request for Competitive Sealed Bids / Proposals
  - The Owner may issue a subsequent Request for Competitive Sealed Bids / Proposals
  - The Owner may remedy technical errors in the Request for Competitive Sealed Bids / Proposals or the Request for Competitive Sealed Bids / Proposals process
  - The Owner may waive formalities and irregularities
- a. **Errors in Response Price:** Errors in extensions of unit prices and addition errors are subject to correction by the Owner. In the case of a mathematical error in the extension of the unit price, the unit price shall govern, and the total extended price and total proposed price shall be recalculated.
- b. **Fatal Errors: Proposals may be immediately rejected that contain errors that are deemed uncorrectable. The following are deemed uncorrectable errors (fatal errors):**
- Late proposals
  - No bond or proposal security (if applicable)
  - No dollar amount specified
  - Debarred vendor
- c. **Evaluation of Competitive Sealed Proposal Response:** This project will be evaluated using a one-step selection process. The Owner has determined that it is in the best interest of the Owner to solicit competitive sealed proposals for the project pursuant to Chapter 60, Subchapter O, Purchase Contracts, of the Texas Water Code.

Each Respondent's proposal shall remain valid for the time period specified in the Invitation to Bid unless an extension of time is mutually agreed by the Owner and the Respondent before the end of that time period.

Unless it elects to reject all proposals, the Owner will award the contract after a thorough analysis of proposals submitted based on the published selection criteria. Within the time period specified in the Invitation to Bid, the Owner will evaluate and rank proposals as necessary to determine and select the proposal that offers the best value for the Owner based on the evaluation criteria, and otherwise evaluate and rank all other proposals. The Owner may discuss, with the selected Respondent, options for scope or time modifications and any price changes associated with the modifications.

If the Owner is unable to negotiate a proposed contract with the selected Respondent that is satisfactory to the Owner in its discretion, the Owner shall formally, and in writing, end negotiations with that Respondent. The Owner may then designate the next remaining proposal that offers the best value for the Owner based on the criteria set forth below. If a proposed contract is again not negotiated, such process shall continue in the order of selection ranking until a contract is negotiated, or until all proposals are rejected.

In determining whether a proposal offers the best value to the Owner, the Owner reserves the right to reject the Response of any Respondent(s) it considers to be not "responsible" to perform the project. In determining whether a Respondent qualifies as "responsible" (i.e., eligible for award), a number of factors, including but not limited to the following, may be considered. A responsible Respondent must:

1. have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
2. have a satisfactory record of performance and integrity;
3. have a satisfactory safety and environmental record;
4. have satisfactory references;
5. have the necessary facilities, equipment, material, personnel, organization, experience, authorizations, technical skills, and financial resources to fulfill the terms of the contract for the project;
6. provide a Project Execution Plan. This plan should demonstrate the bidder's understanding of the Project, including any potential obstacles along with proposed resolutions, and a description of bidder's plans to hire subcontractors. A summary level schedule must be included in the Project Execution Plan and identify key milestones within the required performance period.

In addition to providing all of the documents and information requested in this solicitation, a Respondent shall, when requested by the Owner, provide additional evidence that the Respondent satisfies the above criteria. Failure to provide such evidence (when requested) may result in the rejection of a proposal.

The Owner may review the veracity of information including, but not limited to disqualification from bidding; claims asserted; default, termination, abandonment, or other failure to complete; surety performance; license suspension/termination; party to litigation or other dispute resolution; declaration of bankruptcy; conviction of felony (collectively, "Background Matters"). Information provided by the proposer or discovered by the Owner regarding Background Matters may be taken into consideration and may result in rejection of the proposal for non-responsibility and the withholding of an award under this solicitation.

Responses rejected due to non-responsiveness and responses from entities considered not "responsible" will not be scored.

The selection criteria and relative weights that will be considered by the Owner in evaluating each Eligible Response is stated in the Invitation to Bid (Table 1, below), in conjunction with the below for the criteria.

Table 1. Summary of Proposal Evaluation Criteria and Weight

Proposal Evaluation Criteria and Weight <i>See Instructions to Bidders for Explanation of Evaluation Criteria</i>		Relative Weight %
1	Purchase Price:	60
2	Vendor's Reputation, Quality of Services and/or Product, Safety Record:	20
3	Benefit to Owner	15
4	Overall Compliance with Owner Policies and Instructions:	5
TOTAL		100
<p>Within five (5) days of opening of Competitive Sealed Proposals, the Port will evaluate and rank proposals as necessary to select the proposal that offers the best value for the Port based on the evaluation criteria, and otherwise evaluate and rank all other proposals.</p>		

1. The Purchase Price criteria will be scored as follows:
  - The Eligible Response with the lowest proposed purchase price (the "Lowest Eligible Price") will receive the maximum number of the points available in the Purchase Price category.

$$Price\ Score = (Available\ Price\ Points) \times \frac{(Lowest\ Eligible\ Price)}{(Respondent's\ Price)}$$

- The lowest possible score is zero points.
  - Calculated scores will be rounded to the nearest hundredth (i.e., second decimal place).
2. The Vendor criteria includes the following:
    - Reputation of Respondent and of the Respondent's goods or services.
    - The Respondent's past performance.
    - Quality of Respondent's goods or services taking into consideration the Project Execution Plan.
    - Prior experience performing the type of work required for this Project is essential. Therefore, the résumés of Key Employees, clearly identifying requisite experience, MUST be included with the Proposal Response. Failure to submit required résumé(s) will be taken into consideration in the proposal evaluation process, as will determinations of whether and to what extent experience on submitted résumé(s) meets Project requirements.
    - Safety and environmental records of Respondent.
  3. The Benefit to Owner criteria includes the following:
    - Extent to which the goods or services meet the Owner's needs
    - Total long-term cost to the Owner to acquire the Respondent's goods or services
  4. The Overall Compliance with Owner's Policies and Instructions criteria includes full completion of the sealed bid package and submission of the items required by the Bid Documents.
- d. **Requirements for Contract:** If selected, the Respondent is required to execute the Contract and supporting documents, including all required insurance certificates and Owner insurance forms, and return them to the Owner within ten (10) calendar days after receipt of the Contract. If the Respondent fails to meet the ten (10) day requirement, the Owner may rescind the award. Unless a Contract falls within the delegation limits discussed below, a Contract is not binding

until it is approved by the Port Commission voting in public session, executed by both the Owner and the Respondent, and the availability of funds required by the Contract is certified by the appropriate financial officer of the Owner.

- e. **Notice of Delegation and Delegation Limits:** The Port Commission has authorized the executive director of the Owner, or an authorized representative of the executive director, to make routine purchases or contracts in an amount not to exceed \$50,000 without obtaining award or approval from the Port Commission.

## **5. SUBCONTRACTORS**

A list of subcontractors and major suppliers providing more than 20% of the Bid must be submitted as part of the Bid.

## **6. INTERPRETATION OF DRAWINGS AND SPECIFICATIONS**

BIDDERS DESIRING FURTHER INFORMATION, OR FURTHER INTERPRETATION OF THE DRAWINGS AND SPECIFICATIONS, MUST MAKE REQUEST FOR SUCH INFORMATION IN WRITING TO THE OWNER, PRIOR TO **10 CALENDAR DAYS** BEFORE THE BID OPENING. Answers to all requests will be given in writing to all bidders, in addendum form, and all addenda will be bound and made a part of the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a bidder find discrepancies in, or omissions from the Drawings or other Contract Documents, or should a bidder be in doubt as to their meaning, the bidder should at once notify the Owner in order that a written addendum may be sent to all bidders.

## **7. DELIVERY OF PROPOSALS**

It is the bidder's responsibility to deliver his/her Proposal at the proper time to the proper place. The fact that a proposal was dispatched will not be considered. The bidder must have the Proposal actually delivered.

## **8. ACCEPTANCE OF PROPOSALS**

The Owner reserves the right to reject any or all proposals. Without limiting the generality of the foregoing, any proposal which is incomplete, obscure or irregular may be rejected; any proposal having erasures or corrections in the price sheet may be rejected; any proposal which omits a bid on any one or more items on a price sheet may be rejected; any proposal in which the unit prices are omitted or are obviously unbalanced may be rejected; any proposal accompanied by an insufficient or irregular certified check or bid bond may be rejected. A bidder may withdraw his proposal before the expiration of the time during which a proposal may be submitted without prejudice to himself by submitting a written request for its withdrawal to the Owner's office.

## **9. AWARD OF CONTRACT**

Unless it elects to reject all bids, the Owner will award the Contract within Sixty (60) Calendar Days after receipt of proposals. Such award will be notice in writing signed by a duly authorized representative of the Owner and shall bind the successful bidder to execution of the Contract, which shall become effective and binding upon the parties only with its execution by the Owner.

The Contract will be awarded to the lowest and best responsive, responsible bidder, subject to the determined Relative Weight (%), as described in 4.0 Qualifications of Bidders. Bids will first be evaluated based on the following Qualifications documentation submitted in the first sealed envelope.

#### **10. TIME FOR EXECUTING CONTRACT & DAMAGE FOR FAILURE TO EXECUTE**

Any bidder whose proposal shall be accepted will be required to appear at the Owner's office in person, or, if a firm or corporation, a duly authorized representative shall so appear, and to execute the Contract within Fifteen (15) Calendar Days after Notice of Award of the Contract to him. Failure or neglect to do so shall constitute a breach of agreement affected by the acceptance of the proposal. The damages to the Owner for such a breach will include loss from interference with its construction program, and other items whose accurate amount will be difficult or impossible to compute. The amount of the certified check or bid bond accompanying the proposal of such bidder shall be retained by the Owner as liquidated damages for such breach. In the event the bidder whose proposal was accepted fails or refuses to execute the Contract, the Owner may, at its option, determine that the bidder has abandoned the Contract, and thereupon his proposal and acceptance thereof shall be null and void, and the Owner is entitled to damages in the amount of the check or bid bond submitted with the proposal.

#### **11. CERTIFIED CHECK OR BID BOND**

All proposals shall be accompanied by a certified or cashier's check or bid bond payable to the order of the Calhoun Port Authority and enclosed in the same envelope with the proposal. The amount of the check or bid bond will be five percent (5%) of the greatest possible amount bid. All such certified checks or bid bonds will be returned to the respective bidders within Ten (10) Calendar Days after proposals are opened, except those which the Owner elects to hold until the successful bidder has executed the Contract. Thereafter, all remaining checks or bid bonds, including the one of the successful bidder, will be returned within Five (5) Calendar Days.

#### **12. CONDITIONS OF WORK**

It is the responsibility of each bidder to inform himself fully of (1) the conditions relating to construction and labor under which the work will be performed, (2) to have inspected the site and (3) to have read and to be thoroughly familiar with the Scope of Work, Drawings, and other Contract Documents. Failure to do so will not relieve a successful bidder of his obligation to furnish all equipment and labor necessary to carry out the provisions of the Contract Documents, and to complete the contemplated work for the considerations set forth in his bid. Any information shown in the Specifications or on the Drawings is to be considered approximate and does not relieve the bidder of the responsibility for its verification.

All work within the regulated area will be accomplished within a Maritime Transportation Securities Act (MTSA) - regulated facility in accordance with 33CFR, Chapter I, Subchapter H, Part 105. All workers working on will be required to hold valid Transportation Worker Identification Credentials (TWIC) or be escorted at a maximum ratio of 5:1.

#### **13. APPLICABLE CODES AND REGULATIONS**

It shall be the responsibility of each bidder to comply with any and all applicable local, state, and federal ordinances, laws, codes, and regulations. Any violation, omission, or question of compliance shall be brought to the attention of the Owner, and correction will be made by addenda to the Bid Documents. After Award of Contract, the Contractor will be responsible for full compliance, and shall bear the cost of any additional work not shown on the Scope of Work or Specifications that may be required by authorities having jurisdiction.

**14. FUNDS**

The Owner has available sufficient funds to pay the Contractor in cash in accordance with the provisions of the Contract.

**15. TIME FOR BEGINNING AND COMPLETING THE WORK**

The Contractor shall commence the work no later than 15 calendar days after the date of the written Notice to Proceed and shall work diligently to complete the work within **210 days**.

**16. PERFORMANCE AND PAYMENT BONDS**

The Successful Bidder will be required to furnish a Performance Bond and Payment Bond, both in the full amount of the Contract sum issued by a surety company duly authorized to conduct business in the State of Texas according to the latest list of companies holding certificates of authority from the State Board of Insurance. The proper form of bonds is included herein.

**17. LIMITED SALES, EXCISE AND USE TAX**

The Contractor's attention is directed to Paragraph No. 3 of Ruling No. 9, Repairmen and Contractors (as Amended) issued by the Comptroller of Public Accounts. Reference: Article 20.01 (T), Limited Sales, Excise and Use Tax.

The Owner requires that no state sales tax be paid on any materials incorporated into the completed work on this project. All bidders and their respective subcontractors must comply with Paragraph No. 3 of Ruling No. 9, by obtaining the necessary permit or permits from the State Comptroller allowing the purchase of materials for incorporation into this project without having to pay the Limited Sales, Excise and Use Tax at the time of the purchase. The Owner will furnish such Contractor with an Exemption Certificate for the materials incorporated in the project.

**End of Instructions to Bidders**

# **BID PROPOSAL**

## Bid Proposal

The bidder shall fill in all blanks with the required information and acknowledge receipt of all addenda in the indicated place.

TO: Luis De La Garza, Chairman  
Calhoun Port Authority  
2313 F.M. 1593 South  
P.O. Box 397  
Point Comfort, Texas 77978

The undersigned, as Bidder, declares that the only person or parties interested in this Proposal, as principals, are those named herein; that this Proposal is made without collusion with any other person, firm, or corporation; that I/We have examined the Notice to Bidders, Instructions to Bidders, Agreement between Owner and Contractor, Addenda (if any), the Specifications, and the Drawings; that I/We have examined all of the conditions pertaining to the proposed Work, and hereby offer to and will furnish all necessary materials, supplies, equipment, appliances, tools, labor, supervision, insurance, and other accessories and services required by said documents for the following work:

### **“BEAN TRACT WETLANDS CREATION PROJECT”**

I/We, the undersigned, propose to complete the Work as described in the Contract Documents and Specifications, for the prices listed herein which bear our signature for identification.

I/We, the undersigned, agree to enter into the Agreement between Owner and Contractor with the Calhoun Port Authority of Calhoun County, Texas for furnishing all required supplies/services for the prices listed herein which bear our signature for identification.

I/We agree to start prosecuting the Work within 15 calendar days of the issuance of a Notice to Proceed and complete the Work described in this Project within Sixty (60) Calendar Days thereafter.

The Work described in this Project will be commenced at a date no later than **15** calendar days after the date of the written Notice to Proceed, and will be pursued with all reasonable diligence (excepting acts of God, civil disturbance, or other situations agreed to by the Owner as being beyond the responsibility of the Contractor) and to be deemed by the Owner as Substantially Complete within, **210 calendar days** of the date of the written Notice to or as directed and ordered by the Owner.

I/We agree that time is of the essence and that for each day of delay beyond the number of days specified for Substantial Completion of the Work, after due allowances for extensions of time as may be provided, the Owner may withhold permanently from the Contractor's total compensation the sum of **\$500.00 per calendar day** as stipulated Liquidated Damages.

The Calhoun Port Authority is exempt from the payment of Texas State sales tax. The undersigned agrees that the prices proposed do not include such Texas State sales tax.

I/We shall comply with all applicable local, State, and Federal laws, codes, ordinances, and regulations.

I/We will obtain all necessary operating permits and licenses, except those permits as may already be obtained by the Calhoun Port Authority if enumerated herein.

The total amount of this Proposal includes all costs, insurance, commissions, overhead, permits, licenses, and payments required and necessary to complete the Work as specified.



I/We acknowledge receipt of the addenda listed below and the total amount of this Proposal has been adjusted accordingly.

ADDENDA RECEIVED DATE

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

Enclosed herewith is a Cashier's Check, Certified Check, or Bidder's Bond in the sum of \$ \_\_\_\_\_, which represents five percent (5%) of the greatest total amount of this Proposal.

I/We propose to utilize the following subcontractors to augment our forces for this Project:

_____	_____
_____	_____
_____	_____
_____	_____

If I/We are notified of the acceptance of this proposal, I/We will furnish Performance and Payment Bonds in accordance with approved forms, to be paid by me/us for the proper completion of the Work as specified and, in the time, allotted, the said bonds to be issued for one hundred percent (100%) of the amount of the total contract sum. Said bonds shall conform to the laws of the State of Texas.

It is agreed that, in the event the undersigned fails to enter into a Contract and furnish such bonds within the time and the manner required, the Bidder will pay to the Calhoun Port Authority of Calhoun County, Texas as liquidated damages for failure to enter into formal written Contract, and to perform the Work as proposed and accepted, an amount equal to five percent (5%) of the Proposal made by the Undersigned and duly accepted by the Calhoun Port Authority.

It is further agreed that if the Bidder's Bond or Certified or Cashier's Check deposited for Bid Security is in an amount greater than five percent (5%) of such Proposal made and accepted, that such fact shall not operate to prevent the Calhoun Port Authority from appropriating and holding from the proceeds of such Bond or Certified Cashier's Check, the same certain determinable amount as liquidated damages, refunding the rest.

I/We agree that a period of 60 calendar days from the date of the opening of Proposals is a reasonable time for inspection, analysis, and consideration of this Proposal by the Calhoun Port Authority, and this Proposal cannot, and will not, be withdrawn by me/us prior to 60 calendar days after the opening of Proposals, and that the Calhoun Port Authority may accept this Proposal at any time prior to 60 calendar days after the opening of Proposals.

I/We agree and understand that the Calhoun Port Authority reserves the right to accept or reject any or all Proposals, as stated in the Instructions to Bidders.

In submitting this Proposal, I/We do so with the understanding that all Contract Documents, Drawings, Specifications, and Addenda are completely understood, and that there is no doubt as to the intent and the scope of the Work to be accomplished.

I/We propose to perform all the Work in accordance with the requirements of the Contract Documents and Specifications for the following Unit Prices. The Unit Bid Price will include all costs for labor, material, equipment, supplies, appliances, insurance, overhead, profit and services require indicated in the Scope of Work for a **Not-to-Exceed** price.

Bid Item No.	Bid Item Description	Quantity	Units	Unit Bid Price	Max Amount
1	Mobilization/Demobilization	1	Lump Sum	\$	\$
2	Construction of 2,500-ft Road at Tank area	2500	LF	\$	\$
3	Material Transport (DMSA to Bean Tract)	60,000	CY	\$	\$
4	Wetlands Location Construction	14	AC	\$	\$
			Total	\$	\$

TOTAL BID: \_\_\_\_\_ Dollars  
(words)

Signed:

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

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

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

\_\_\_\_\_  
(Company Address)

\_\_\_\_\_  
(Company Phone Number)

\_\_\_\_\_  
(Printed/Typed Name)

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

(Seal if bidder is a corporation)

**BIDDER'S STATEMENT OF  
QUALIFICATIONS**

## Bidder's Statement of Qualifications

The Undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter. All items are to be completely filled in as requested. If additional space is required, attach separate sheets.

SUBMITTED TO: Calhoun Port Authority  
2313 FM 1593 South  
Point Comfort, TX 77978

PROJECT: Bean Tract Wetlands Creation Project

SUBMITTED BY:

NAME:

ADDRESS:

PRINCIPAL OFFICE:

CHECK ONE:

Corporation	<input type="checkbox"/>	Joint Venture	<input type="checkbox"/>
Partnership	<input type="checkbox"/>	Other (_____)	<input type="checkbox"/>
Individual	<input type="checkbox"/>		

1. How many years has your organization been in business under its present business name?
2. How many years has your organization been in business under a prior business name?
3. If a corporation, answer the following:
  - a. Date of incorporation:
  - b. State of incorporation:
  - c. President's name:
  - d. Vice President's name:
  - e. Secretary's or Clerk's name:
  - f. Treasurer's name:
4. If individual or partnership, answer the following:
  - a. Date of organization:
  - b. Name and address of all partners: (State whether general or limited partnership).

5. Have you ever failed to complete any work awarded to you?  
(If so, note when, where and why).
  
6. Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a construction contract? (If so, state circumstances.)
  
7. Are there any judgments, claims or suits pending or outstanding against your company? (If yes, please attach details)
  
8. Have you received any regulatory (EPA, OSHA, etc.) civil or criminal citations in the last three years?  
(If so, provide details)
  
9. Are you now or have you ever been involved in any bankruptcy or reorganization proceedings? (If yes, please attach details)
  
10. Worker's Compensation Experience Modification Rate (EMR) for last three (3) years:  
  
    2019:  
  
    2020:  
  
    2021:
  
11. List name of project, owner, engineer, contract amount, date of completion of the major projects of a similar nature to this project that your organization has completed in the past five (5) years. Indicate all projects on which your organization acted as prime contractor. Include name and telephone number of owner's representative to contact on each project for further information.
  
  
12. List the construction experience of the principal individuals of your organization:
  
  
13. Proposed construction superintendent:
  - a. Name:
  
  - b. General construction experience (attach resume):

c. Experience in similar types of projects:

14. List all Major Subcontractors/Suppliers (individually, 20% or greater of the Bid Amount) the bid is based on:

15. List states and categories in which your organization is legally qualified to do business:

16. Professional References: (List names, addresses, and telephone numbers)

17. Bank References: (Include names, addresses, and telephone numbers of officers familiar with your company).

18. Name of Bonding Company: (Include name, address, and telephone number of agent).

19. Provide a work plan narrative describing how the scope of work objectives will be met. Include a statement confirming that the work will be in compliance with the scope of work and with no deviations to the technical specifications.

The Calhoun Port Authority reserves the right to request a Certified Statement of Financial Condition, including Contractor's latest regular dated financial statement or balance sheet which must contain current assets including cash, joint venture accounts, accounts receivable, notes receivable, accrued interest on notes, deposits, materials, prepaid expenses, net fixed assets, and other assets, and current liabilities including accounts payable, notes payable, accrued interest on notes, provision for income taxes, advances received from owners, accrued salaries, accrued payroll taxes, other liabilities and capital (capital stock, authorized and outstanding shares per values and earned surplus). Date of statement must be within 12 months of current date.

Dated at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Name of Organization: \_\_\_\_\_

By: \_\_\_\_\_

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

\_\_\_\_\_ being duly sworn, deposes and says that he/she is the \_\_\_\_\_ of \_\_\_\_\_ Contractor(s), and that answers to the foregoing questions and all statements therein contained are true and correct.

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

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

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

# **NOTICE**



## **Notice**

The following documents are provided to familiarize the Bidder with the terms the Bidder will need to comply with should he/she be awarded the contract and are NOT to be included in the Bid Submittal Package:

- Agreement Between Owner and Contractor
- Performance Bond
- Payment Bond
- Contractor's Partial Affidavit and Waiver of Liens
- Subcontractor's Partial Affidavit and Waiver of Liens
- Contractor's Final Affidavit and Waiver of Liens
- Subcontractor's Final Affidavit and Waiver of Liens
- Contractor's Guarantee

# **AGREEMENT**

## Agreement Between Owner and Contractor

THE STATE OF TEXAS     §  
  §  
COUNTY OF CALHOUN    §

**THIS AGREEMENT** is dated as of the \_\_\_\_ day of \_\_\_\_\_, in the year 2022, by and between the **CALHOUN PORT AUTHORITY OF CALHOUN COUNTY, TEXAS** (hereinafter called **OWNER**), and \_\_\_\_\_ (hereinafter called **CONTRACTOR**).

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

### **Article 1 - WORK:**

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

#### “BEAN TRACT WETLANDS CREATION PROJECT”

### **Article 2 - ENGINEER:**

The Project has been designed by Lloyd Engineering, Inc. and who is to act as **OWNER'S** Representative, assume all duties and responsibilities and have the rights and authority assigned to **ENGINEER** in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### **Article 3 - CONTRACT TIME:**

The **CONTRACTOR** shall commence the work within **15 calendar days** of the date of the “Notice to Proceed” and shall be pursued with all reasonable diligence (excepting acts of God, civil disturbances, or other situations agreed to by the **OWNER** as being beyond the responsibility of the **CONTRACTOR**) and be deemed by the **OWNER** as Substantially Complete within **210 Calendar Days** of the date of the written Notice to Proceed or as directed and ordered by the **OWNER**.

### **Article 4 - CONTRACT PRICE:**

**OWNER** shall pay **CONTRACTOR** for completion of the Work in accordance with the attached Bid Proposal and Contract Documents in current funds as follows:

---

(Words)

---

(Figures)

## **Article 5 - PAYMENT PROCEDURES:**

**CONTRACTOR** shall submit Applications for Payment to the **ENGINEER** in accordance with Article 14 of the General Conditions. Retainage in the amount of **10%** of all Work Completed and Stored Materials will be withheld until Final Payment.

## **Article 6 - INTEREST:**

Except for Retainage, all moneys not paid when due as provided in Article 14 of the General Conditions, assuming prompt submittals by the **CONTRACTOR**, shall bear interest at the place of the Project for passbook savings.

## **Article 7 - CONTRACTOR'S REPRESENTATIVES:**

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

- 7.1 CONTRACTOR** has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 7.2 CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**.

## **Article 8 - CONTRACT DOCUMENTS:**

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

- 8.1 Invitation to Bidders**
- 8.2 Instructions to Bidders**
- 8.3 Bid Proposal**
- 8.4 Bidder's Statement of Qualifications**
- 8.5 Agreement Between Owner and Contractor**
- 8.6 Performance and Payment Bonds**
- 8.7 Certificate(s) of Insurance**
- 8.8 General Conditions of the Construction Contract**
- 8.9 Technical Specifications and Drawings**
- 8.11 Addenda**
- 8.12 Notice of Award**

**8.13** The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.4 of the General Conditions.

There are no Contract Documents other than those listed above in Article 8. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.4 of the General Conditions.

## **Article 9 - MISCELLANEOUS**

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

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

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

**IN WITNESS WHEREOF, OWNER and CONTRACTOR** have signed this Agreement in triplicate. Two (2) counterpart each has been delivered to **OWNER** and one has been delivered to the **CONTRACTOR**. All portions of the Contract Documents have been signed or identified by **OWNER** and **CONTRACTOR**.

The Effective Date of this Agreement will be \_\_\_\_\_, 2022.

**OWNER: CALHOUN PORT AUTHORITY OF CALHOUN COUNTY, TEXAS**

By: \_\_\_\_\_  
Luis De La Garza, Chairman

Attest: \_\_\_\_\_  
Johnny J. Perez, Secretary

Address for giving notices:

2313 FM 1593 South  
P. O. Box 397  
Point Comfort, Texas 77978

**CONTRACTOR:** \_\_\_\_\_

By: \_\_\_\_\_

Attest \_\_\_\_\_ (CORPORATE SEAL)

Address for giving notices:

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

License No. \_\_\_\_\_

Agent for service of process: \_\_\_\_\_  
(If **CONTRACTOR** is a corporation, attach evidence of Authority to sign.)

# **PERFORMANCE BOND**

# Performance Bond

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**CONTRACTOR** (Name and Address):

**SURETY** (Name and Address of Principal Place of Business):

**OWNER** (Name and Address):

## **CONTRACT**

Date:

Amount:

Description (Name and Location):

## **BOND**

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

### **CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

### **SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

### **CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

### **SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.



1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR, and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract;

3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefore to the OWNER; or

4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefore.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied

liability, in whole or in part without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. If the Surety or this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delay performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was performed any provision in Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

# **PAYMENT BOND**

# Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR** (Name and Address):

**SURETY** (Name and Address of Principal Place  
of Business):

**OWNER** (Name and Address):

**CONTRACT**

Date:

Amount:

Description (Name and Location):

**BOND**

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative.

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants and

2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the CONTRACTOR:

1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3. or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

**CONTRACTOR'S PARTIAL  
AFFIDAVIT AND WAIVER OF LIENS**



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

\_\_\_\_\_  
(CONTRACTOR'S NAME)

Signed By: \_\_\_\_\_

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

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

SWORN AND SUBSCRIBED by \_\_\_\_\_ of

\_\_\_\_\_, before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, to certify which  
witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

(seal)

**SUBCONTRACTOR'S PARTIAL  
AFFIDAVIT AND WAIVER OF LIENS**





EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
(SUBCONTRACTOR)

Signed By: \_\_\_\_\_

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

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

SWORN TO AND SUBSCRIBED by \_\_\_\_\_ of

\_\_\_\_\_, before me this \_\_\_\_ day of \_\_\_\_\_, 2022, to certify  
which witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

(seal)

**CONTRACTOR'S FINAL AFFIDAVIT  
AND WAIVER OF LIENS**



EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
(CONTRACTOR)

Signed By: \_\_\_\_\_

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

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

SWORN AND SUBSCRIBED by \_\_\_\_\_ of  
\_\_\_\_\_, before me this \_\_\_\_ day of \_\_\_\_\_, 2022, to certify which  
witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

(seal)

**SUBCONTRACTOR'S FINAL  
AFFIDAVIT AND WAIVER OF LIENS**



EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
(Subcontractor)

Signed By: \_\_\_\_\_

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

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

SWORN TO AND SUBSCRIBED by \_\_\_\_\_,  
\_\_\_\_\_ Of \_\_\_\_\_, before me this \_\_\_\_ day of  
\_\_\_\_\_, 2022 to certify which witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS  
(seal)



# **GENERAL PROVISIONS**

## General Provisions

1. **Definitions.** As used in these General Provisions, the following terms (in addition to the terms defined elsewhere herein or in the Agreement, Memorandum of Understanding, Letter of Intent, Lease, any related transaction documents, and any other undertaking of the Calhoun Port Authority (“Port” or “CPA” or “Owner” or “Customer” or “Client”) to which these General Provisions apply either as an attachment or by incorporated reference (any such instrument along with these General Provisions referred to collectively herein as the “Agreement”)), and whether the singular or plural thereof, shall have the following meanings when used herein or in the Agreement with initial capital letters:

**“Business Day”** means any day except Saturday, Sunday, and any other day that the Port is ordinarily or specially closed for administrative business. Provided, that if notice is given, an event occurs, or an action is taken after 5:00 p.m. local time of the Port, the notice shall be deemed to have been given or the event to have occurred or action to have been taken as of 9:00 a.m. local time of the Port of the next-following Business Day.

**“Force Majeure Events”** shall mean:

- (a) acts of God;
- (b) fires, explosions, floods, earthquakes, landslides, hurricanes, tornadoes, blizzards, lightning, and other adverse and inclement weather events that are designated as state or federal emergencies and such designated area includes the site of the property or activity that is the subject of the Agreement;
- (c) acts of a public enemy, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest;
- (d) orders or judgments of any federal, state or local court, administrative agency or governmental body that have not been suspended, superseded or stayed;
- (e) shortage of adequate power or transportation facilities affecting the implementation or purposes of the Agreement that persist for at least twenty-four (24) hours due to no fault of the party claiming the benefit of Force Majeure;
- (f) embargoes, or blockades in effect on or after the effective date of the Agreement;
- (g) national or regional emergency, including but not limited to health or medical pandemics, epidemics or pervasive closings of activities within and including a 100-mile radius of the Port’s administrative offices; and
- (h) other similar events or circumstances constituting an interruption of navigation or other disruption of normal business conditions that is beyond the reasonable control of the impacted Party and which materially impacts the performance of the Agreement within the scope of reasonable commercial circumstances.

Provided, however, the foregoing circumstances will only be deemed Force Majeure Events to the extent such event or act: (a) delays or renders impossible or commercially impracticable the impacted Party’s performance; (b) is beyond the

reasonable control of the impacted Party; and (c) was not due to its own fault or negligence. Strikes, changes in market or economic conditions, economic hardship, late delivery, failure of equipment, lockouts or differences with workers which are limited to a Party's or a Party's affiliates' employees, general climatic conditions (including rain, snow, wind, temperature and other seasonal weather conditions), and inability of either Party to secure funds, shall not be regarded as Force Majeure without the express written consent of the Party not claiming the effects of a Force Majeure event.

**"Party"** or **"Parties"** mean the Port and/or any other entity or individual which or who is a party to the Agreement.

**"Port"** means the Calhoun Port Authority, a local body politic and governmental subdivision created under the constitution and laws of the State of Texas, and its successors and authorized assigns.

2. **Governing Law.** This Agreement and all related documents including all exhibits attached thereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute shall exclusively be governed by, and construed in accordance with, the laws of the State of Texas without regard to choice of law or conflict of law provisions thereof that would require or permit the application of the laws of any jurisdiction other than those of the State of Texas, and where mandatory and applicable, federal law.

3. **Venue.** Venue for any action brought hereunder shall lie exclusively in the State District Courts of Calhoun County, Texas. To the extent, but only to the extent, that jurisdiction properly lies in a federal district court in Texas, venue of any such proceeding shall lie exclusively in the United States District Court in and for the Southern District of Texas, Victoria Division.

4. **Submission to Venue and Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby must be instituted and conducted exclusively in a Texas state district court within Calhoun County, Texas, or a federal court of proper Venue and having subject matter jurisdiction notwithstanding the Eleventh Amendment to the United States Constitution and other Governing Law. Each Party irrevocably consents to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and irrevocably and unconditionally waives to the fullest extent permitted by applicable law, any claim or any objection it may now or hereafter have or claim to have, that venue or personal jurisdiction is not proper for any such suit, action, or proceeding in such courts and irrevocably waives and agrees not to plead or claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Each Party further consents to the service of process, summons, notice, or other document out of any of the aforementioned courts in any such action, or proceeding by one or more of the methods of giving notice under the Agreement or by such other notice, service, summons or citation given in accordance with the rules and procedures of such courts.

5. **Sovereign or Governmental Immunity.** The Parties acknowledge and agree that nothing in this Agreement will ever be construed as a waiver, release or abandonment by the Port of any rights or defenses of sovereign immunity, governmental immunity, or similar special or affirmative defense, which it may have had, now has or will have with respect to all matters arising out of this Agreement except to the limited extent of an action for breach of contract seeking recovery of actual damages, only, and then only such actual damages directly arising out of and caused by the Port in connection with this Agreement, and in no event shall the Port ever be liable to any

other Party or to any non-Party for consequential, incidental, indirect, punitive, exemplary or nominal damages.

6. **Entire Agreement.** This Agreement, together with any other documents incorporated herein or in the Agreement by reference and all related exhibits and schedules, constitute the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and entirely supersede all prior and contemporaneous understandings, agreements, representations, and warranties, if any, both written and oral, with respect to subject matter not contained in this Agreement. In the event of any irreconcilable inconsistency between the statements in the body of this Agreement, any other documents incorporated herein by reference, and the related exhibits and schedules, the statements in the body of this Agreement shall control to the extent of such inconsistency.

7. **Amendment and Modification.** This Agreement may be amended, modified, waived, terminated or supplemented exclusively by an agreement in writing executed and duly delivered by an authorized representative of each Party hereto, except as may otherwise be expressly provided in this Agreement.

8. **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any proper jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement. Upon determination that any term or other provision is invalid, illegal, or unenforceable, this Agreement will be deemed to be amended to delete the invalid, illegal, or unenforceable provision or portion thereof. If any provision is deleted or amended, the remaining provisions shall remain in full force and effect to the fullest extent possible by application of generally applicable provisions of the interpretation, effect, and enforcement of contracts under Governing Law. If necessary, the Parties shall negotiate in good faith to modify this Agreement so as to give effect to the original intent of the Parties as closely as possible in a mutually acceptable manner so that the terms of this Agreement may be accomplished as originally contemplated to the greatest extent possible.

9. **Waivers.** No waiver or purported waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and executed and delivered by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No mere failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

10. **Further Assurances.** Each of the Parties hereto agrees to execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and to give effect to the transactions or undertakings contemplated thereby.

11. **Counterparts and Delivery.** This Agreement may be executed and delivered in one fully executed instrument, or in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one Agreement. An executed copy of this Agreement delivered by facsimile, email, or other commercially reasonable means of electronic transmission, or as otherwise provided in Paragraph 18, shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement.

12. **Relationship of the Parties.** Nothing herein shall be construed to create a joint venture, business combination or general or limited partnership between the Parties hereto or an employee/employer or agency relationship. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any non-Party whether related to this Agreement or otherwise.

13. **Attorneys' Fees.** Should any Party institute any legal suit, action, or proceeding, including arbitration, against the other Party arising out of or relating to this Agreement, the prevailing Party in the suit, action, or proceeding, including any bankruptcy, insolvency or appellate proceedings, shall be entitled to receive, in addition to all other damages or other relief to which it may be entitled, the costs reasonably incurred by such Party in conducting the suit, action, or proceeding, including but not limited to reasonable attorneys' fees, expenses not taxable as court costs including expert witness fees and costs, prejudgment and post judgment interest, and taxable court costs.

14. **Interpretation.** For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive and is deemed to be "and/or"; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof or of this Agreement; and (z) to a statute, agency rule or regulation means such statute, rule or regulation as amended from time to time and includes any successor legislation, rule or regulation thereto. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted, modified during the course of being finalized, or assisting in the circulation, execution and delivery of the final document. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement and incorporated herein by reference to the same extent as if they were set forth verbatim herein.

15. **Time is of the Essence.** Time shall be of the essence in this Agreement and in the Parties' respective performance of obligations under this Agreement.

16. **Headings.** The headings used in this Agreement are for reference only and do not affect the meaning or interpretation of this Agreement.

17. **Survival.** All applicable provisions of these General Provisions shall survive the expiration or termination of this Agreement.

18. **Notice.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder to the Port with respect to this Agreement (but not including administrative communications regarding performing this Agreement) (each, a "Notice") must be in writing and shall be deemed given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email (with confirmation of transmission and receipt) if sent during normal administrative business hours of the recipient, and on the next Business Day if received after normal administrative business hours of the recipient; or (d) on the

third Business Day after the date mailed, by certified or registered mail (in each case, return receipt requested, first-class postage pre-paid). Notices must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a Notice given in accordance with this **Section**):

To Port at: Calhoun Port Authority  
P. O. Box 397  
Point Comfort, Texas 77978

or

2313 FM 1593 South  
Port Comfort, Texas 77978

Attention: Port Director  
Phone: 361.987.2813  
Email: crh@calhounport.com  
Facsimile: 361.987.2189

With copy to: Moore Landrey, LLP  
Mailing Address: 527 21<sup>st</sup> Street, No. 27  
Galveston, Texas 77550  
Attn: Alan Sanders  
Phone: 409.882.1706  
Email: PASLaw@MooreLandrey.com

Any Party other than the Port shall give Notice to the Port of its information regarding receipt of Notice, by separate Notice to the Port if not otherwise contained in the other component instruments constituting this Agreement.

A Party may change its address of service by giving not less than five Business Days written notice thereof to the other Party.

# **GENERAL CONDITIONS**

# General Conditions

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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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#### 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer and Owner which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer and Owner, which is signed by Contractor, Engineer and Owner and authorizes an addition, deletion, or revision in the Work or an

adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief sought by Contractor with respect to the terms of the Contract. A demand for money or services by a third party not demanded by Owner for damages for breach of the Contract Documents by Contractor is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*—Felicia F. Harral, P.E. an employee of Owner. Also referred to as the Owner's Representative.

20. *Field Order*--A written order issued by Engineer and approved by Owner which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations*; Laws or Regulations--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*—The Calhoun Port Authority of Calhoun County, Texas (formerly known as the Calhoun County Navigation District); the individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative* -- Not used.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

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

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner, which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer and Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*—Not Used.

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*—  
All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to

be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but a Work Change Directive may be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

### B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. *Day*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

### D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, or test referred to in the Contract Documents.

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases, which have a well-known technical or construction industry or trade meaning, are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 - PRELIMINARY MATTERS

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

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified herein, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *Copies of Documents*

A. Owner shall furnish to Contractor one (1) set of signed, original Contract Documents marked “Contract Documents” and up to three (3) sets of Contract Documents marked “Issued for Construction”. Additional copies will be furnished upon request at the cost of reproduction.

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

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

### 2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run. Should Contractor wish to start the Work prior to the date on which the Contract Times commence to run, Contractor shall submit a written request to the Owner explaining the reason(s) for this request. Owner, in consultation with Engineer, will review the request and respond in writing to Contractor either accepting or rejecting the request.

1. If there is any error, omission or inconsistency in the Contract Documents, unless otherwise directed in writing by Engineer or Owner, Contractor shall provide the better quality of, the greatest quantity of, work or materials, so that Owner receives a complete project, ready for occupancy, with all governmental and regulatory approvals.

2. Owner shall not be responsible for furnishing surveys or other information as to the physical characteristics of, legal limitations of the project site.

3. At Owner’s request, Contractor shall make available to Owner the results of any site investigations, test borings, analyses, studies or other tests conducted by or in possession of Contractor or any of its agents.

4. Contractor represents that it is familiar with the project site and has received all information it needs concerning the conditions of the project site. Contractor represents that it has inspected the location of the Work and conditions of improvements existing at the site, and has satisfied itself as to the condition thereof,

including, without limitation, all structural, surface and subsurface conditions.

## 2.05 *Before Starting Construction*

A. *Contractor's Review of Contract Documents:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Owner and Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer and Owner before proceeding with any Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in other sections of the Contract Documents), Contractor shall submit to Engineer for timely review and approval:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals;

and

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

C. *Evidence of Insurance:* Before any Work at the site is started, Contractor shall deliver to Owner, with copies to each additional insured identified herein, certificates of insurance (and other evidence of insurance which Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with Article 5.

## 2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work

and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

## 2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until schedules enumerated in paragraph 2.05.b are approved by Owner and Engineer.

1. The Progress 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 Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Owner and Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Owner and Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

## ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

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### 3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer and approved by Owner prior to transmitting to Contractor.

### 3.02 Reference Standards

#### A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an

emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

#### B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

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

### 3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

### 3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:



1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

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### 4.01 *Availability of Lands*

A. Owner shall furnish the Site.

B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Bidding Documents identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Bidding Documents. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. Not Used.

3. is located below the surface of the ground and differs materially from those generally encountered in the general area in which the site is located or differs materially from conditions encountered in any subsurface investigation completed prior to the date of the Agreement; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Bidding Documents:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated* – Contractor represents that it has inspected the Site and has satisfied itself as to the condition thereof; including, without limitation, all structural, surface and subsurface conditions. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, except as specified below, Contractor shall have no claim for such Underground Facility encountered, and there shall be no adjustment in the Contract Price or Contract Times. Contractor shall, however, identify the owner of the Underground Facility and give written notice that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility. If Engineer concludes that a change is required, a Work Change Directive or Change Order will be issued to reflect and document such consequences. A change in Contract Price or Contract Time in the sole discretion of Owner and Engineer may be considered if Owner and Engineer agree that no one could have known of the existence of the underground facility with the exercise of reasonable care.

#### 4.05 *Reference Points*

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

#### 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Bidding Documents for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Bidding Documents. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Not Used.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to

resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. Not Used.

H. Contractor has inspected the site, and represents and warrants to Owner that, to the best of his knowledge and belief, there is no Hazardous Environmental Condition at the site. Contractor agrees that in the performance of the Work, Contractor will not introduce a Hazardous Environmental Condition to the site, and will be responsible for, and hereby to the fullest extent permitted by Law and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and officers, directors, partners, employees, site tenants, 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 other dispute resolution costs, and any cleanup or other costs) arising out of or relating to a Hazardous Environmental Condition. Contractor will not be liable for costs enumerated above that were existing at the site before the commencement of Work, unless Contractor shall disturb same and otherwise affect or increase the liability of Owner thereof.

## ARTICLE 5 - BONDS AND INSURANCE

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

A. If required, Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such

sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

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

### 5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner and Engineer, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified herein, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

### 5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

Type of Insurance Minimum Limits

General Liability

Per Person/Per Incident	\$1,000,000
Personal & Adv. Injury	\$1,000,000
General Aggregate	\$1,000,000
Excess Liability (combined bodily injury & property damages)	\$2,000,000

Automobile Liability (Any Auto)

Per Person/Per Incident	\$2,000,000
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Worker’s Compensation & Employers Liability

Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each person

Pollution Liability

Per Incident	\$5,000,000
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Owner’s Protective Liability Insurance Policy:

Contractor shall obtain at his expense an Owner’s Protective Liability Policy naming the Calhoun Port Authority, Lloyd Engineering, Inc. and their employees, tenants and agents as insured with the following limits:

Bodily Injury	\$1,000,000 per person/per incident
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All Certificates of Insurance shall include the following statement:

“The Liability Insurance certified hereunder includes Contractor’s Assumed Liability Coverage for liability assumed by the Insured under written contracts between the Calhoun Port Authority and the Insured.”

Workmen’s Compensation:

Contractor shall not commence work under this contract until he has obtained all the Workmen’s Compensation insurance required under this paragraph. Each insurance carrier shall be licensed to operate in State of Texas and listed with the Texas State Board of Insurance.

B. Definitions:

1. *Certificate of Coverage* (‘certificate’)-

A copy of a certificate of insurance, a certificate of authority to self-issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a project, for the duration of the Project. Duration of the Project-includes the time from the beginning of the work on the project

until the Contractor’s/Subcontractor’s work on the project has been completed and accepted by the Owner.

2. *Persons Providing Services on the Project* (“Subcontractor”) - 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, which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivery of equipment or materials, or providing labor, transportation or other services related to the Project. “Services” does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

C. Requirements:

1. 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, Section 401.011 (44) for all employees of Contractor providing services on the project, for the duration of the project.

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

3. If the coverage period shown on Contractor’s current certificate of coverage ends during the duration of the project, Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

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

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

2. no later than seven (7) days after receipt by 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.

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

4. Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

5. Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

a. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any insurance coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.00 (44) for all of its employees providing services on the project, for the duration of the project.

b. Provide to Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project:

c. Provide Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate ends during the duration of the project.

d. Obtain from each other person with whom it contracts, and provide to 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 coverage, prior to the end of the coverage period, if the coverage period shown on the current

certificate of coverage ends during the duration of the project:

e. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter:

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

g. Contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.

6. By signing the Contract or providing or causing to be provided a certificate of coverage, Contractor is representing to Owner that all employees of 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 Commission's Division of Self Insurance Regulation. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

7. Contractor's failure to comply with any of these provisions is a breach of the contract by Contractor, which entitles Owner to declare the contract void if Contractor does not remedy the breach within 10 days after the receipt of the notice of breach of Owner."

E. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraph 5.04.A, include as additional insured (subject to any customary exclusion regarding professional liability, workmen's compensation and automobile liability) Owner and INEOS Nitrile, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability

provided for in Paragraph 5.04.A herein or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Bidding Documents to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

F. Contractor shall furnish Owner and Engineer, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance-Builder's Risk-NOT USED*

A. Unless otherwise provided, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be required by the Contract Documents, Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Bidding Documents, and the officers, directors, partners, employees, agents, consultants and subcontractors of

each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Bidding Documents;

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

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

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

6. include testing and startup; and

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

B. Contractor shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Contract Documents or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, Engineer, Engineer's Consultants, and any other individuals or entities identified in the Bidding Documents, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate

of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Bidding Documents. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

#### 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Bidding Documents to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in the Bidding Documents to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

#### 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest

may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers.

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

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

#### 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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



## ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

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### 6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent, satisfactory to Owner, thereto who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor. If Owner is dissatisfied for any reason with the resident superintendent, the Contractor will immediately replace that resident superintendent with one acceptable to Owner. Contractor is required to designate a contact with authority to make decisions to Owner with all applicable contact information, including a substitute therefore before it begins Work. Contractor shall also provide an adequate staff for the proper coordination and expediting of the Work. Owner reserves the right to require Contractor to dismiss from the Work such employee or employees as Owner may deem incompetent, careless, or insubordinate. Contractor shall also be required to provide Owner with a list of all personnel, including employees, subcontractors and subcontractor's employees. Contractor shall furnish to the Owner's representative daily construction reports indicating personnel and equipment on the project and the production results for previous day of work as well as any condition that have affected Contractor's work schedule.

### 6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the

Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer. Legal Holidays (Owner's holidays) are,

1. Good Friday
2. Memorial Day
3. Independence Day
4. Labor Day
5. Veteran's Day
6. Thanksgiving (2 days)
7. Christmas (2 days)
8. New Year's Day

### 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. Except for the purpose of affording protection against any emergency endangering health, life, limb or property, Contractor shall make no changes in the materials used or in the specified manner of constructing and/or installing the Work or supplying additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from Owner authorizing Contractor to proceed with change. No claim for an adjustment of the Contract Price will be valid unless so ordered in writing.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected,

used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 Substitutes and “Or-Equals”

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer and Owner for review under the circumstances described below.

1. “Or-Equal” Items: If in Owner’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Owner as an “or-equal” item, in which case review and approval of the proposed item may, in Owner’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Owner and Engineer determine that:

(i) it is at least equal in quality, durability, appearance, strength, and design characteristics;

(ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole;

(iii) the installed cost (labor, equipment and materials) will not result in a decrease in the unit cost of the item by more than 15% of the value of the item named in the Contract Documents, and;

b. Contractor certifies that, if approved and incorporated into the Work:

(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 Contract Documents.

#### 2. Substitute Items

a. If in Owner’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will not be considered a substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to recommend to Owner that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The procedure for review by Owner and Engineer will be as set forth in Paragraph 6.05.A.2.d, and as Engineer and Owner may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

(i) shall certify that the proposed substitute item will:

(a) perform adequately the functions and achieve the results called for by the general design,

(b) be similar in substance to that specified, and

(c) be suited to the same use as that specified;

(ii) will state:

(a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

(b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

(c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

(iii) will identify:

(a) all variations of the proposed substitute item from that specified, and

(b) available engineering, sales, maintenance, repair, and replacement services;

(iv) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

**B. *Substitute Construction Methods or Procedures:*** If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

**C. *Engineer's Evaluation:*** Engineer will be allowed ten (10) working days within which to evaluate each proposal or submittal made pursuant to Paragraphs

6.05.A and 6.05.B. Owner will be the sole judge of acceptability regarding quality, durability, appearance, strength, design characteristics and performance reliability. Engineer will receive concurrence from Owner in all instances regarding cost increases, credits, changes in the Contract Time or changes in the provisions of any other contract with Owner for work on the Project. No "or equal" or substitute will be ordered, installed or utilized until Engineer's and Owner's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer and Owner will advise Contractor in writing of any negative determination.

**D. *Special Guarantee:*** Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

**E. *Engineer's Cost Reimbursement:*** Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

**F. *Contractor's Expense:*** Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

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

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

**B.** If the Bidding Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Bidding Documents, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents)

of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work. Contractor shall submit a complete list of subcontractors to be utilized on the Project. This list shall be submitted in conjunction with the Proposal. Contractor may change subcontractors after Bid Submittal only as approved by Owner.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

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

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier, which specifically binds the

Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer,, and all other individuals or entities identified in the Bidding Documents to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. Paragraph 6.20.A shall govern indemnification obligations of Contractor.

#### 6.08 *Permits*

Contractor shall secure and pay for all construction permits and licenses required for the prosecution of the Work except those specifically indicated in the Specifications for the Project. Permits shall be required prior to construction within any areas indicated and Contractor shall comply with and satisfy all permit provisions. Contractor shall also comply with and satisfy all other ordinances and laws which relate to all other Work. Contractor shall apply for and pay fees for permits of temporary nature. Contractor is also responsible to verify that Owner has obtained all necessary permits or licenses required to perform the Work, even if Contractor is not responsible for obtaining or paying for the permit or license.

## 6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work that is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

## 6.10 *Taxes*

Owner is exempt from all Texas State Sales Tax. Owner will provide Contractor through Engineer with a Certificate of Texas Sales and Use Tax Exemption. Contractor will be responsible for all other taxes, required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

## 6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by

arbitration or other dispute resolution proceeding or at law.

3. Paragraph 6.20.a shall govern indemnification obligations of Contractor.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

## 6.12 *Record Documents*

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

## 6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

E. Contractor shall comply with Item 155, Rule 34, Sub-rule 12 HARBOR & SAFETY REQUIREMENTS of the current version of the Owner's published Tariff.

F. Not Used.

G. ALL DAMAGES, INJURY, OR LOSS TO ANY PROPERTY REFERRED TO IN PARAGRAPH 6.13.A.2 OR 6.13.A.3 CAUSED, directly or indirectly, in whole or in part, by contractor, any subcontractor, supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the work, or any one for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of drawings or specifications or the acts or omissions of Owner or Engineer or Engineer's consultant, or anyone employed

by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of contractor or any subcontractor, supplier, or other individual or entity directly or indirectly employed by any of them).

#### 6.14 *Safety Representative*

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

#### 6.15 *Hazard Communication Programs*

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

#### 6.16 *Emergencies*

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

#### 6.17 *Shop Drawings and Samples*

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

##### 1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

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

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

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

#### C. Submittal Procedures

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

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

#### D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

#### E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

## 6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

## 6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees, in the form of Section 01700 – Contract Close-out Requirements, that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

## 6.20 *Indemnification*

A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ENGINEER, AND THE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK, OR THE FAILURE OF CONTRACTOR TO PERFORM ITS OBLIGATIONS OR UNDERTAKINGS AS STATED IN THE CONTRACT DOCUMENTS, OR THE INACCURACY OF ANY REPRESENTATION OR WARRANTY OF THE CONTRACTOR CONTAINED IN THE CONTRACT DOCUMENTS, PROVIDE THAT ANY SUCH CLAIM, COST, LOSS OR DAMAGE:

1. IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM; AND

2. IS CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY ANY NEGLIGENCE OR OMISSION OF AN INDIVIDUAL OR ENTITY INDEMNIFIED HEREUNDER OR WHETHER LIABILITY IS IMPOSED UPON SUCH INDEMNIFIED PARTY BY LAWS AND REGULATIONS REGARDLESS OF THE NEGLIGENCE OF ANY SUCH INDIVIDUAL OR ENTITY.

IT IS THE EXPRESSED INTENTION AND AGREEMENT OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY



AND PROTECT THE INDEMNITEES HEREIN FROM SUCH INDEMNITEES' OWN ACTUAL OR ALLEGED NEGLIGENCE OR OMISSIONS, WHERE SAID NEGLIGENCE OR OMISSION IS AN ALLEGED OR ACTUAL CONCURRING OR JOINT PROXIMATE CAUSE OF ANY HARM TO ANY CLAIMANT, WHETHER IN THE NATURE OF PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF USE, OR OTHERWISE.

OWNER AND CONTRACTOR ACKNOWLEDGE THAT THIS STATEMENT AND FOREGOING INDEMNIFICATION UNDER PARAGRAPH 6.20 COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND IS CONSPICUOUS AND HAS BEEN REVIEWED AND APPROVED BY EACH PARTIES OWN RESPECTIVE INDEPENDENT LEGAL COUNSEL. THE INDEMNIFICATION ARISING HEREIN SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CONTRACTOR'S INDEMNITY SHALL NOT BE CONSTRUED TO INCLUDE INDEMNITEES' GROSS NEGLIGENCE, WILLFUL OR KNOWING ACTS, SOLE NEGLIGENCE, DESIGN OR CHARACTER OF THE WORK ITSELF.

B. In any and all claims against Owner or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

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

## ARTICLE 7 - OTHER WORK AT THE SITE

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### 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site,

the following will be set forth herein or in the Bidding Documents:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Bidding Documents, Owner shall have sole authority and responsibility for such coordination.

### 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

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### 8.01 *Communications to Contractor*

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

### 8.02 *Replacement of Engineer – Not Used*

### 8.03 *Furnish Data*

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

### 8.04 *Pay When Due*

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

#### 8.05 *Lands and Easements; Reports and Tests*

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

#### 8.06 *Insurance*

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

#### 8.07 *Change Orders*

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

#### 8.08 *Inspections, Tests, and Approvals*

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

#### 8.09 *Limitations on Owner's Responsibilities*

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

#### 8.10 *Undisclosed Hazardous Environmental Condition*

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

#### 8.11 *Project Representative – Not Used.*

### ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

#### 9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsi-

bilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

#### 9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Owner and Engineer deem necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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

#### 9.03 *Project Representative – Not Used*

#### 9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 9.05 *Rejecting Defective Work*

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

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

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

#### 9.07 *Determinations for Unit Price Work*

A. Engineer, with the assistance of the Owner, 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 recommendation to Owner (by recommendation of an Application for Payment or otherwise). Upon acceptance by Owner, Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Contractor, subject to the provisions of Paragraph 10.05.

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. All of Engineer's decisions shall be subject to Owner's approval and Engineer will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer accepted by Owner with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by Contractor of such rights or remedies as it may otherwise have under the Contract Documents or by Laws or Regulation in respect of any such Claim, dispute or other matter.

C. Engineer's written decision on the issue referred will be final and binding on Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

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

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be

delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Engineer's Consultants and assistants, if any.

## ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

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### 10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

### 10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

### 10.03 *Execution of Change Orders*

A. Owner, Engineer and Contractor shall execute appropriate Change Orders on the prescribed form supplied by Owner (or Written Amendments):

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

### 10.04 *Notification to Surety*

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

### 10.05 *Claims and Disputes*

A. Notice: Written notice stating the general nature of each Claim, dispute or other matter shall be delivered by the Contractor to Engineer and the Owner promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute or other matter with supporting data shall be delivered to the Engineer and the Owner within 60 days after the start of such event (unless Owner allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01 B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02. B. Each Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.

B. *Engineer's Decision:* Engineer will render a formal decision in writing within 30 days after receipt of the last submittal of the Contractor or the last submittal of the Owner, if any. Engineer's written decision on such claim, dispute or other matter, will, if approved by Owner, be final and binding upon Contractor unless a written notice of intention to appeal from Engineer's written decision is delivered by Contractor to Owner and Engineer within 30 days after

the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by Owner and Contractor), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. *Engineer's Action:* Engineer will review each Claim and, within thirty (30) days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, recommend to Owner, in writing, to take one of the following actions:

1. deny the Claim in whole or in part,
2. approve the Claim, or
3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not make a recommendation on a Claim within said 30 days, the Claim shall be deemed denied.

E. All decisions made by Owner under Paragraph 10.05.C or Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Contractor.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

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### 11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall

include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

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 at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

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

5. Supplemental costs including the following:

- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

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

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

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

5. other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit

in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 11.02 Allowances

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

##### B. Cash Allowances

###### 1. Contractor agrees that:

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

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

##### C. Contingency Allowance

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

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

#### 11.03 Unit Price Work

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

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

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

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

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#### 12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for



overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
  - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
  - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
  - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
  - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
  - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays Beyond Contractor's Control*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God. In order to be considered as a lost "day of work", adverse weather days must prevent work for 50 percent (50%) or more of the Contractor's work day and delay work critical to the timely completion of the project. Owner will convert any delays meeting the above requirements to calendar days and issue a change order in accordance with the Contract Documents.

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

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

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### 13.01 *Notice of Defects*

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

### 13.02 *Access to Work*

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

### 13.03 *Tests and Inspections*

A. Owner's Representative will inspect and check all items of Work as it progresses to ensure compliance with the Contract Documents. Contractor shall at all times facilitate this inspection. It will be Contractor's responsibility to contact Owner's Representative directly prior to beginning any new phase of Work, so that he may be on hand to inspect materials, equipment, etc. prior to the start of such Work.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer or to requirements specifically expressed in the Contract Documents, it must, if requested by Engineer, Owner or governmental authority, be uncovered for their observation and replaced at Contractor's expense.

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

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 13.05 *Owner May Stop the Work*

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

### 13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, Owner or any governmental authority, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the

provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

### ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

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#### 14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

#### 14.02 *Progress Payments*

##### A. Applications for Payments

1. Application for payment for work completed by the last day of the preceding month shall be submitted by Contractor to Engineer within five (5) days of the last day of the preceding month. Partial payments for uncontested work completed by the last day of the preceding month, based upon the recommendation of Engineer, will be made by Owner within thirty (30) days of the date of receipt of Application for payment and the recommendation of Engineer.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's

legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### *B. Review of Applications*

1. Engineer will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

### C. *Payment Becomes Due*

1. Thirty (30) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

### D. *Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

e. Owner does not agree with Engineer's recommendation.

2. Notwithstanding anything to the contrary contained in the Contract Documents, Owner may withhold any payment to Contractor hereunder if and for so long as Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents or there is an amount in dispute under a Work Change Directive; provided however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of Owner to cure any such default or failure of performance by Contractor, multiplied by 150%. Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment pursuant to any provision of the Contract Documents if the Work for which payment is withheld shall have been rejected by any governmental authority, Engineer, Owner or Owner's lender, if any.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

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

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

### 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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

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

mentation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

#### 14.07 *Final Payment*

##### A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12 and Technical Specifications, Section 01700), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

##### B. Engineer's Review of Application and Acceptance

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required

by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment. Withholding of any amount due to Owner under Liquidated Damages, shall be deducted from the final payment due Contractor.

#### C. Payment Becomes Due

1. Thirty (30) days after the presentation to Owner of the Application for Payment and accompanying documentation, and the approval of the completeness of the Work by Owner, the amount recommended by Engineer, will become due and, when due, will be paid by Owner to Contractor. Notwithstanding the foregoing, Contractor acknowledges and agrees that final settlement shall not be had, nor shall final payment be due or made, until after the Agreement has been fully performed and the Work thereof accepted by Owner, Owner's lender, if any, and all applicable governmental authorities. These are conditions precedent to any obligation of Owner to make final payment.

#### 14.08 *Final Completion Delayed*

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

#### 14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

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#### 15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### 15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven (7) days written notice of its intent to terminate the services of Contractor:

1. Exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),



2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

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

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

#### 15.03 *Owner May Terminate for Convenience*

A. Upon seven (7) days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair

and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

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

A. If, through no act or fault of Contractor,

1. the Work is suspended for more than ninety (90) consecutive days by Owner or under an order of court or other public authority, or

2. Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted, or

3. Owner fails for thirty (30) days to pay Contractor any sum finally determined to be due, then,

4. Contractor may, upon seven (7) days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within thirty (30) days after it is submitted, or Owner has failed for thirty (30) days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to

Contractor's stopping the Work as permitted by this Paragraph.

## ARTICLE 16 - DISPUTE RESOLUTION

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### 16.01 *Methods and Procedures*

A. It is mutually understood and agreed that this Contract shall be considered as being performed in Calhoun County, Texas, and that it shall be governed by the laws of the State of Texas, both as to the interpretation and the performance. Any and all suits for any and every breach of this Contract shall be instituted and maintained in state district court in the County of Calhoun, State of Texas.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within sixty (60) days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding thirty (30) days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for herein, or
2. agrees with the other party to submit the Claim to another dispute resolution process, or
3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 - MISCELLANEOUS

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### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

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

### 17.02 *Computation of Times*

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

### 17.03 *Cumulative Remedies*

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

### 17.04 *Survival of Obligations*

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

### 17.05 *Controlling Law*

A. This Contract is to be governed by the law of the State of Texas.

### 17.06 *Headings*

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

### 17.07 *Labor*

A. Contractor certifies that it does not and will not employ any child to perform Work or provide Work for Owner who is under sixteen (16) years of age, or eighteen (18) years of age in the case of hazardous Work (hereinafter "Child Labor"). Contractor has used reasonable efforts to determine whether its suppliers use Child Labor and it certifies that its suppliers of goods and services do not and will not knowingly use Child Labor in any services or work performed for or on behalf of Owner.

B. Contractor certifies that the workers it uses, and will use, to produce and supply the Work are present voluntarily. Contractor certifies that it and its suppliers of goods and services do not and will not knowingly use forced labor.

C. Contractor understands that these Certifications and undertakings are essential to this Contract. Contractor agrees to indemnify Owner and hold Owner harmless with respect to any liability arising from the contravention of this Section by Contractor or any of its suppliers of goods or services. Contractor also agrees that, in the event that Owner determines that a violation of this section has occurred, Owner shall notify Contractor and Contractor shall immediately remedy the violation. In the event that Owner determines that Contractor has not remedied the violation, then Owner may terminate this contract immediately, and such termination shall be with cause.

#### 17.08 *Immigration Status*

Prior to assigning any personnel to Owner's Work on site or Owner's project, Contractor shall determine that such individual is either a U.S. citizen or otherwise legally authorized to work on such project and, as applicable, to do so in the United States. Contractor shall procure and maintain as required by law all necessary documentation, including, but not limited to, a Form I-9 for each person assigned to the Work under this contract and shall defend, indemnify and hold OWNER harmless from and against any all claims, costs, losses, fees, penalties, interest, liabilities or damages arising from Contractor's failure to comply with any and all applicable immigration laws and regulations.

#### 17.09 *Criminal Background Check*

A. To the fullest extent permitted by law, prior to assigning any personnel to perform any Work on Owner's site, Contractor shall have performed a criminal background check to determine whether such individual has been convicted of any felony or misdemeanor crime during the prior seven (7) year period, or has any known criminal convictions that occurred beyond the seven (7) year period. Contractor shall not, without Owner's prior written approval, permit Contractor's personnel to perform Work on Owner's site if that individual has been convicted of any felony or misdemeanor crimes.

B. Contractor's criminal background check program must be in compliance with the Fair Credit Reporting Act and Owner's Criminal Background Investigation Requirements, if any.

C. Contractor shall ensure that all investigations meet the minimum guidelines as set forth above. Contractor agrees that written documentation as proof of compliance with these guidelines will be

retained at Contractor's office and shall be available for inspection by Owner.

D. Contractor shall be responsible for compliance to these guidelines by all tier subcontractors. Contractor shall obtain confirmation in writing from all tier subcontractors that the guidelines have been satisfied. Contractor shall initiate, at the request of a tier subcontractor, the request for authorization to assign a subcontractor employee to Owner's Work that has been convicted of a felony or misdemeanor.

#### 17.10 *Substance Abuse*

A. Contractor shall advise its employees and the employees of its consultants and subcontractors and agents that:

1. it is the policy of Owner to prohibit use, possession, sale, manufacture, dispensing and distribution of alcohol, drugs or other controlled substances on the worksite, and to prohibit in the workplace the presence of an individual with such substance in their body for non-medical reasons;

2. entry onto the worksite constitutes consent to an inspection of the Contractor employee's person, vehicle, and personal effects when entering, while on, or upon leaving the worksite; and

3. any Contractor employee who is found in violation of the policy or who refuses to permit inspection may be removed or barred from the worksite.

B. Contractor also shall develop and implement procedures to test its employees for alcohol, drug and controlled substance use when Contractor suspects that a performance deviation, an incident, or unusual behavior of one of Contractor's employees on Owner's worksite is related to drug or controlled substance use.

C. In connection with these alcohol, drug and controlled substance testing requirements, Contractor shall secure the written consent of its employees to release results of such tests to Owner. Owner shall use such test results only in connection with its decision to permit Contractor's employee to enter or remain on Owner's premises, and to monitor contract compliance.

D. All requirements of this Section shall apply only to the extent permitted by the laws of the State of Texas.

#### 17.11 *Compliance with Owner's Policies and Procedures.*

All of Contractor's employees performing Work in any way under this Contract must comply with all

applicable Owner policies and procedures, including, but not limited to, all policies relating to drug and alcohol use, safety, security and workplace violence. In the event a Contractor employee violates a policy or procedure, Owner may demand that such individual be immediately removed and replaced by another qualified individual. All of Contractor's workers performing onsite work under this contract must comply with all requirements of the Maritime Transportation Security Act (MTSA) and the SAFE Port Act, including procurement and personal possession of Transportation Work Identification Credentials (TWIC), which serves as an identification card for all personnel requiring unescorted access to secure areas of MTSA regulated facilities.

#### 17.12 *Nondiscrimination*

Contractor shall comply with all applicable laws, rules, orders and regulations of relevant governmental authorities covering the production, sale and delivery of the goods or services specified in this Contract, including, but not limited to:

- \*Affirmative Action Compliance Program (41 CFR 60-1.40),
- \*Affirmative Action-Disabled Veterans and Veterans of the Vietnam Era (41 CFR-60-250.4),
- \*Affirmative Action-Handicapped Workers (41 CFR 60-741.4),
- \*Equal Opportunity (41 CFR 60-1.4),
- \*Employer Information Report SF-100, annual filing (41 CFR 60-1.7),
- \*Fair Labor Standards Act of 1938, as amended,
- \*Prohibition of Segregated Facilities (41 CFR 60-1.8), and
- \*Small Business Concerns, Small Disadvantaged Business Concerns, and Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7),

#### 17.13 *Conflicts of Interest*

Contractor acknowledges that Owner is a governmental authority and, as such, Owner is firmly committed to making any business decisions based solely on evaluation of offers that Owner believes will provide Owner the best value and greatest return. Basic business integrity dictates that Owner's business decisions be objective, be in the best interest of Owner, and be in no way connected to or influenced by any other relationship. Contractor, represents, warrants and certifies that (a) Contractor has not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or any other thing of value or benefit (including employment, contracts, or subcontracts relating to Contractor's business) to any Commissioner, official or employee of Owner, (b) no Commissioner, official or employee of Owner has (directly or indirectly) solicited any such payment or

contribution, and (c) Contractor does not have any Relationship (as the term is hereinafter defined) with any Commissioner, official or employee of Owner. For the purposes of this Agreement, a Relationship is defined as (1) a Commissioner, official, or employee of Owner or an affiliate of a Commissioner, official or employee of Owner owns ten percent (10%) of the ownership of Contractor or ownership in Contractor with a fair market value of \$5,000 or more; or (2) a Commissioner, official or employee of Owner or an affiliate of a Commissioner, official or employee of Owner has an employment or other business relationship with Contractor that results in taxable income or receipt of something of value by a Commissioner, official or employee of Owner or an affiliate of a Commissioner, official or employee of Owner receives one or more gifts from the Contractor that have a total value of more than \$250 in one 12-month period. An "affiliate" of a person is (1) a family member of the person, related within the first degree of consanguinity or affinity, as defined by Subchapter B, Chapter 573 of the Texas Government Code, or (2) an entity owned in whole or in part by the person or by a family member of the person related within the first degree by consanguinity or affinity. The representations, warranties and certifications made in this Paragraph 17.14 are ongoing and will remain in effect for the term of this Agreement. If any of the representations, warranties or certifications made by Contractor herein cease to be correct during the term of this Agreement, and in any event prior to making any payment or contribution to or forming a Relationship with a Commissioner, official or employee of Owner, Contractor will notify Owner by filing a written statement with the Secretary of the Port Commission through the office of the Port Director. Contractor will be in default under the terms of this Agreement if (i) any representations, warranties or certifications made herein are false or misleading in any material respect as of the effective date, (ii) Contractor fails to disclose any matter required to be disclosed hereunder, or (iii) Contractor makes a payment or contribution to a Commissioner, official or employee of Owner without first disclosing the nature of the payment to be made as provided herein.

#### 17.14 *Underutilized Businesses*

In performance of the Work, Owner requires Contractor to provide maximum practicable utilization of consultants, subcontractors and vendors among its sources of supply that are Minority Owned, Women Owned, Handicapped Owned, or Small Businesses. For purposes of this Article, Minorities include, but are not limited to, Black American, Hispanic Americans, Native Americans, Asian-Indian Americans, Asian-Pacific Americans, and Native Hawaiians. A business is Minority Owned, Women Owned, or Handicapped Owned if at least 51% is owned by Minorities, Women

or Handicapped, as the case may be, and has its management and daily business controlled by one or more such individuals. A Small Business is a business considered by a Small Business under applicable federal laws and regulations.

#### 17.15 *Force Majeure*

No liability shall result to either party from delay in performance or from nonperformance caused by circumstances beyond the control of the party who has delayed performance or not performed. Such circumstances may include, but are not limited to, flood or other act of God, war, terrorist act, governmental action or inaction or requirement of governmental authority, strike or lockout. The non-performing party shall be diligent in attempting to remove any such cause and shall promptly notify the other party in writing of its extent and probable duration shall give the other party such evidence as it reasonably can of such force majeure.

If the non-performing party, due to circumstances beyond its control, is unable to supply the total demand for the goods or services required by the Contract, then that non-performing party shall allocate its available supply among all purchasers in proportion to the amounts previously provided to those purchasers.

#### 17.16 *No Consequential Damages*

Notwithstanding anything herein to the contrary, in no event shall Owner incur any cost, loss or liability to Contractor under this Contract or otherwise whether based upon contract, strict liability, tort (including negligence), or warranty (either express or implied) for any indirect, incidental, consequential or special damages of any nature, including the loss of profits or business opportunity. Contractor's remedies with respect to the Work hereunder, whether based upon contract, strict liability, tort (including negligence), or other legal theory, shall be exclusively those expressly set forth in the Contract Documents.

#### 17.17 *Reservation of Rights*

Owner's waiver of any of its remedies afforded hereunder or by law is without prejudice and shall not operate to waive any other remedies which Owner shall have available to it, nor shall such waiver operate to waive or adversely affect Owner's rights to any remedies for a future breach, whether of a like or different character. Furthermore, any termination of this Contract by Owner shall not relieve or release Contractor from any rights, liabilities, or obligations which it has accrued under law or under the terms of the Contract Documents prior to the date of such termination.

#### 17.18 *Alternate Dispute Resolution*

A. Both parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise out of services performed under this Contract or from any dispute concerning the contract terms. Therefore, both parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both parties agree to develop and follow a process for presenting, rapidly assessing, and settling claims on a fair and equitable basis.

B. If any dispute or claim arising under this Contract cannot be readily resolved by the parties pursuant to the process referenced in section (A), the parties agree to refer the matter to a panel consisting of one (1) executive, from each party, not directly involved in the claim or dispute for review or resolution. A copy of the contract terms, any agreed upon facts (and areas of agreement and disagreement), and concise summary of the basis for each side's contentions may be provided to both executives who shall review the same, confer with each other, and attempt to reach a mutual resolution of the issue.

C. If the dispute cannot be resolved under the process set forth in sections (A) and (B), then the parties may elect to resolve the dispute through nonbinding mediation. If mediation is to be utilized, the parties shall select a single unrelated but qualified Mediator (architect or engineer) who shall hold a hearing (not to exceed one day in length) during which each party shall present its version of the facts (supported, if desired, by sworn, written testimony, and other relevant documents), its assessment of damages, and its arguments. The parties shall provide the mediator with copies of all documents provided to their senior executives under section (B) at least ten (10) days prior to the scheduled date of the mediation hearing. The parties may also provide the mediator with copies of any laws or regulations that they feel are relevant to the dispute. A copy of this Contract will be provided to the mediator. Formal written arguments, legal memoranda and live testimony are discouraged but may be permitted at the discretion of the mediator. Both parties agree to make any involved employees or documents available to the other party for its review and use in preparing its position under this Article without the need for subpoena or other court order.

D. The mediator, within fifteen (15) days of the completion of the hearing, will meet with both parties and provide each of them, on a confidential basis, with his written views of the strengths and weaknesses of their respective positions. The parties will then reconvene and, with the assistance of the mediator, attempt to resolve the matter. If the parties cannot achieve resolution within forty-eight (48) hours of this second meeting, the mediator, within fifteen (15) additional

days, will issue a written, non-binding decision on the issue, which shall include a brief statement explaining such decision.

E. If the matter has not been resolved, including the cost of the mediator, utilizing the processes set forth in this Article and the parties are unwilling to accept the non-binding decision of the mediator, either or both parties may elect to pursue resolution through litigation.

F. To the extent that the dispute is resolved in mediation, each party will bear its own costs of mediation. To the extent that mediation is unsuccessful and the parties litigate their dispute, the costs of the mediator shall be recoverable by the prevailing party (determined at subsequent litigation).

END OF GENERAL CONDITIONS

# **SCOPE OF WORK**

## **Scope of Work**

The Calhoun Port Authority (CPA) in accordance with United States Army Corps of Engineers Permit #SWG-2016-01066, is requesting proposals for the construction of a wetland mitigation site. The proposed site is on the Bean Tract in Lavaca Bay, Calhoun County, Texas.

The proposed mitigation area is approximately 14 acres in size, with one acre of circulation channels and 3 acres of levees.

The scope of work call for the removal of material 12 acres located from CPA disposal area at the Port. This material will be transported to the proposed site. At the site an access road will be constructed to facilitate the movement of material. Two temporary access roads will be constructed from the shoreline to the proposed mitigation area. The roads 70-ft in surface width, roads have been designed to avoid impacts to wetlands and other sensitive resources. These roads are to be removed upon completion of the construction and pre-construction contours restored.

Protection levees will be constructed with a minimum base of 45 feet wide and built up to an elevation of +10 ft NAVD 88 to accommodate equipment movement and material placement. Approximately 1,775 linear ft of articulated mat is to be installed to provide stabilization of the levee from wind and wave energy. The finished grade of the armored levee would be +5.0 ft NAVD 88. The finished grade of unarmored levee will be between +2.0 ft and +3.0 ft NAVD 88 to allow for tidal influence. Circulation channels will be lowered to -2.0 to -3.0 ft NAVD 88 with a 20-ft top width. All slopes to be a minimum of 3:1.

### **Attachments (see link [Bean Tract Wetlands Creation Scope of Work](#)) :**

- Proposed Levee - Bean Tract Mitigation Site, August 2022
- Geotechnical Subsurface Investigation and Recommendations for the Proposed Beneficial Use Mitigation
- Borrow Area Overview
- PHOTOS CPA Mitigation Borrow Area BEI Field Investigation 3-30-2022
- Survey of Belaire Environmental Bean Tract Mitigation Site, Lavaca Bay, Texas
- Depart of the Army Permit SWG-2016-01066