CITY OF DRIPPING SPRINGS, TX

DRIPPING SPRINGS
SOUTH REGIONAL WATER RECLAMATION FACILITY FINAL DESIGN UPDATE

CONTRACT DOCUMENTS

AGENCY REVIEW SUBMITTAL

DIVISION 00

OCTOBER 2026

DRAFT DOCUMENTS
These Draft Documents are released for the purpose of information exchange review and planning only under the authority of Laura Rodriguez, October 2026, Texas PE# 148436. They are not to be used for bidding, permit, or construction purposes.

TBPELS No. F-882

10900 STONELAKE BOULEVARD, BLDG. 2, SUITE 126 ▪ AUSTIN, TEXAS 78759 ▪ P 512-453-5383

pw://Carollo/Documents/TX/Dripping Springs/204551-100000/04 Design/04 Specs/Carollo/00002

CITY OF DRIPPING SPRINGS, TX

DRIPPING SPRINGS
SOUTH REGIONAL WATER RECLAMATION FACILITY FINAL DESIGN UPDATE

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DRIPPING SPRINGS
Texas

INVITATION FOR BIDS

SOUTH REGIONAL WATER RECLAMATION PLANT EXPANSION
TWDB Project No. 73819
Solicitation No. ITB #2026-06

Public Works - Competitive Sealed Bid

Owner	City of Dripping Springs
Solicitation No.	ITB #2026-06
Project Engineer	Carollo Engineers, Inc. 8911 N. Capital of Texas Hwy, Suite 2200 Austin, TX 78759 512-453-5383
Bid Deadline	[[DATE / TIME / TIME ZONE]]
Public Opening	[[DATE / TIME / CITY-CONTROLLED LOCATION OR APPROVED ELECTRONIC PROCEDURE]]
Base Bid Time	730 consecutive calendar-days to Operational Substantial Completion
Funding	Texas Water Development Board funded

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DIVISION A - BIDDING INFORMATION AND REQUIREMENTS

A-1. NOTICE TO BIDDERS

The City of Dripping Springs (the "City" or "Owner") will receive sealed Bids for the South Regional Water Reclamation Plant Expansion, TWDB Project No. 73819, Solicitation No. ITB #2026-06, until [[BID DEADLINE]]. Bids shall be addressed and mailed or hand delivered to:

Burgess & Niple, Inc.
235 Ledge Stone
Austin, Texas 78737
(512) 432-1000.

Bids received through email, fax, or any other method are not accepted unless a written addendum expressly authorizes the method.

Bids will be publicly opened at the time and place stated above. Late Bids will not be considered. The City will procure and award the Contract; its engineers may prepare and administer the solicitation and provide technical recommendations; Texas Water Development Board (TWDB) review is for funding-program compliance.

The Work will construct a new treatment train, including new headworks and influent pump station, aeration basins and associated systems, secondary clarifier and secondary scum pumping, RAS/WAS pump station, tertiary granular media filters and associated systems, UV disinfection, sludge thickening facility, electrical building, yard piping, paving and grading, and electrical additions and modifications to the existing treatment plant as necessary. The Work includes all supervision, machinery, insurance, materials, equipment, tools, labor, fabrication, delivery, erection, construction, painting, inspection, testing, startup, and commissioning required by the Contract Documents.

The Project is a public-works competitive sealed bid. Award will be made to the lowest responsive responsible bidder. No comparative best-value scoring will be used.

Bid Security. Each Bid must be accompanied by a bid guarantee equal to at least five percent (5%) of the highest independent total price actually submitted by the bidder. The form and delivery requirements for bid security are stated in the Contract Documents.

Post-Award Security. The successful bidder must furnish a performance bond and a payment bond, each in the amount of 100% of the Contract Price, in the forms included in the Contract Documents, together with the required insurance and other conditions precedent to contract execution. The successful bidder must also furnish the maintenance/warranty bond stated in the Agreement and Contract Documents.

Pre-Bid Conference / Site Visit: **[[DATE / TIME / LOCATION / MANDATORY OR OPTIONAL]]**

Deadline for Questions and Approved-Equal Requests: **[[DATE / TIME / OFFICIAL CHANNEL]]**

The City anticipates issuing its final addendum no later than [[DATE]]. No oral statement made at a pre-bid conference or site visit changes the Contract Documents.

Only written addenda issued through the official procurement channel modify the solicitation. Oral statements, informal communications, and unissued draft responses are not binding.

The Project is expected to be financed in whole or in part with TWDB financial assistance. All currently applicable TWDB, federal-equivalency, Davis-Bacon, domestic-preference/material, DBE, debarment, lobbying, audit, records, and related funding conditions must be included exactly as required by the controlling funding documents. The City will not authorize NTP or a Limited NTP until all applicable TWDB conditions are satisfied.

The City reserves the right to reject any or all Bids, reject materially nonresponsive Bids, determine bidder responsibility under the published criteria, waive informalities to the extent permitted by law, and proceed in the manner authorized by the Contract Documents and applicable law.

A-2. INSTRUCTIONS TO BIDDERS

1. Procurement Method and Vocabulary

This solicitation is an Invitation for Bids. The terms Bid and Bidder are used throughout. It is not a request for proposals and does not authorize comparative scoring, ranking, or post-opening negotiation of price, schedule, scope, or material Contract terms.

2. Examination of Contract Documents and Site

Before submitting a Bid, each bidder must examine the complete Contract Documents; inspect the Site and reasonably discoverable conditions; review access, staging, utilities, existing plant operations, shutdown and tie-in constraints, environmental and permit requirements, and available geotechnical/site information; and identify any patent ambiguity or conflict through the written question process before the deadline.

3. Bid Submission

- Submit the signed Bid Form and all mandatory pricing entries.
- Provide bid security in the required amount and form.
- Acknowledge every addendum.
- Submit the responsibility information required by Division B.
- Submit all TWDB certifications and other forms identified as bid-stage requirements in the Funding and Regulatory Attachment.
- Do not qualify, condition, or take exception to the prescribed Contract Time, pricing basis, material risk allocation, or required Contract Documents.

4. Pricing

The Bid must include all labor, supervision, shifts, overtime, equipment, expediting, supplier premiums, subcontractor premiums, temporary facilities, testing, commissioning, insurance, bonds, taxes not exempt, and other costs necessary to perform the Work under the accommodations and Contract Time applicable.

5. Bid Security

Each bidder must furnish a bid guarantee equivalent to five percent (5%) of the bid price (Water Code 17.183). If a bid bond is provided, the Contractor must utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

6. Responsiveness

A Bid may be considered materially nonresponsive for failure to submit the mandatory Bid; sign the Bid; provide required bid security; acknowledge addenda; provide mandatory bid-stage TWDB forms; submit required pricing; comply with the prescribed Bid format; or accept the material requirements of the Contract Documents.

7. Responsibility

Responsibility is a pass/fail determination, not comparative scoring.. The City may require clarification or verification of responsibility information but will not permit the bidder to revise its Bid price, completion obligation, or material Contract terms after opening.

- Comparable operating wastewater-treatment-plant construction experience and timely-completion history.
- Bonding, financial, staffing, equipment, and management capacity.
- Qualified and available project executive, project manager, superintendent, scheduler, startup/commissioning manager, and other key personnel required by the Work.
- Current workload, major subcontractors and suppliers, long-lead equipment assumptions, and manufacturer commitments.
- Preliminary CPM schedule and credible plan for the selected Contract Time.
- Safety history; defaults, terminations, material claims, and liquidated-damages history; and debarment status.
- Ability to comply with TWDB funding and domestic-preference/material requirements.

8. Preliminary Schedule and Resource Materials

Submit the materials required by Section B-3. These materials demonstrate capacity to meet a City-prescribed deadline; they are not scored against other bidders.

9. Questions, RFIs, and Addenda

Questions must be submitted through the designated channel before the stated deadline. Only a written addendum may revise the solicitation. If the City changes a common requirement before opening, the revision will be issued to all prospective bidders by addendum.

10. TWDB Conditions

Advertisement, award, contract execution, NTP, reimbursement, and material changes remain subject to the applicable TWDB review/authorization sequence. No bidder should assume that a City award alone authorizes reimbursable performance.

Contingent Award of Contract

This contract is contingent upon release of funds from the TWDB. Any contract(s) awarded under this Invitation for Bids is/are expected to be funded in part by a loan or loan with principal forgiveness from the TWDB and a grant from the United States Environmental Protection Agency, (EPA). Neither the State of Texas, the EPA, nor any of its departments, agencies, or employees, are or will be a party to this Invitation for Bids or any resulting contract.

State Revolving Fund Procurement Requirements

The TWDB Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs receive federal funding from the EPA. As a condition of federal grant awards, EPA regulations require that funding recipients (municipalities, towns, public water authorities, nonprofit water supply corporations, etc.) and sub-recipients (prime consultants, prime contractors, and subcontractors) make a "good faith efforts" to award a fair share of contracts, subcontracts, and other procurements in a nondiscriminatory manner whenever procuring Construction and Non-Construction (supplies, services and equipment). More information on these requirements is available in Section III, Supplemental Contract Conditions section of TWDB-0550 guidance *No. 16. State Revolving Fund Procurement requirements*.

Davis-Bacon Wage Rate Requirements

Davis-Bacon prevailing wage rates apply to the construction, alteration, or repair of treatment works carried out, in whole or in part, with assistance made available by the CWSRF or a construction project financed, in whole or in part, from the DWSRF.

The Davis-Bacon prevailing wage requirements apply to Contractors and Subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting) of a treatment works project under the CWSRF or a construction project under the DWSRF.

For prime contracts in excess of $100,000, Contractors and Subcontractors must also, under the provisions of the Contract Wage Hours and Safety Standards Act (CWHSSA), as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

Any contracts in excess of $2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements. In TWDB-0550, see Section III, Paragraph 11, Option 1 (governmental entities) and Option 2 (non-governmental entities) for contract clauses required for Davis-Bacon requirements. This information is also included in TWDB Guidance DB-0156, as follows (Applicant = Owner (sub-recipient)):

- If the Owner (sub-recipient) is a governmental entity such as a city or district, it must insert in full the contract clauses found in TWDB Guidance DB-0156, Appendix 1: Section 3, Section 4 (if the contract exceeds $100,000), and Section 5.
- If the Owner (sub-recipient) is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in TWDB Guidance DB-0156, Appendix 2: Section 3, Section 4 (if the contract exceeds $100,000), and Section 5.

The Owner (sub-recipient) must ensure all prime contracts require the same full text in any subcontracts. See TWDB Guidance DB-0156 for the text of the contract language that must be included. Additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract can be found in TWDB Guidance DB-0156.

American Iron and Steel

Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of 33 U.S.C. §1388 for Clean Water State Revolving Fund projects or Public Law 114-113, Consolidated Appropriations Act, 2016, or subsequent appropriations acts, for Drinking Water State Revolving Fund projects. The Contractor must complete the statement of understanding regarding this requirement, found in TWDB-0550, Item No. 9. The statement of understanding must be signed by the Contractor.

Equal Employment Opportunity and Affirmative Action

All qualified applicants will receive consideration for employment.

Debarment and Suspension Certification

This contract is subject to the federal requirements of Subpart C of 2 CFR Part 180 and Part 1532 regarding Debarment and Suspension. The Contractor will comply with the assurances provided with the bid that leads to a contract.

11. Contract Formation

After City Council awards the Contract and all applicable TWDB requirements are satisfied, the successful bidder must execute the Agreement, provide required bonds and insurance, complete disclosure and funding conditions, and satisfy all conditions precedent. Physical construction may begin only under a written NTP.

A-3. BASIS OF AWARD

1. Mandatory Bid

Every bidder must submit a Bid.

2. Published Selection Rule

The Contract will be awarded to the lowest responsive, responsible bidder subject to City Council approval and applicable TWDB authorization.

3. No Undisclosed Best-Value Discretion

The City will not select a higher-priced bidder because staff prefers its schedule narrative, team, work plan, or perceived overall value if the lower bidder satisfies all published responsiveness and responsibility requirements. Bidder-proposed completion dates do not alter the prescribed Contract Time and are not used to rank Bids.

DIVISION B - BID FORMS AND RESPONSIBILITY SUBMITTALS

B-1. BID FORM AND PRICING SCHEDULE

Bidder Information	Response
Legal name	
Entity type / state	
Address	
Telephone	
Email	
Authorized representative	
Title	

Total Price

Bid Component	Election	Required Operational Substantial Completion	Included City Accommodation	Total Price
Base Bid	Required	730 days to Operational Substantial Completion	Ordinary Contract administration and work-hour framework	$_____

The required Contract Time is the consecutive-calendar-day period stated above. A bidder may not condition its Bid on another completion date.

Bid Security Calculation

Item	Amount
Total price submitted	$_____
Required bid guarantee - 5%	$_____

Other Engineer Pricing Schedules

The following project-specific pricing schedules are incorporated from the Engineer's Project Manual and must be completed as applicable:

Bid Item Number	Description	Price in Figures ($)
Mobilization, SWPPP and Trench Safety		
1	Mobilization	$
2	Stormwater Pollution Prevention Plan	$
3	Development, Design, and Implementation of a Trench Safety System	$
4	Headworks, and Influent Lift Station.	$
5	Headworks/Influent Lift Station Odor Control	$
6	Aeration Basins, Secondary Clarifier, Secondary Scum Pumping and RAS/WAS Pump Station	$
7	Granular Media Tertiary Filtration and Associated Air Scour and Filter Backwash Systems	$
8	In-Vessel Ultraviolet (UV) Disinfection System	$
9	Modifications to Existing Reclaimed Water Ground Storage Tank	$

Bid Item Number	Description	Price in Figures ($)
10	Chemical Feed Systems	$
11	Sludge Thickening Facility and WAS Pump	$
12	Yard Piping	$
13	Grading and Paving	$
14	Electrical Duct Bank, Power, and Lighting	$
15	Electrical Building	$
16	Generator	$
17	Commissioning	$
Demobilization, Final Adjustment and Lump Sum Bid Total		
18	Demobilization	$
19	Add/Deduct – Final Adjustment to Bid, but not including previous Bid Items 1 through 18	$
20	Total Lump Sum Bid Price for all Work in the Contract Documents including the Items listed above.	$

Bidder Acknowledgments

- ☐ I have examined the complete Contract Documents and Site information made available for bidding.
- ☐ I acknowledge all addenda listed below.
- ☐ I accept the City-prescribed Contract Time for each Bid Component I priced and have not conditioned my Bid on a different completion date.
- ☐ Each price includes all costs necessary to achieve the applicable Contract Time except compensation expressly provided by the Contract Documents.

Bidder Certifications

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

In accordance with Texas Government Code Chapter 2252.152 Contracts With Companies Engaged In Business With Iran, Sudan, Or Foreign Terrorist Organization Prohibited, Bidder acknowledges the following: Texas Comptroller does not list Bidder as a terrorist organization.

Submit Document 00453 with bid. Texas Government Code, Chapter 2252, grants a preference to “Resident Bidders” in awarding certain governmental contracts, not including contracts involving federal funds.

Addenda Acknowledgment

Addendum No.	Date	Bidder Initials

Authorized Bid Signature

Field	Response
Signature	

Field	Response
Printed name	
Title	
Date	
Bidder legal name	
Address	

B-2. BIDDER RESPONSIBILITY QUESTIONNAIRE

The City will use the following information only to determine responsibility under the published standards. It is not a weighted proposal evaluation.

A. Comparable Wastewater Treatment Plant Experience

Comparable Project 1	Response
Project/owner	
Location	
Contract value	
Scope and treatment capacity	
Original/actual substantial completion	
Owner contact	
Liquidated damages/default/termination, if any	

Comparable Project 2	Response
Project/owner	
Location	
Contract value	
Scope and treatment capacity	
Original/actual substantial completion	
Owner contact	
Liquidated damages/default/termination, if any	

Comparable Project 3	Response
Project/owner	
Location	
Contract value	
Scope and treatment capacity	
Original/actual substantial completion	
Owner contact	
Liquidated damages/default/termination, if any	

Comparable Project 4	Response
Project/owner	
Location	
Contract value	
Scope and treatment capacity	
Original/actual substantial completion	
Owner contact	
Liquidated damages/default/termination, if any	

B. Key Personnel

Role	Name	Years / comparable experience	Available for this Project?
Project Executive			
Project Manager			
Superintendent			
Scheduler			
Startup/Commissioning Manager			
Electrical/Controls Lead			

Named key personnel may not be replaced after award without City approval and an equal or better-qualified replacement, subject to the Agreement and General Conditions.

C. Capacity, Workload, Safety, and Performance

Requirement	Bidder Response / Attachment
Current committed workload and major project completion dates	
Bonding capacity and surety contact / letter	
Financial capacity/requested evidence	
OSHA/EMR/safety information required by the Project Manual	
Material litigation, default, termination, bond claim, and liquidated-damages history for the preceding five years. Attach a separate page identifying each matter, project, owner, claim status, and disposition, or state “None.”	
Debarment/suspension status	
TWDB-funded project experience	

D. Major Subcontractors and Suppliers

Trade/equipment	Firm	Committed/ proposed	Relevant experience / lead-time support

B-3. SCHEDULE AND RESOURCE SUPPORT REQUIREMENTS

Submit one Bid support package. The materials must show a facially credible path to the City-prescribed deadline and must not propose a different deadline for award purposes.

Each schedule and support package must be submitted in PDF format, use the project calendar stated in the Bidding Documents, and be signed by the bidder's proposed project manager or scheduler. The City may reject a Bid only for a material failure to provide the published information; the materials will be used solely for responsiveness/responsibility review and not comparative scoring.

- Preliminary critical-path schedule showing major construction activities, submittals, procurement/fabrication, shutdowns/tie-ins, startup, commissioning, reliability testing, Operational Substantial Completion, and Final Completion.
- Schedule narrative identifying logic, calendar assumptions, critical and near-critical paths, float assumptions, weather allowance, and City/third-party dependencies.
- Crew-loading and shift plan by major phase.
- Long-lead equipment procurement plan with supported manufacturer lead times and production-slot assumptions.
- Major supplier and subcontractor commitments or letters of intent where relied upon.
- Site logistics, staging, access, delivery, shutdown, and tie-in plan.
- Startup, commissioning, operator-training, and performance-demonstration sequence.
- Schedule-risk register and recovery strategy.

B-4. BIDDER CERTIFICATIONS AND SIGNATURE

- ☐ The Bid is genuine and not collusive or sham.
- ☐ All information submitted is true and complete in all material respects.
- ☐ Bidder has reviewed all Contract Documents, addenda, plans, technical specifications, TWDB conditions, and funding requirements identified for bidding.
- ☐ Bidder has included all costs necessary to perform the Work under each Bid Component priced.
- ☐ Bidder will furnish required bonds and insurance if awarded.
- ☐ Bidder will comply with applicable domestic-preference/material requirements, prevailing wage requirements, debarment rules, DBE/affirmative-steps requirements, and other funding conditions incorporated into the Project.
- ☐ Bidder understands that CIQ is trigger-based and that Form 1295, if applicable, is a selected-vendor pre-City-execution requirement rather than a universal bid-stage form.

Authorized Signer	Response
Printed name	
Title	
Signature	
Date	

DIVISION C - PROJECT-SPECIFIC CONTRACT REQUIREMENTS

C-1. CONTRACT TIME AND OPERATIONAL SUBSTANTIAL COMPLETION

1. Contract Times

Bid Component	Operational Substantial Completion	Final Completion
Bid	730 consecutive calendar days after Contract Times commence	30 days additional consecutive calendar days after Operational Substantial Completion

The Contract Times commence only as stated in the executed Agreement, General Conditions, and written Notice to Proceed.

2. Operational Substantial Completion

Operational Substantial Completion is a project-specific contractual milestone. It is not satisfied merely because physical construction is substantially complete. Unless the Engineer issues a more stringent final project-specific standard before advertisement, the milestone requires at least:

- completion of construction necessary for the new treatment train and related systems to operate safely and lawfully;
- successful startup and commissioning;
- demonstrated capability to process 399,000 gallons per day of wastewater in compliance with TPDES Permit No. WQ0014488003, subject to Engineer confirmation that these remain the correct final design and permit criteria;
- successful performance and continuous reliability testing for the period stated in the Technical Specifications;
- operational SCADA, controls, alarms, and required backup systems;
- completion of essential tie-ins, shutdown work, and removal or stabilization of temporary systems needed for safe operation;
- completion of required operator training;
- delivery of essential O&M manuals, startup records, test reports, and other documents identified by the Engineer as conditions to operational use;
- no incomplete or defective Work materially impairing safety, treatment capacity, reliability, access, or regulatory compliance; and
- written Engineer certification and City acceptance under the Contract Documents.

C-2. SPECIAL CONDITIONS

These Special Conditions modify the City's selected EJCDC-based General Conditions only for the Bid accepted by the City. They do not replace the General Conditions.

SC-2.1 Base Bid - 24-Month Framework

- Work Hours: Monday through Saturday, 7:00 a.m. to 5:30 p.m.
- Overtime, Sunday, holiday, or night work only through the ordinary request/approval process.
- Normal submittal and RFI review periods.
- Long-lead equipment procurement after full NTP, except as otherwise expressly authorized.
- Existing site access, staging, inspection/testing coverage, and City payment administration.

C-3. SCHEDULE ADMINISTRATION AND RECOVERY

1. Baseline Schedule

Before full construction NTP, Contractor must submit an Engineer-acceptable cost- and resource-loaded CPM baseline schedule using the scheduling platform and coding requirements stated in the Technical Specifications. The baseline must incorporate the accepted Bid Component and all critical procurement, submittal, construction, startup, testing, commissioning, and turnover activities.

2. Updates and Look-Ahead Planning

- Monthly CPM updates using the accepted baseline logic and coding.
- Short-interval look-ahead schedules at the frequency stated in the Technical Specifications.
- Current procurement and submittal logs.
- Narrative explanation of critical-path changes, variances, float consumption, and anticipated delays.
- Schedule meetings attended by decision-capable Contractor personnel.

3. Delay Notice and Time-Impact Analysis

Contractor must provide prompt written notice of actual or anticipated delay and contemporaneous time-impact analysis for requests affecting Contract Time. Retrospective schedule reconstruction may be rejected when contemporaneous analysis was reasonably required and not provided, subject to the General Conditions and applicable law.

4. Contractor-Caused Delay and Recovery

If progress falls below the recovery threshold stated in the Technical Specifications or an accepted update shows a contractor-caused threat to a Contract milestone, the City may require a recovery schedule and reasonable corrective measures, including increased forces, additional equipment, additional hours or shifts, resequencing, increased supervision, or expedited material delivery, at Contractor cost to the extent the delay is Contractor-caused. City-directed compensable acceleration must be authorized through the Contract change process.

Recovery trigger / float threshold: **20 calendar days behind schedule.**

5. Phased Turnover and Partial Use

The City may use or occupy a separately functioning and usable portion of the Work before Final Completion when permitted by the General Conditions and identified in the Contract Documents. Phased startup, parallel commissioning, and partial operational use do not constitute Final Completion and do not waive incomplete or defective Work.

6. Change Administration

The City may use only the change instruments defined and authorized in the final Agreement and Document 00700. Field Orders do not change Contract Price or Contract Time. No direction from an inspector, Engineer representative, or City project manager changes Contract Price or Contract Time unless issued through an authorized written instrument by a person with delegated authority.

Direction from an inspector, Engineer representative, or City project manager does not change Contract Price or Contract Time unless issued through an authorized instrument by a person with delegated authority. Critical-path changes should be escalated promptly so unresolved pricing does not unnecessarily stop Work where the Contract permits a directive pending later price/time resolution.

C-4. LIQUIDATED DAMAGES

1. Liquidated Damages

Delay Event	Liquidated Damages
Operational Substantial Completion	$2,000 per calendar day
Final Completion	$1,500 per calendar day

DIVISION D - TWDB AND CONTRACT DOCUMENT INTEGRATION

D-1. TWDB HOLD POINTS AND FUNDING CONDITIONS

The controlling TWDB requirements and forms listed in Attachment H are incorporated into these Bidding Documents. In the event of a conflict, an expressly applicable funding requirement controls only to the extent required by its identified controlling source.

Stage	Required Control
Before advertisement	TWDB review/non-objection of the procurement form, Bid Form, alternate structure, funding ceiling/award method, acceleration incentive and eligibility, liquidated damages, contract documents, domestic-preference/material requirements, wage determination, DBE/affirmative steps, and all current program conditions.
After Bid opening/before award	Bid tabulation; selected/apparent low Bid; bid guarantee; Engineer recommendation; explanation of irregularities or selected bidder if required; DBE and other program documentation.
Before contract execution/contingent award	Complete conditions required by the TWDB commitment and project reviewer.
Before NTP/construction funds	Executed Contract, bonds, insurance, and all TWDB conditions precedent.
During construction	Current wage, domestic-preference/material, DBE, audit/records, payment, change-order, reporting, and funding-program requirements.

The City and Contractor remain responsible for compliance with applicable law and the controlling funding documents. TWDB funding review does not expand municipal procurement authority or excuse a Contract requirement.

D-2. CONTRACT DOCUMENT REGISTER AND ORDER OF PRECEDENCE

The documents listed below are the Contract Documents for this solicitation. The final executed Agreement states the controlling order of precedence.

Document	Exact Title/Revision/Source	Status
Executed Agreement / post-award amendments	Section 00500, Standard Form of Agreement Between Owner and Contractor, September 2026; ITB-conformed draft included in this package	Supplied / conformed draft included; final approval required
City project Supplementary / Special Conditions	Section 00800, SOUTH REGIONAL WATER RECLAMATION FACILITY ITB Special Conditions	Section 00800 included; existing project Supplementary Conditions still required
City EJCDC-based General Conditions	Document 00700, Standard General Conditions of the Construction Contract, City of Dripping Springs, South Regional Water Reclamation Plant Expansion, August 2026, EJCDC C-700 (2018) with Owner modifications	Supplied; source remains marked DRAFT and requires final controlled issue
TWDB Funding and Regulatory Addendum	[[ATTACH CURRENT PROGRAM PACKAGE / CITY FUNDING ADDENDUM]]	Required if applicable
Addenda	Reverse chronological to extent each expressly modifies Contract Documents	As issued
Technical Specifications	[[ENGINEER PROJECT MANUAL / EXACT ISSUE DATE]]	Required
Drawings	[[ISSUED-FOR-BID DRAWING SET / EXACT ISSUE DATE]]	Required

Document	Exact Title/Revision/Source	Status
Geotechnical / subsurface information	[[ATTACH OR IDENTIFY RELIANCE STATUS]]	As applicable
Accepted Bid Form and pricing schedules	Division B and Engineer pricing schedules	Required
Bonds / insurance exhibits	[[ATTACH EXACT FORMS]]	Required

Each incorporated addendum controls the specific Contract Document provision it expressly modifies. If a funding-program requirement conflicts with another Contract Document, it controls only to the extent required by its controlling source and the City should issue a written reconciliation. No external TFC, AIA, or additional EJCDC general-conditions set is stacked on top of the selected City EJCDC-based General Conditions. Any TFC-derived concepts used for this Project are implemented only through project Special Conditions.

D-3. ATTACHMENT REGISTER

Att.	Attachment	Release Status / Needed Input
A	Issued-for-Bid Drawings	[[ENGINEER TO PROVIDE FINAL PLAN SET AND ISSUE DATE]]
B	Technical Specifications / Project Manual	[[ENGINEER TO PROVIDE CURRENT FINAL TECHNICAL PACKAGE, INCLUDING BID ITEM SCHEDULES]]
C	City/Contractor Agreement	Section 00500, October 2026
D	City EJCDC-based General Conditions	Document 00700, EJCDC C-700 (2018)
E	Existing Project Supplementary Conditions	Document 00800, October 2026

Att.	Attachment	Release Status / Needed Input
F	Performance Bond / Payment Bond / Bid Bond Forms	[[PROVIDE CURRENT TWDB-ACCEPTABLE FORMS]]
G	Insurance Requirements and Endorsements	[[PROVIDE PROJECT-SPECIFIC LIMITS / FORMS]]
H	TWDB Funding and Regulatory Package	TWDB-0216, TWDB-0217, TWDB-0373, TW
I	Current Davis-Bacon Wage Determination	DB-0154
J	Domestic Preference/AIS/BABA Requirements	[[PROVIDE CURRENT PROJECT-APPLICABLE REQUIREMENTS AND CERTIFICATION FORMS]]
K	DBE/Affirmative Steps/Debarment/Lobbying Forms	[[PROVIDE CURRENT PROJECT-APPLICABLE TWDB FORMS]]
L	TPDES Permit/Performance Criteria	[[PROVIDE CURRENT PERMIT OR ENGINEER-CONFIRMED EXCERPT FOR 399,000-GPD ACCEPTANCE REQUIREMENT]]
M	Geotechnical/Site/Utility/Easement Information	[[ENGINEER / CITY TO PROVIDE AND IDENTIFY RELIANCE STATUS]]
N	Long-Lead Equipment Schedule	[[ENGINEER TO PROVIDE SPEC SECTIONS, TAGS, LEAD TIMES, LIMITED-NTP ELIGIBILITY]]
P	Addenda	Issued after advertisement, if any

END OF SOUTH REGIONAL WATER RECLAMATION FACILITY ITB FRONT-END PACKAGE

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DOCUMENT 00430

BID BOND (PENAL SUM FORM)

Bidder Name: Address *(principal place of business):*	**Surety** Name: Address *(principal place of business):*
Owner Name: Address *(principal place of business):* **511 Mercer St.** **PO Box 384** **Dripping Springs, TX 78620**	**Bid** Project *(name and location):* **South Regional Water Reclamation Facility Expansion** Bid Due Date: **TBD**
Bond Penal Sum: Date of Bond:	
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.	

Bidder	Surety
_____ *(Full formal name of Bidder)*	_____ *(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature) (Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____

Notes:
(1) Note: Addresses are to be used for giving any required notice.
(2) Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
   3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
   3.2. All Bids are rejected by Owner.
   3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. **Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.**
5. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than 1 year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

END OF DOCUMENT

DOCUMENT 00436

LIST OF EQUIPMENT MANUFACTURERS

ARTICLE 1 — SELECTED MANUFACTURER/SUPPLIER

1.01 Bidder shall edit Table 1. List of Selected Equipment Manufacturers by circling the manufacturer or supplier that will furnish the respective item of equipment for the Work.

1.02 If Bidder fails to circle a manufacturer or supplier for each piece of equipment identified,

A. the Bidder shall provide the first listed (“A”) manufacturer or supplier for its Bid at no increase in the Contract amount or

B. may be cause for rejection of the Bid.

1.03 Acceptance of a manufacturer or supplier listed by the Bidder shall not constitute a waiver of any provision of the Contract Documents.

Table 1. List of Selected Equipment Manufacturers:

Section	Equipment	Manufacturer/Supplier
		A. B.
		A. B.
		A. B.

BIDDER

_____

(Signature)

_____

(Date)

END OF DOCUMENT

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DOCUMENT 00451A

CONSTRUCTION CONTRACTOR QUALIFICATIONS FORM

ARTICLE 1 — QUALIFICATION DETERMINATION

1.01 Engineer has sole discretion in the determination of qualified businesses.

ARTICLE 2 — CONTACT AND OWNERSHIP INFORMATION

2.01 Provide contact information for the business:

Legal Name of Business:			
Corporate Office			
Name:		Phone number:	
Title:		Email address:	
Business address of corporate office:			
Local Office			
Name:		Phone number:	
Title:		Email address:	
Business address of local office:			

2.02 Provide information on the business's organizational structure:

Form of Business:	☐ Sole Proprietorship ☐ Partnership ☐ Corporation		
☐ Limited Liability Company ☐ Joint Venture comprised of the following companies:			
1.			
2.			
3.			
Provide a separate Qualification Statement for each Joint Venturer.			
Date business was formed:		State in which business was formed:	
Is this business authorized to operate in the Project location?	☐ Yes ☐ No ☐ Pending		

2.03 Identify all businesses that own Business in whole or in part (25 percent or greater), or that are wholly or partly (25 percent or greater) owned by Business:

Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			
Name of business:		Affiliation:	
Address:			

2.04 Provide information regarding the business's officers, partners, and limits of authority.

Name:		Title:	
Authorized to sign contracts: ☐ Yes ☐ No		Limit of Authority:	$
Name:		Title:	
Authorized to sign contracts: ☐ Yes ☐ No		Limit of Authority:	$
Name:		Title:	
Authorized to sign contracts: ☐ Yes ☐ No		Limit of Authority:	$
Name:		Title:	

2.05 License requirements:

A. Provide information regarding licensure for Business:
   1. Licensed in the state where the project is to be constructed continuously for minimum period of 5 years.

Name of License:			
Licensing Agency:			
License No:		Expiration Date:	
Name of License:			
Licensing Agency:			
License No:		Expiration Date:	

ARTICLE 3 — DIVERSE BUSINESS INFORMATION

3.01 Provide information regarding Business's Diverse Business Certification, if any. Provide evidence of current certification. Bidder must demonstrate Diverse Business compliance with the required percentage of Contract Price.

Certification	Certifying Agency	Certification Date	Required Percent of Contract Price
☐ Disadvantaged Business Enterprise			
☐ Minority Business Enterprise			
☐ Woman-Owned Business Enterprise			
☐ Small Business Enterprise			
☐ Disabled Business Enterprise			
☐ Veteran-Owned Business Enterprise			
☐ Service-Disabled Veteran-Owned Business			
☐ HUBZone Business (Historically Underutilized) Business			
☐ Other			
☐ None			

ARTICLE 4 — FINANCIAL

4.01 Financial requirements:

A. The financial condition of the business cannot be such that its financial ability to complete the Project is in doubt, in the opinion of the Owner.

4.02 Provide the most recent audited financial statement, and if such audited financial statement is not current, also provide the most current financial statement.

4.03 Provide information regarding the business's financial stability.

Financial institution:		
Business address:		
Date of business's most recent financial statement:		☐ Attached
Date of business's most recent audited financial statement:		☐ Attached
Financial indicators from the most recent financial statement		
Contractor's Current Ratio (Current Assets ÷ Current Liabilities)		

Contractor's Quick Ratio ((Cash and Cash Equivalents + Accounts Receivable + Short Term Investments) ÷ Current Liabilities)	
Is the business in bankruptcy?	

ARTICLE 5 — SAFETY PROGRAM

5.01 Must have a designated Safety Manager.

5.02 Submit a copy of the company's Safety Program.

5.03 Submit the company protocol for call-in of emergency work.

A. Must have a 24-hour 7-day a week emergency on call service with a dedicated 1-800 number that is answered by a person and not a recording.

5.04 Submit a statement that all employees that perform work:

A. Have completed the company safety training.

5.05 Provide information regarding Business's safety organization and safety performance.

Name of Business's Safety Officer:		
Safety Certifications		
Certification Name	Issuing Agency	Expiration

5.06 Provide 3 years of data in the format below that includes Contractor's Worker's Compensation Insurance Experience Modification Rate (EMR), Total Recordable Injury Rate (TRIR) for incidents, and Total Number of Recorded Man Hours (MH) based on 29 CFR 1904 OSHA Recording and Reporting Occupational Injuries and Illness requirements. Bidder shall submit Worker's Compensation Insurance Experience Modification Rate (EMR) letter from insurance broker with signed Agreement.

Year									
Company	EMR	TRIR	MH	EMR	TRIR	MH	EMR	TRIR	MH

ARTICLE 6 — SURETY INFORMATION

6.01 Provide information regarding the surety company that will issue required bonds on behalf of the Business, including but not limited to performance and payment bonds.

Surety Name:	
Surety is a corporation organized and existing under the laws of the state of:	
Is surety authorized to provide surety bonds in the Project location?	☐ Yes ☐ No
Is surety listed in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies"	☐ Yes ☐ No

published in Department Circular 570 (as amended) by the Bureau of the Fiscal Service, U.S. Department of the Treasury?			
Mailing Address (principal place of business):			
Physical Address (principal place of business):			
Phone (main):		Phone (claims):	

ARTICLE 7 — INSURANCE

7.01 Provide information regarding business's insurance company(s), including but not limited to its Commercial General Liability carrier. Provide information for each provider.

Name of insurance provider, and type of policy (CLE, auto, etc.):			
Insurance Provider		Type of Policy (Coverage Provided)	
Are providers licensed or authorized to issue policies in the Project location?			☐ Yes ☐ No
Does provider have an A.M. Best Rating of A-VII or better?			☐ Yes ☐ No
Mailing Address (principal place of business):			
Physical Address (principal place of business):			
Phone (main):		Phone (claims):	

ARTICLE 8 — FACILITIES

8.01 Provide information regarding the facilities:

REQUIREMENT	YES OR NO
Does the business have a permanent service facility?	

ARTICLE 9 — EXPERIENCE AND RESOURCES

9.01 Provide information regarding the business:

REQUIREMENT	YES OR NO
Has the business been operating at least 5 years?	
Has the business had at least $15.0 million, annual gross revenue?	
Does the business or any of its officers have adverse criminal or legal records, such as criminal convictions, defaults, loss of licenses, etc.?	
Does the business have a poor project performance record, such as repeated claims, litigation, defaults, etc.?	
Does the business have a training program staffed by qualified instructors to provide proper training in the operation and maintenance of equipment as specified in the Contract Documents?	

9.02 Provide information that will identify the overall size and capacity of the business.

Average number of full-time employees:	
Estimate of gross revenue for the current year:	
Estimate of gross revenue for the previous year:	

9.03 Provide information regarding the business's current workload.

A. Submit all projects currently under contract using the form provided in Attachment A - Project Experience.

9.04 Provide information regarding the business's previous contracting experience.

Years of experience with projects similar to the proposed project:			
As a general contractor:		As a joint venturer:	
Has business, or a predecessor in interest, or an affiliate identified in Paragraph 2.03:			
Been disqualified as a bidder by any local, state, or federal agency within the last 5 years?			☐ Yes ☐ No
Been barred from contracting by any local, state, or federal agency within the last 5 years?			☐ Yes ☐ No
Been released from a bid in the past 5 years?			☐ Yes ☐ No
Defaulted on a project or failed to complete any contract awarded to it?			☐ Yes ☐ No
Refused to construct or refused to provide materials defined in the contract documents or in a change order?			☐ Yes ☐ No
Been a party to any currently pending litigation or arbitration?			☐ Yes ☐ No
Provide full details in a separate attachment if the response to any of these questions is Yes.			

END OF DOCUMENT

ATTACHMENT A - PROJECT EXPERIENCE

PROJECT EXPERIENCE

PROJECT NAME:	DATE COMPLETED:
	PROJECT DURATION:
OWNER NAME:	OWNER ADDRESS:
OWNER CONTACT PERSON:	OWNER CONTACT PHONE NO. (Office and mobile number):
DESIGN FIRM NAME:	DESIGN FIRM ADDRESS:
DESIGN FIRM CONTACT PERSON:	DESIGN FIRM CONTACT PHONE NO. (Office and mobile number):
BRIEF DESCRIPTION OF THE PROJECT:	
INITIAL PROJECT COST:	
CHANGE ORDER COST:	
FINAL PROJECT COST:	
COMMENTS OR EXCEPTIONS:	

DOCUMENT 00453

BID PREFERENCES

1.01 Texas Government Code, Chapter 2252, grants a preference to “Resident Bidders” in awarding certain governmental contracts, not including contracts involving federal funds.

A. “Resident Bidder” is defined as “a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.”

B. “Nonresident Bidder” is defined as “a person who is not a resident.”

1.02 Do you claim a bid preference in accordance with Texas Government Code, Chapter 2252?

[ ]Yes [ ] No

a. If so, are you submitting proof of qualification for bid preference?

[ ]Yes [ ] No

1.03 Are you a “Nonresident Bidder” in accordance with Texas Government Code, Chapter 2252?

[ ]Yes [ ] No

A. If so, complete the question below that applies. The failure of Nonresident Bidders to do so will automatically disqualify that Bidder.

1. Our principal place of business is _____ (provide state name), where nonresident Bidders are required to be _____ percent lower than Resident Bidders by state law.
2. Our principal place of business is _____ (provide state name) where nonresident Bidders are not required to underbid Resident Bidders.

NOTE: THIS FORM MUST BE RETURNED WITH YOUR BID.

END OF DOCUMENT

SECTION 00500 - STANDARD FORM OF AGREEMENT

BETWEEN OWNER AND CONTRACTOR - ITB CONFORMED DRAFT

This AGREEMENT is by and between the City of Dripping Springs (OWNER) and _____ (CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants stated below, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents.

The Project is the City of Dripping Springs South Regional Water Reclamation Plant Expansion. The Work will construct a new treatment train, including new headworks and influent pump station, aeration basins and associated systems, secondary clarifier and secondary scum pumping, RAS/WAS pump station, tertiary granular media filters and associated systems, UV disinfection, sludge thickening facility, electrical building, yard piping, paving and grading, and electrical additions and modifications to the existing treatment plant as necessary. The Work includes furnishing all necessary supervision, machinery, insurance, materials, equipment, tools, and labor necessary for fabrication, material delivery, erection and construction, painting, inspection, testing, startup, and commissioning to complete the Work.

Whenever "OWNER" is used in the specifications, it means the City of Dripping Springs and/or its authorized representative. Whenever "ENGINEER" is used in incorporated City of Austin specifications, it means Carollo Engineers, Inc., subject to the duties and limitations in the Contract Documents.

ARTICLE 2 - THE PROJECT

2.01 **Project:** City of Dripping Springs South Regional Water Reclamation Plant Expansion, TWDB Project No. 73819.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Carollo Engineers, Inc., 8911 N. Capital of Texas Hwy, Suite 2200, Austin, Texas 78759, telephone 512-453-5383, which is ENGINEER and will act as OWNER's representative to the extent assigned in the Contract Documents.

ARTICLE 4 - CONTRACT TIMES; ACCELERATION; DAMAGES

4.01 **Time of the Essence.** All time limits for Milestones, Operational Substantial Completion, and Final Completion are of the essence.

4.02 Contract Time.

Item	Contract Value
Operational Substantial Completion	730 consecutive calendar days after Contract Times commence
Final Completion	30 days after Substantial Completion

4.03 **Operational Substantial Completion.** In addition to Paragraph 15.03 of the General Conditions, Operational Substantial Completion requires construction, startup, and commissioning of the treatment train sufficient to demonstrate capacity to process **399,000 gallons per day** of wastewater in compliance with **TPDES Permit No. WQ0014488003**, successful completion of the required continuous reliability test, and satisfaction of the final design, permit, commissioning, SCADA, backup-system, operator-training, documentation, and acceptance criteria stated in Section 00800 and the Technical Specifications.

4.04 **Liquidated Damages.** CONTRACTOR shall pay OWNER liquidated damages, and not a penalty, in the following amounts for delay beyond the applicable Contract Time, subject to extensions authorized under the Contract Documents:

Milestone	Daily Liquidated Damages
Operational Substantial Completion	$2,000 per calendar day after the applicable Operational Substantial Completion deadline.
Final Completion	$1,500 per calendar day after the applicable Operational Substantial Completion deadline.

.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents. The Contract Price is the price of the Bid Component selected for award, as supported by the accepted Bid Form, unit-price schedules, quantities, and other pricing documents incorporated into the Contract:

Contract Price: _____ ($_____).

The Contract Price is based on the accepted Bid Form and pricing schedules dated [[DATE]].

The accepted Bid Form and Engineer pricing schedules are incorporated. Unit Price Work is adjusted under the General Conditions. There are no cash allowances unless expressly identified in the Bidding Documents or Technical Specifications.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications will be processed by ENGINEER as provided in the General Conditions.

6.02 OWNER shall make progress payments as the Work progresses on the basis of CONTRACTOR's Applications for Payment and the accepted Schedule of Values. Prior to Final Completion and acceptance, progress payments will be made at 95% of Work completed, less prior payments and authorized set-offs, with the balance retained.

6.03 **Materials and Equipment.** Subject to Paragraph 15.01 of the General Conditions, progress payments may include 95% of the cost of materials and equipment not incorporated into the Work but delivered and suitably stored at the Site or another location approved in writing, accompanied by required payment/title/lien and insurance documentation. Payments for undelivered equipment are not permitted except as expressly authorized by the Contract Documents and applicable TWDB requirements. Payment for stored equipment, including equipment stored offsite, is available only if expressly authorized by the Agreement, Section 00800, the General Conditions and the applicable TWDB requirements. Any such authorization must state title, risk of loss, insurance, storage, inspection, segregation, project marking, documentation, and payment conditions.

6.04 **Final Payment.** Upon Final Completion and acceptance in accordance with Paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price subject to lawful set-offs and retainage requirements.

ARTICLE 7 - INTEREST

7.01 Money not paid when due, excluding retainage, will bear interest as required by applicable Texas law and the Contract Documents. Any stated contractual rate must be consistent with current law and the controlling funding requirements.

ARTICLE 8 - CONTRACTOR REPRESENTATIONS

8.01 CONTRACTOR acknowledges to and for the benefit of the OWNER and the Texas Water Development Board (TWDB) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the TWDB that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the TWDB. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the TWDB by the Owner). While the Contractor has no direct contractual privity with the TWDB, as a lender to the Owner for the funding of its project, the Owner and the Contractor agree that the TWDB is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the TWDB.

8.02 CONTRACTOR has examined and carefully studied the Contract Documents and related data identified in the Bidding Documents, including all Addenda.

8.03 CONTRACTOR has visited the Site and is familiar with general, local, and Site conditions that may affect cost, progress, and performance.

8.04 CONTRACTOR is familiar with applicable federal, state, and local Laws and Regulations that may affect the Work.

8.05 CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information concerning Underground Facilities except as expressly stated in the Contract Documents.

8.06 CONTRACTOR has undertaken or assumed responsibility for examinations, investigations, studies, and data necessary for performance within the Contract Price and Contract Times.

8.07 CONTRACTOR is aware of the general nature of work by OWNER and others at the Site and has correlated known information with the Contract Documents.

8.08 CONTRACTOR has given ENGINEER written notice of discovered conflicts, errors, ambiguities, or discrepancies and has included in the Bid all Work required by the final Bidding Documents and Addenda.

8.09 CONTRACTOR agrees that no lien may attach to public property or funds except to the extent expressly permitted by Texas law.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 The Contract Documents consist of the following, as finally issued and incorporated:

(a) this Agreement, Section 00500;

(b) the accepted Bid, Bid Form, pricing schedules, and responsibility information incorporated by the Notice of Award or Agreement;

(c) bid, performance, payment, and warranty bonds as required;

(d) insurance certificates, endorsements, and the City insurance requirements;

(e) Document 00700, General Conditions;

(f) Section 00800, SRWRF ITB Special Conditions, dated [[DATE]], and only those additional City supplementary conditions expressly identified by title, revision date, and effect in the Order of Precedence below.

(g) the TWDB Funding and Regulatory Addendum**,** dated [[DATE]], together with the specific incorporated TWDB program clauses, wage determination, domestic-preference/materials requirements, DBE/affirmative-steps forms, debarment/lobbying certifications, and other forms identified in its attachment register. An expressly applicable TWDB program requirement controls only to the limited extent required by its identified controlling source.

(h) Technical Specifications and Project Manual;

(i) Issued-for-Bid Project Drawings;

(j) Addenda, each controlling the provision it expressly modifies;

(k) pre-bid meeting minutes only if expressly incorporated by Addendum or this Agreement;

(l) the Certificate of Substantial Completion, Work Change Directive, Change Order, Affidavit of All Bills Paid, and Certificate of Final Completion forms; and

(m) written amendments, executed Work Change Directives, and executed Change Orders issued after the Effective Date.

9.02 **Order of Precedence.** In the event of a conflict among Contract Documents, the following order controls, subject to an addendum's express modification and the limited precedence of an activated Funding and Regulatory Addendum:

(a) This executed Agreement and City-approved post-award amendments.

(b) Incorporated addenda, but only as to the provision, drawing, specification, scope item, pricing item, or requirement each addendum expressly modifies; later addenda control earlier addenda for an express conflict.

(c) Section 00800, SRWRF ITB Special Conditions, and any other City supplementary or special conditions expressly identified in this Agreement.

(d) An activated TWDB Funding and Regulatory Addendum, only to the extent required by its identified controlling statute, regulation, grant/loan agreement, agency directive, or incorporated program document.

(e) Document 00700, identified by exact title, edition, revision date, and source.

(f) Technical Specifications and Project Manual.

(g) Issued-for-Bid Project Drawings and details.

(h) The accepted Bid Form, pricing schedules, and responsibility information, only to the extent expressly incorporated and not inconsistent with a higher-order Contract Document.

(i) Bonds, insurance requirements, and other subject-specific exhibits, as to the subject they govern.

If the hierarchy does not resolve a conflict, Contractor must obtain written direction through the contract-administration process before performing the affected Work.

9.03 There are no Contract Documents other than those listed or expressly incorporated. The Contract may be amended or supplemented only as provided in Article 11 of the General Conditions and this Agreement.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms used in this Agreement have the meanings stated in the General Conditions and Special/Supplementary Conditions.

10.02 **Assignment.** No assignment is binding without any consent required by the Contract Documents and applicable law, and no permitted assignment releases the assignor from duties unless the written consent expressly provides otherwise.

10.03 **Successors and Assigns.** OWNER and CONTRACTOR bind their respective successors, assigns, and legal representatives to the obligations of the Contract Documents.

10.04 **Severability.** If a provision is held void or unenforceable, the remaining provisions remain effective to the fullest extent permitted by law.

10.05 **Governing Law.** Texas law governs.

10.06 **Venue.** Venue for litigation relating to the Contract will lie in Hays County, Texas, to the extent permitted by law.

10.07 **No Waiver of Governmental Immunity.** Nothing in the Contract Documents waives or is intended to waive any governmental immunity, sovereign immunity, defense, limitation of liability, or other protection available to City under applicable law, except to the extent an express written provision and applicable law provide otherwise.

10.08 **Entire Agreement and Modification.** The Contract Documents constitute the integrated agreement and may be modified only by a written instrument authorized by the Contract Documents.

10.09 **Public Information; Records; Audit.** Contractor acknowledges that records relating to the Contract may be subject to the Texas Public Information Act. Contractor shall cooperate with City in identifying and producing responsive Contract records and shall timely assert any claimed exception or proprietary interest as provided by law. Contractor shall maintain project, payment, subcontract, payroll, funding, change, and closeout records for the period stated in the Supplementary Conditions, applicable funding requirements, or City records-retention requirements, whichever is longer, and shall provide City reasonable access for audit and compliance review.

10.10 **Termination; Warranty.** Contractor's termination, suspension, warranty, correction, and warranty-bond obligations are governed by the final Document 00700 and the Project Special/Supplementary Conditions. The Project Supplementary Conditions shall state the final warranty/correction period and the term and penal sum of any maintenance/warranty bond.

ARTICLE 11 - INDEMNIFICATION

11.01 Contractor's indemnification obligations are governed by Paragraph 7.18 of the General Conditions and any additional indemnification language expressly incorporated into the final Contract Documents.

This Agreement will be effective on _____, 20____ (Effective Date).

OWNER	CONTRACTOR
City of Dripping Springs	_____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
Address: P.O. Box 384, Dripping Springs, Texas 78620	Address: _____
Phone: (512) 858-4725	Phone: _____

OWNER Designated Representative: Ginger Faught

CONTRACTOR Designated Representative: _____

SECTION 00510
RESOLUTION OF CONTRACTOR

SAMPLE COPY

RESOLUTION
of

_____(CONTRACTOR)_____

I hereby certify that it was RESOLVED by a quorum of the directors of _____(Name of Corporation)_____, meeting on the _____day of _____, 2021 that _____(Name)_____, _____(Title)_____, be, and hereby is, authorized to execute all documents necessary to the transaction of business in the State of Texas on behalf of the said _____(Name of Corporation)_____, and

That the above resolution was unanimously ratified by the Board of Directors at said meeting and that the resolution has not been rescinded and is now in full force and effect; and

In authentication of the adoption of this resolution, I subscribe my name and affix the seal of the corporation this _____day of _____, 20__.

_____(Secretary)_____

(Seal)

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DOCUMENT 00550

NOTICE TO PROCEED

Owner:	_____	Owner's Project No.:	_____
Engineer:	_____	Engineer's Project	_____
Contractor:	_____	Contractor's Project	_____
Project:	_____		
Contract	_____		
Effective Date of	_____		

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on **[date Contract Times are to start]** pursuant to the General Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

The number of days to achieve Substantial Completion is **730** from the date stated above for the commencement of the Contract Times, resulting in a date for Substantial Completion of **[date, calculated from commencement date above]**; and the number of days to achieve readiness for final payment is **760** from the commencement date of the Contract Times, resulting in a date for readiness for final payment of **[date, calculated from commencement date above]**.

Before starting any Work at the Site, Contractor must comply with the following:

[Note any access limitations, security procedures, or other restrictions]

Owner:	**City of Dripping Springs**
By *(signature)*:	_____
Name	_____
Title:	_____
Date Issued:	_____

Copy: Engineer

END OF DOCUMENT

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DOCUMENT 00610

PERFORMANCE BOND

Contractor	**Surety**
Name: **[Full formal name of Contractor]**	Name: **[Full formal name of Surety]**
Address *(principal place of business)*: **[Address of Contractor's principal place of business]**	Address *(principal place of business)*: **[Address of Surety's principal place of business]**
Owner	**Contract**
Name: **City of Dripping Springs, TX**	Description *(name and location)*: **South Regional Water Reclamation Facility Expansion, Dripping Springs, Texas**
Mailing address *(principal place of business)*: **PO Box 384** **511 Mercer Street** **Dripping Springs, 78620**	Contract Price: **[Amount from Contract]**
	Effective Date of Contract: **[Date from Contract]**

Bond

Bond Amount: **[Amount]**

Date of Bond: **[Date]**

(Date of Bond cannot be earlier than Effective Date of Contract)

Modifications to this Bond form:

☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

Contractor as Principal	Surety
_____ *(Full formal name of Contractor)*	_____ *(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature)(Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*

Title: _____	Title: _____

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated in this Document by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
    3.1. Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within 5 business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within 10 business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
    3.2. Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
    3.3. Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
    5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
    5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
    5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
    5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond 7 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 5.4, and the Owner refuses the payment, 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.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

   7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

   7.2. 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 5; and

   7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

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

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

11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within 2 years after a declaration of Contractor Default or within 2 years after the Contractor ceased working or within 2 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 periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.

12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting

with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated in this Document. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Now, therefore, the condition of this obligation is such, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Agreement during the original term of the Agreement and any extension of the Agreement, with or without notice to the Surety, and during the life of any guaranty required under the Agreement, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Agreement that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

15. Provided, however, that this bond is executed in accordance with Texas Government Code, Chapter 2253 and all liabilities on this bond shall be determined in accordance with the provisions thereof to the same extent as if it were copied at length in this Document.

16. Definitions:

    16.1. Balance of the Contract Price—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for 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 Construction Contract.

    16.2. Construction Contract—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

    16.3. Contractor Default—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

    16.4. Owner Default—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

    16.5. Contract Documents—All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

18. Modifications to this Bond are as follows:

    i. The performance bond must include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;

    ii. The performance bond must be in a penal sum of not less than 100 percent of the contract price and remain in effect for two years beyond the date of approval by the Consulting Engineer of the political subdivision; and

iii. The Contractor must utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

END OF DOCUMENT

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DOCUMENT 00612

WARRANTY BOND

Contractor	**Surety**
Name: **[Full formal name of Contractor]** Address *(principal place of business)*: **[Address of Contractor's principal place of business]**	Name: **[Full formal name of Surety]** Address *(principal place of business)*: **[Insert address of Surety's principal place of business]**
Owner	**Construction Contract**
Name: **City of Dripping Springs** Address *(principal place of business)*: **511 Mercer St** **PO Box 384** **Dripping Springs, TX 78620**	Description *(name and location)*: **South Regional Water Reclamation Facility Expansion, Dripping Springs, Texas** Contract Price: **[Amount from Contract]** Effective Date of Contract: **[Date from Contract]** Contract's Date of Substantial Completion: **[Date from Contract]**
Bond	
Bond Amount: **[Amount]** Date of Bond: **[Date]** Modifications to this Bond form: ☒ None ☐ See Paragraph 9	Bond Period: Commencing 364 days after Substantial Completion of the Work under the Construction Contract, and continuing until **2** years after such Substantial Completion.

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Document, do each cause this Warranty Bond to be duly executed by an authorized officer,

Contractor as Principal	Surety
_____ *(Full formal name of Contractor)*	_____ *(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature) (Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title:	Title:

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract's Correction Period Obligations. The Construction Contract is incorporated in this Document by reference.
2. If the Contractor performs the Correction Period Obligations, the Surety and the Contractor shall have no obligation under this Warranty Bond.
3. If Owner gives written notice to Contractor and Surety during the Bond Period of Contractor's obligation under the Correction Period Obligations, and Contractor does not fulfill such obligation, then Surety shall be responsible for fulfillment of such Correction Period Obligations. Surety shall either fulfill the Correction Period Obligations itself, through its agents or contractors, or, in the alternative, Surety may waive the right to fulfill the Correction Period Obligations itself, and reimburse the Owner for all resulting costs incurred by Owner in performing Contractor's Correction Period Obligations, including but not limited to correction, removal, replacement, and repair costs.
4. The Surety's liability is limited to the amount of this Warranty Bond. Renewal or continuation of the Warranty Bond will not modify such amount, unless expressly agreed to by Surety in writing.
5. The Surety shall have no liability under this Warranty Bond for obligations of the Contractor that are unrelated to the Construction Contract. No right of action will accrue on this Warranty Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
6. Any proceeding, legal or equitable, under this Warranty Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and must be instituted within 2 years after the Surety refuses or fails to perform its obligations under this Warranty Bond.
7. Written notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown in this Warranty Bond.
8. Definitions:
    8.1. Construction Contract—The agreement between the Owner and Contractor identified on the cover page of this Warranty Bond, including all Contract Documents and changes made to the agreement and the Contract Documents.
    8.2. Contract Documents—All the documents that comprise the agreement between the Owner and Contractor.
    8.3. Correction Period Obligations—The duties, responsibilities, commitments, and obligations of the Contractor with respect to correction or replacement of defective Work, as set forth in the Construction Contract's Correction Period clause, Document 00700 - General Conditions , Paragraph 15.08, as duly modified.
    8.4. Substantial Completion—As defined in the Construction Contract.
    8.5. Work—As defined in the Construction Contract.
9. Modifications to this Bond are as follows: **None**.

END OF DOCUMENT

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DOCUMENT 00615

PAYMENT BOND

Contractor	**Surety**
Name: **[Full formal name of Contractor]**	Name: **[Full formal name of Surety]**
Address *(principal place of business)*:	Address *(principal place of business)*:
[Address of Contractor's principal place of business]	**[Address of Surety's principal place of business]**
Owner	**Contract**
Name: **City of Dripping Springs**	Description *(name and location)*:
Mailing address *(principal place of business)*:	**South Regional Water Reclamation Facility Expansion, Dripping Springs, Texas**
511 Mercer St **PO Box 384** **Dripping Springs, TX 78620**	Contract Price: **[Amount from Contract]**
	Effective Date of Contract: **[Date from Contract]**

Bond

Bond Amount: **[Amount]**

Date of Bond: **[Date]**

(Date of Bond cannot be earlier than Effective Date of Contract)

Modifications to this Bond form:
☐ None ☒ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

Contractor as Principal	Surety
(Full formal name of Contractor)	*(Full formal name of Surety) (corporate seal)*
By: _____ *(Signature)*	By: _____ *(Signature)(Attach Power of Attorney)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____
Attest: _____ *(Signature)*	Attest: _____ *(Signature)*
Name: _____ *(Printed or typed)*	Name: _____ *(Printed or typed)*
Title: _____	Title: _____

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.

1. The Contractor and 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 Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
    5.1. Claimants who do not have a direct contract with the Contractor
        5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
        5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
    5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
    7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
    7.2. Pay or arrange for payment of any undisputed amounts.
    7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction 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 Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

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

12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, 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 will be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.

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

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

    16.1. *Claim*—A written statement by the Claimant including at a minimum:

        16.1.1. The name of the Claimant;

        16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;

        16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;

        16.1.4. A brief description of the labor, materials, or equipment furnished;

16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;

16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;

16.1.7. The total amount of previous payments received by the Claimant; and

16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2. *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 Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction 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.

16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.

18. Modifications to this Bond are as follows:

i. The payment bond must be in a penal sum of not less than 100 percent of the contract price and remain in effect for two years beyond the date of approval by the Consulting Engineer of the political subdivision; and

ii. The Contractor must utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

19. This Bond is in accordance with Texas Government Code, Chapter 2253, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

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

21. The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling their toll-free number: (800) 252-3439.

END OF DOCUMENT

Document 00620
Contractor's Application for Payment

Owner:		**Contractor's Application for Payment No.**
Owner's Contract No.:		**Application Period:**
Contractor:	Contractor's Project No.:	**Application Date:**
Project Name:		
Contract Name:		
[Engineer]	**[Engineer's]**	
[Construction Manager]:	**[Construction Manager's]** Project No:	

Application for Payment

Change Order Summary

Approved Change Orders

Number	Additions	Deductions
TOTALS	$0.00	$0.00
NET CHANGE BY CHANGE ORDERS	**$0.00**	

1. ORIGINAL CONTRACT PRICE			**$**	
2. Net change by Change Orders			**$**	**$0.00**
3. Current Contract Price (Line 1 ± 2)			**$**	**$0.00**
4. TOTAL COMPLETED AND STORED TO DATE				
(Column F total on Progress Estimates)			**$**	**$0.00**
5. RETAINAGE:				
a.	**X**	$0.00 **Work Completed**	**$**	**$0.00**
b. 0%	**X**	$0.00 **Stored Material**	**$**	**$0.00**
c. Total Retainage (Line 5.a + Line 5.b)			**$**	**$0.00**
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)			**$**	**$0.00**
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)			**$**	
8. AMOUNT DUE THIS APPLICATION			**$**	**$0.00**
9. BALANCE TO FINISH, PLUS RETAINAGE			**$**	
(Column G total on Progress Estimates + Line 5.c above)			**$**	**$0.00**

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and

(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature

By:	Date:

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____ _____
(**[Engineer] [Construction Manager]**) (Date)

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____ _____
(Owner) (Date)

Approved by: _____ _____
Funding or Financing Entity (if applicable) (Date)

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DOCUMENT 00625

CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:	_____	Owner's Project No.:	_____
Engineer:	_____	Engineer's Project No.:	_____
Contractor:	_____	Contractor's Project No.:	_____
Project:	_____		
Contract Name:	_____		

This ☐ Preliminary ☐ Final Certificate of Substantial Completion applies to:

☐ All Work ☐ The following specified portions of the Work:

[Describe the portion of the Work for which Certificate of Substantial Completion is issued]

Date of Substantial Completion: **[Enter date, as determined by Engineer]**

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see the General Conditions.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work must be as provided in the Contract, except as amended as follows:

Amendments to Owner's Responsibilities: ☐ None ☐ As follows:

[List amendments to Owner's Responsibilities]

Amendments to Contractor's Responsibilities: ☐ None ☐ As follows:

[List amendments to Contractor's Responsibilities]

The following documents are attached to and made a part of this Certificate:

[List attachments such as punch list; other documents]

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Engineer

By *(signature)*: _____

Name *(printed)*: _____

Title: _____

END OF DOCUMENT

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DOCUMENT 00700

GENERAL CONDITIONS

Prepared By

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GENERAL CONDITIONS

ARTICLE 1 — DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
5. *Bidder*—An individual or entity that submits a Bid to Owner.
6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
10. *Claim*
    a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *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.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or

any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
   1. does not conform to the Contract Documents;
   2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
   3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*
   1. The word "furnish," when used in connection with services, materials, or equipment, means 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, means 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, means to furnish and install said services, materials, or equipment complete and ready for intended use.
   4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

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

ARTICLE 2 — PRELIMINARY MATTERS

2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by

Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 Copies of Documents

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed *counterpart* of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
   1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
   2. a preliminary Schedule of Submittals; and
   3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 Preconstruction Conference; Designation of Authorized Representatives

A. Before any *Work* at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

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

2.05 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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 Electronic Transmittals

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3 — CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

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

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

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part

thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:
   1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
   2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 Reference Standards

A. *Standards Specifications, Codes, Laws and Regulations*
   1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
   2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies*
   1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
   2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by

Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
   a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Requirements of the Contract Documents

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 Reuse of Documents

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

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

ARTICLE 4 — COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 Starting the Work

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

4.03 Reference Points

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

4.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
   1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
   2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 Delays in Contractor's Progress

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
   1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
   2. Abnormal weather conditions;
   3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
   4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
   1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
   2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
   3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
   1. The circumstances that form the basis for the requested adjustment;
   2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
   3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
   4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5 — SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

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

5.02 Use of Site and Other Areas

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

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

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

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

5.03 Subsurface and Physical Conditions

A. *Reports and Drawings*: The Supplementary Conditions identify:
1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
   1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
   2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
   3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
   4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 Differing Subsurface or Physical Conditions

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
   1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
   2. is of such a nature as to require a change in the Drawings or Specifications;
   3. differs materially from that shown or indicated in the Contract Documents; or
   4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

   then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*
   1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
      a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
      b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
      c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
   2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
      a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
      b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
      c. Contractor failed to give the written notice required by Paragraph 5.04.A.
   3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
   4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04

are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 Underground Facilities

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
   1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
   2. complying with applicable state and local utility damage prevention Laws and Regulations;
   3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
   4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
   5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:
   1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
   2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
   3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
   4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

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

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*
   1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
      a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
      b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
      c. Contractor gave the notice required in Paragraph 5.05.B.
   2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
   3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
   4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

A. *Reports and Drawings*: The Supplementary Conditions identify:
   1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
   2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
   3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers,

directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

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

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or

Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 — BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a

prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

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

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 Insurance—General Provisions

A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

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

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:
   1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
   2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may

impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 Contractor's Insurance

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;
2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
4. apply with respect to the performance of the Work, whether such performance is 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; and
5. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
   1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
   2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
   3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
   4. not seek contribution from insurance maintained by the additional insured; and
   5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 Builder's Risk and Other Property Insurance

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible

for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 Property Losses; Subrogation

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
   1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
   2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
   1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.

C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the

Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 Receipt and Application of Property Insurance Proceeds

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7 — CONTRACTOR'S RESPONSIBILITIES

7.01 Contractor's Means And Methods Of Construction

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 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.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 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 maintain good discipline and order at the Site.

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

C. 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 will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 "Or Equals"

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and

sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that the proposed item:
    1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
    3) has a proven record of performance and availability of responsive service; and
    4) is not objectionable to Owner.
b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    1) there will be no increase in cost to the Owner or increase in Contract Times; and
    2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

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

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
    1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is

functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
    a. will certify that the proposed substitute item will:
        1) perform adequately the functions and achieve the results called for by the general design;
        2) be similar in substance to the item specified; and
        3) be suited to the same use as the item specified.
    b. will state:
        1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
        2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
        3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
    c. will identify:
        1) all variations of the proposed substitute item from the item specified; and
        2) available engineering, sales, maintenance, repair, and replacement services.
    d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

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

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor

shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 Concerning Subcontractors and Suppliers

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

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

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

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

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

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

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

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

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 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 an 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 will be disclosed in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out

of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 Permits

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 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. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field

Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. 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, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. 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.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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.

7.15 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 Submittals

A. *Shop Drawing and Sample Requirements*
   1. Before submitting a Shop Drawing or Sample, Contractor shall:
      a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
      b. determine and verify:
         1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
         2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
         3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
      c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
   2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the

Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
   1. *Shop Drawings*
      a. Contractor shall submit the number of copies required in the Specifications.
      b. Data shown on the Shop Drawings must 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 7.16.C.
   2. *Samples*
      a. Contractor shall submit the number of Samples required in the Specifications.
      b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
   3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*
   1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. 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, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
   2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
   3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
   4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
    d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
   1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
   2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
   1. abuse, or improper modification, 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.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
   1. Observations by Engineer;
   2. Recommendation by Engineer or payment by Owner of any progress or final payment;
   3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
   4. Use or occupancy of the Work or any part thereof by Owner;
   5. Any review and approval of a Shop Drawing or Sample submittal;
   6. The issuance of a notice of acceptability by Engineer;
   7. The end of the correction period established in Paragraph 15.08;
   8. Any inspection, test, or approval by others; or
   9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will 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.

7.19 Delegation of Professional Design Services

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
   1. Checking for conformance with the requirements of this Paragraph 7.19;
   2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
   3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8 — OTHER WORK AT THE SITE

8.01 Other Work

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to 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.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is

performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 Coordination

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
   1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
   2. An itemization of the specific matters to be covered by such authority and responsibility; and
   3. The extent of such authority and responsibilities.

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

8.03 Legal Relationships

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
   1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
   2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work,

and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 — OWNER'S RESPONSIBILITIES

9.01 Communications to Contractor

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

9.02 Replacement of Engineer

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 Furnish Data

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

9.04 Pay When Due

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 Lands and Easements; Reports, Tests, and Drawings

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 Insurance

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 Change Orders

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 Inspections, Tests, and Approvals

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 Limitations on Owner's Responsibilities

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

9.10 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 Evidence of Financial Arrangements

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 Safety Programs

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 — ENGINEER'S STATUS DURING CONSTRUCTION

10.01 Owner's Representative

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 Visits to Site

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's

efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. 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.

10.03 Resident Project Representative

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 Engineer's Authority

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 Limitations on Engineer's Authority and Responsibilities

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will 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 Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 Compliance with Safety Program

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11 — CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract

A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 Change Orders

A. Owner and Contractor shall execute appropriate Change Orders covering:
   1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
   2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
   3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
   4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 Work Change Directives

A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a Work Change Directive and:
   1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
   2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 Field Orders

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 Owner-Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:
   1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
   2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
   3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
   1. A mutually acceptable fixed fee; or
   2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
      a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
      b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
      c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
      d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
      e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
      f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 Change Proposals

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or

relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*
   1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
   2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
      a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
      b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

      The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.
   3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
   4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
   5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice

will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 Notification to Surety

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

ARTICLE 12 — CLAIMS

12.01 Claims

A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
   1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
   2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
   3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
   4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation*
   1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 — COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees

include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will 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 accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will 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, which 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 will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of 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, 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.
        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
    c. *Construction Equipment Rental*
        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and

removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), 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 include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

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

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

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by

Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. 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.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
   a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
   b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
      1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
      2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be

performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:
   1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
   2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

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

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

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

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. Adjustments in Unit Price
   1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
      a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
      b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
   2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to

perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

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

ARTICLE 14 — TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

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

14.02 Tests, Inspections, and Approvals

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

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

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 Uncovering Work

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

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

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
   1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
   2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

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

14.07 Owner May Correct Defective Work

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 — PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*
   1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
   2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
   3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
   4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications
   1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend

payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
    a. the Work has progressed to the point indicated;
    b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
    c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
    a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
    b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
    a. to supervise, direct, or control the Work;
    b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
    c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
    d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
    e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
    a. the Work is defective, requiring correction or replacement;
    b. the Contract Price has been reduced by Change Orders;
    c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
   a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
   b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
   c. Contractor has failed to provide and maintain required bonds or insurance;
   d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
   e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
   f. The Work is defective, requiring correction or replacement;
   g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
   h. The Contract Price has been reduced by Change Orders;
   i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
   j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
   k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
   l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
   1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
   2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
   3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
   4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 Final Payment

A. Application for Payment
   1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:
    a. all documentation called for in the Contract Documents;
    b. consent of the surety, if any, to final payment;
    c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
    d. a list of all duly pending Change Proposals and Claims; and
    e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments.

Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 Waiver of Claims

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 Correction Period

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
   1. correct the defective repairs to the Site or such adjacent areas;
   2. correct such defective Work;
   3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
   4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. 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.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 — SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
   1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
   2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
   3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
   4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
   1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
   2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate for Convenience

A. Upon 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; and
   3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 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 16.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is

submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 — FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this article:
   1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
   2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.

B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:
   1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
   2. agree with the other party to submit the dispute to another dispute resolution process; or
   3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 — MISCELLANEOUS

18.01 Giving Notice

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
   1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
   2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
   3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 Computation of Times

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

18.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions

of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 Limitation of Damages

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 No Waiver

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 Survival of Obligations

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

18.07 Controlling Law

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

18.08 Assignment of Contract

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is 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.

18.09 Successors and Assigns

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 Headings

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

END OF DOCUMENT

DOCUMENT 00800

SUPPLEMENTARY CONDITIONS

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These Supplementary Conditions amend or supplement Document 00700 - General Conditions. The General Conditions remain in full force and effect except as amended.

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

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

ARTICLE 1 — DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

SC-1.01 Add to Paragraph 1.01.A by inserting the following as new numbered items in their proper alphabetical positions:

Construction Manager - The individual or entity will be responsible for administration of the Contract as a representative of the Owner. Owner has designated Carollo Engineers to provide construction management services with duties, responsibilities, and limitations therein as required by Contract.

Final Completion - The Work is complete when it is ready for final payment as established by the Engineer’s written recommendation of final payment as set forth in Paragraph 15.06.

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.

Owner’s Representative - The individual or entity will be responsible for administration of the Contract as a representative of the Owner. Owner has designated Carollo Engineers to provide construction management services with duties, responsibilities, and limitations therein as required by Contract. Where, in the Contract Documents, certain rights, responsibilities, actions, or obligations are required of Owner, either the Owner or the Owner’s Representative may exercise and act on Owner’s behalf.

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.

Related Entity – An officer, director, partner, employee, agent, consultant, or subcontractor.

SC-1.01 Amend Paragraph 1.01.A. numbered items as follows:

Agreement—The written instrument~~, executed by Owner and Contractor,~~ that sets forth the Contract Price**,** ~~and~~ Contract Times, identifies the parties and ~~the Engineer, and designates the specific items that are Contract Documents~~ **evidences the agreement between the Owner and the Contractor for performance of the Work.**

Bidding Requirements—The Advertisement or invitation to bid, ~~Instructions to Bidders~~ **instructions to bidders,** ~~Bid Bond~~ **bid bond** or other ~~Bid~~ **bid** security, if any, the ~~Bid Form~~ **bid form**, and ~~the Bid with~~ any attachments **or supplements to the Bidding Documents**.

Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times**, or both**~~; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract~~.

Claim—**A demand or assertion by the Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.**

~~a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.~~

~~b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.~~

~~c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.~~

~~d. A demand for money or services by a third party is not a Claim.~~

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

Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract. **Contract Documents include the Agreement, the General Conditions, any Supplemental, Supplementary and Special Conditions, if any, the Insurance Rider (Exhibit A), and the performance and payment bonds, along with any other documents specifically listed in the Agreement as a Contract Document. Only those documents 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.**

*Contract Time**(s)***~~*s*~~—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work **so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment**.

Drawings—The part of the Contract **Documents prepared or approved by Engineer, which** ~~that~~ 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.**

Effective Date of the Contract—The date, indicated in the Agreement, on which the Contract 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**.

Notice of Award—The written notice by Owner to ~~a Bidder of Owner's acceptance of the Bid~~ **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.**

Successful Bidder—The Bidder **having submitted a responsive Bid** to which the Owner makes an award of contract.

Work Change Directive—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner ~~and recommended by Engineer, ordering an addition, deletion, or revision in the Work~~ **ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times**.

ARTICLE 2 — PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

SC-2.01 Delete Paragraph 2.01.C in its entirety and amend Paragraphs 2.01.A and 2.01.B as follows:

A. *Performance and Payment Bonds*: ~~When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds)~~. **Contractor shall deliver to Owner such bonds as Contractor may be required to furnish within ten (10) days of the date on which Contractor signs the Agreement. Contractor shall not be permitted to commence performance until the bonds have been delivered even though the Contract time may have commenced.**

B. *Evidence of Contractor's Insurance*: ~~When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.~~ **Before any Work at the Site may commence, Contractor shall deliver to the Owner certificates of insurance and policy endorsements pages for all insurance policies that may be required of Contractor by the Contract Documents evidencing compliance with the Owner's insurance requirements**

as required in Article 6 and Exhibit A, Owner's Insurance Requirements, to these General Conditions.

2.02 Copies of Documents

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

A. Owner shall furnish to Contractor three printed copies of conformed documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including 1 fully signed counterpart of the Agreement), and 1 copy in electronic portable document format (PDF). Additional printed copies of the conformed documents will be furnished upon request at the cost of reproduction.

2.03 Before Starting Construction

SC-2.03 Add the following new subparagraph immediately after Paragraph 2.03.A:

B. Contractor represents that Contractor's preliminary Progress Schedule has been prepared and is based upon Contractor's own knowledge, understanding, and judgment of conditions and hazards, known and anticipated, and does not rely on any representations by Owner

2.04 Preconstruction Conference; Designation of Authorized Representatives

SC-2.04 Delete Paragraph 2.04.B. in its entirety.

2.06 Electronic Transmittals

SC-2.06 Delete Paragraphs 2.06.B and 2.06.C in their entirety and insert the following in their place:

B. Electronic Documents Protocol: The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

1. Basic Requirements

a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.

b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.

c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.

d. Except as otherwise explicitly stated in this Document, the terms of this Protocol will be incorporated into any other agreement or subcontract

between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.

e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.

f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of General Conditions, Paragraph 18.01.

2. System Infrastructure for Electronic Document Exchange

   a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.

      1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is 50 MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.

      2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.

   b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.

   c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, Trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic

Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.

d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.

e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.

f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.

g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

h. The Owner will operate a Project information management system (also referred to in this EDP as “Project Website”) for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the Project Website by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the Project Website:

    1) Describe the period of time during which the Project Website will be operated and be available for reliance by the parties;

    2) Provide any minimum system infrastructure, software licensing and security standards for access to and use of the Project Website;

    3) Describe the types and extent of services to be provided at the Project Website (such as large file transfer, email, communication and document archives, etc.); and

    4) Include any other Project Website attributes that may be pertinent to Contractor’s use of the facility and pricing of such use.

C. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.

    a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.

2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Table 1, including software versions, if listed.

Table 1. Software Requirements for Electronic Document Exchange

Item	**Electronic Documents**	**Transmittal Means**	**Data Format**	**Note (1)**
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	EADOC	EADOC	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	EADOC	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	EADOC	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	EADOC	PDF	

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	Email with Attachment	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	Email with Attachment	DOC	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	Email with Attachment	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	Email with Attachment	DB	

Notes:

1. All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.
2. Transmittal of written notices is governed by General Conditions, Paragraph 18.01.

Key:

DB	Microsoft® Access .mdb format, Version 2013
DGN	Microstation .dgn format, Version V8i
DOC	Microsoft® Word .docx format, Version 2013
DWG	Autodesk® AutoCAD .dwg format, Version 2016
EADOC	Web-Based Construction Document Management System
Email	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies
EXC	Microsoft® Excel .xls or .xml format, Version 2013
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive)
PD	Portable Document Format readable by Adobe® Acrobat Reader, Version 2020 or later

2.07 **Commencement of Contract Times; Notice to Proceed**

SC-2.07 Add the following new paragraph immediately after Paragraph 2.06:

A. <u>The Contract Times will commence upon issuance of a Notice to Proceed by the Owner.</u>

2.08 **<u>Commencement of Performance</u>**

SC-2.08 Add the following new paragraph immediately after Paragraph 2.07:

A. Contractor may commence performance upon receipt of the Notice to Proceed and in accordance with any terms and dates contained therein.

2.09 **Designation of Authorized Representatives**

SC-2.09 Add the following new paragraph immediately after Paragraph 2.08:

A. Prior to or within three days of the Notice to Proceed, the Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.10 **Electronic Data**

SC-2.10 Add the following new paragraph immediately after Paragraph 2.09:

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.

1. 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 3 — CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

SC-3.01 Amend Paragraph 3.01.B as follows:

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.**

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

3.03 Reporting and Resolving Discrepancies

SC-3.03 Amend Paragraph 3.03.A.1 as follows:

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall ~~not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01~~ **obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby**.

SC-3.03 Amend Paragraph 3.03.A.2 as follows:

2. *Contractor's Review of Contract Documents*: If, ~~before or~~ during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

SC-3.03 Amend Paragraph 3.03.A.3 as follows:

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof. **Should Contractor perform the Work after discovery of such a conflict without reporting the conflict or before receipt of a clarification or interpretation by Engineer, Contractor will be solely liable for any correction or other measures that may be required to overcome the conflict or bring the Work into compliance with the Contract Documents.**

3.04 Requirements of the Contract Documents

SC-3.04 Amend Paragraph 3.04.B as follows:

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal~~, and on Owner, unless it appeals by filing a Claim~~.

SC-3.04 Add the following Paragraph immediately after 3.04.C:

D. **If the Work required by a Drawing or Specification identifies or requires a specific piece of equipment, such Drawing or Specification shall indicate the manufacturer's part number or reference data. If specific equipment is required, the Drawings or Specifications shall indicate the design dimensions and the minimum and maximum allowable operating tolerances for any such equipment, where applicable.**

3.06 **Amending and Supplementing Contract Documents**

SC-3.06 Add the following paragraphs immediately after Paragraph 3.05:

3.06 Amending and Supplementing Contract Documents

C. **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.**

ARTICLE 4 — COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

SC-4.02 Amend Paragraph 4.01.A as follows:

A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. ~~A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.~~

4.02 Starting the Work

SC-4.02 Amend Paragraph 4.02.A as follows:

D. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date. **Any Work performed by the Contractor before the Contract Time commences shall not be charged against the Contract Time.**

4.03 Reference Points

SC-4.03 Amend Paragraph 4.03.A and 4.03.B as follows:

E. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to

proceed with the Work. Contractor**, by or through a registered professional land surveyor (RPLS) or other qualified professional,** 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 **an RPLS or other** professionally qualified personnel.

F. Contractor shall note the location of all reference points and controls on a set of red-lined drawings or exhibits to be maintained at all time on the jobsite or the location of Contractor's project management personnel.

4.04 Progress Schedule

SC-4.04 Amend Paragraph 4.04.A.1 and 4.04.A.2 as follows:

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
   1. Contractor shall submit to Engineer for **Owner's** acceptance (to the extent indicated in Paragraph 2.05) 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.**

   Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11. **Adjustments in Contract Times may only be made by a Change Order.**

4.05 Delays in Contractor's Progress

SC-4.05 Delete section 4.05 in its entirety and replace with the following:

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, weather conditions, or acts of God.

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

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, unusually severe and abnormal weather conditions such as tropical storms, hurricanes, or tornados, 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 and Contractor's ability to demonstrate effect on Contractor's then established critical path. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this sub-Paragraph. The occurrence of flooding or other effects of storms or severe weather such as thunderstorms or ordinarily experienced rain events shall not trigger an adjustment of the Contract Time pursuant to this Section. Rain events and other anticipated weather that may result in delays to Contractor's performance are addressed in the following paragraphs D and E.

D. The procedure for the determination of time extensions for unusually severe weather. In order for the Owner to award a time extension under this clause, the following conditions must be satisfied:

1. The weather experienced at the Project site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month; and

2. The unusually severe weather must actually cause a delay to the completion of the Project.

4.05 **The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the Project location and will constitute the base line for monthly weather time evaluations. The Contractor's activity durations provided in the progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.**

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY
WORK DAYS BASED ON FIVE (5) DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
(5)	(4)	(5)	(4)	(5)	(6)	(4)	(4)	(5)	(5)	(4)	(4)

E. For the duration of the Contract, the Contractor shall maintain in its daily reports an accurate and contemporaneous record of the occurrence of adverse weather and resultant impact to normally scheduled Work. Delay from adverse weather shall not qualify as an adverse weather delay unless Work on the overall Project's critical activities is prevented for 50 percent or more of the Contractor's scheduled work day. The number of actual adverse weather days shall be calculated monthly. If the number of actual adverse weather delay days in a month exceeds the number of days for that month as referenced above, the Owner upon notification by the Contractor, will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and a Modification shall be issued in accordance with the Contract.

F. 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 the Project or any other project or anticipated project.

G. 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.

H. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 4.

I. Contractor must submit any Change Proposal seeking an adjustment in Contract Times under this Paragraph 12.03 within 30 days of the commencement of the delaying, disrupting, or interfering event.

A. **CONTRACTOR EXPRESSLY WAIVES ANY RIGHT TO AN ADJUSTMENT IN CONTRACT PRICE FOR ANY EVENT OF DELAY. CONTRACTOR'S SOLE REMEDY FOR ANY DELAY SHALL BE LIMITED TO AN ADJUSTMENT IN CONTRACT TIME.**

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

5.01 Availability of Lands

SC-5.01 Add the following language at the end of the last sentence of Paragraph 5.01.A:

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

SC-5.01 Delete Paragraph 5.01.B in its entirety and replace with the following:

B. Owner shall provide any easements for ingress or egress necessary for access to the Site.

SC-5.01 Add the following language at the end of the last sentence of Paragraph 5.01.C:

for which the Site and any Owner-provided easements do not provide.

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

D. Any Work performed in public rights-of-way, in addition to conforming to the Contract Documents, shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located.

5.03 Subsurface and Physical Conditions

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D.4:

Contractor waives and expressly acknowledges that it does not possess and may not maintain any claims against Owner due to the inclusion or omission from the bid documents or the Contract Documents any data concerning geotechnical, hydrological or other similar data and studies that may be

known to the Owner or its Engineer, regardless of whether such data was considered in the design.

E. Contractor accepts the responsibility to satisfy itself as to the soil conditions and nature and type of geological formations in and through which this Project will be constructed. Such information as may be obtained from the test borings and accompanying notations shown on the plans is merely for the guidance of the Contractor and is not to be construed in any manner as a guarantee by the Owner that such conditions of sub-surface strata are infallible.

F. Contractor waives any and all rights to make a claim against Owner relating to representations related to geotechnical data provided in the Contract Documents, plans and specifications. The locations of the test holes, if applicable, are shown in the Geotechnical Report. Logs of these test holes are included in the Geotechnical Report. Test holes information represents subsurface characteristics to the extent indicated and only for the point location of the test hole. Contractor shall make its own interpretation of the character and condition of the materials, which will be encountered. Contractor may, at its own expense, make additional surveys and investigations as it may deem necessary to determine conditions, which will affect performance of the Work.

G. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Geotechnical Engineering Report	May 21, 2007	Geotechnical information and recommendations
Supplemental Geotechnical Engineering Recommendations	May 31, 2007	Drilled pier foundations
Geotechnical Engineering Report	June 10, 2020	Geotechnical information, including boring logs, and recommendations

H. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
Construction Plans for City of Dripping Springs Wastewater Treatment Plant (As-Built)	June 17, 2010	As-built Construction Plans
Construction Plans for City of Dripping Springs WWTP Improvements for Amendment 1	November 1, 2016	Construction Plans

I. Contractor may examine copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents at C during regular business hours, or may request copies from Engineer.

5.04 Differing Subsurface or Physical Conditions

SC 5.04 Delete Paragraph 5.04.E.1 in its entirety and insert the following in its place:

1. **The Contract Times 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 time required for performance of the Work; subject, however, such condition must meet any one or more of the categories described in Paragraph 5.04.**

5.05 Underground Facilities

SC 5.05 Amend Paragraph 5.05.B. as follows:

B. *Notice by Contractor*: If ~~Contractor believes that~~ an Underground Facility ~~that~~ is uncovered or revealed at **or contiguous to** the Site was not shown or indicated **with reasonable accuracy** on the Drawings, ~~or was not shown or indicated on the Drawings with reasonable accuracy,~~ then Contractor shall, promptly**, but in no instance more than three days** after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.

SC 5.05 Delete Paragraph 5.05.C. in its entirety and insert the following in its place:

C. *Engineer's Review*: **Following receipt of said written notice,** Engineer will:
   1. 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.**
   2. **During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.**

SC 5.05 Delete Paragraph 5.05.D. in its entirety.

SC 5.05 Delete Paragraph 5.05.F. in its entirety and insert the following in its place:

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

SC 5.05 Add the following paragraph immediately after Paragraph 5.05.F:

G. The information and data shown or indicated on the Drawings listed in the following table with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with industry best practices. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph.

Drawings Title	Date of Drawings
None	

5.06 Hazardous Environmental Conditions at Site

SC-5.06 Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
None		

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		

SC 5.06 Amend Paragraph 5.06.B as follows:

B. ***Limited*** *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the **general** accuracy of the Technical Data expressly identified in the ~~Supplementary~~ **General** Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. ~~If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data,~~ Contractor **waives and acknowledges that it** may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

SC 5.06 Delete Paragraph 5.05.I. in its entirety and insert the following in its place:

TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS

AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE, OR TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.J OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.

ARTICLE 6 — BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

SC-6.01 Delete Paragraphs 6.01.A, 6.01.B, 6.01.C, A in their entirety and insert the following in their place:

A. **Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall be in accordance with Texas Government Code Chapters 2253 and 2269.**
   1. **A Performance Bond in the amount of one hundred percent (100%) of the contract price will be required (if the contract exceeds $100,000).**
   2. **A Payment Bond in the amount of one hundred percent (100%) of the contract price will be required (if the contract amount exceeds $50,000).**
   3. **Contractor will be required to furnish performance and payment bonds, if required as stated above, in the contract amount in the Contract Agreement, the Project specifications, or the latest edition issued with the contract at the time of award. The bonds must be issued by one or more corporate sureties authorized to do business in Texas as acceptable to the Owner.**
   4. **Contractor shall furnish a fully executed warranty bond issued in the form of Document 00612 - Warranty Bond prior to or with the final application for payment, and in any event no later than 11 months after Substantial Completion.**
   5. **The warranty bond must be in a bond amount of 15 percent of the final Contract Price.**
   6. **The warranty bond period will extend to the end of the correction period, for a period of 2 years.**
   7. **The warranty bond must be issued by the same surety that issues the performance bond.**

B. **All bonds shall be in the form prescribed by the Owner in the Contract Documents. 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 above, 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 above.

D. **If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 15.**

6.02 Insurance- General Provision

SC-6.02 Delete section 6.02 in its entirety and insert the following in its place:

6.02 Insurance- Licensed Sureties and Insurors

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

6.03 Contractor's Insurance

SC-6.03 Delete section 6.03 in its entirety and insert the following in its place:

6.03 Certificates of Insurance

C. **Contractor shall deliver to Owner, with copies to each additional insured identified in Exhibit A to the Contract, certificates of insurance, policy endorsements page (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.**

6.04 Builder's Risk and Other Property Insurance

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

6.04 Waiver of Rights

D. Owner and Contractor intend that all policies purchased will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Insurance Rider 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. Upon receipt of payment for any loss or damage covered by an insurance policy required by the Insurance Rider or this Agreement, the 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 all other individuals or entities

identified in the Insurance Rider 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.

6.05 Property Losses; Subrogation

SC-6.04 Delete section 6.05 in its entirety.

6.06 Receipt and Application of Property Insurance Proceeds

SC-6.04 Delete section 6.06 in its entirety.

ARTICLE 7 — CONTRACTOR'S RESPONSIBILITIES

7.01 Contractor's Means and Methods of Construction

SC-7.01 Amend Paragraph 7.01.B as follows:

B. ~~If the~~ **Unless noted in the** Contract Documents**,** ~~, note, or Contractor determines, that~~ professional engineering or other design services **that may, in the Contractor's determination, become necessary** ~~are needed~~ to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety **are the Contractor's responsibility, and the** ~~then~~ Contractor shall cause such services to be provided by a properly licensed design professional~~,~~ at Contractor's expense. **If noted in the Contract Documents, then the services shall be included in the Contract Price and no Change Order or increase in the Contract Price shall be due to Contactor upon performance of those professional services.** ~~Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.~~

7.02 Supervision and Superintendence

SC-7.02 Amend Section 7.02 to read as follows:

7.02 **Contractor's Standard of Care;** Supervision and Superintendence

E. 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.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written **consent of** Owner. **Such consent shall not be unreasonably withheld. Contractor shall not employ any superintendent on the Project, whether initially or as a replacement, against whom Owner may have reasonable objection. The superintendent shall fluently speak the English language. 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.

C. The Contractor shall prosecute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards for projects similar to the Project, using qualified, careful, and efficient workers, in conformity with the provisions of the Agreement and in strict compliance with the Contract Documents and with Laws and Regulations.

SC-7.03 Amend the first and second sentences of Paragraph 7.03.C to read as follows:

C. "…all Work at the Site must be performed during regular working hours, Monday through Saturday. Contractor will not perform overtime Work on a Sunday, or any legal holiday without Owner's written consent, which will not be unreasonably withheld."

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

1. Regular working hours will be 7 am to 5:30 pm.
2. Owner's legal holidays are: New Year's Eve and New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day after, Christmas Eve and Christmas Day.

7.07 Concerning Subcontractors and Suppliers

SC-7.07 Amend Paragraph 7.07.A to read as follows:

F. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work**, but the Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom Owner may have reasonable objection**. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in **strict** accordance with the Contract Documents.

SC-7.07 Delete Paragraph 7.07.B, Paragraph 7.07.C and Paragraph 7.07.D in their entirety.

SC-7.07 Amend the first sentence of Paragraph 7.07.F to read as follows:

"If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor may be entitled to an adjustment in Contract Price or Contract Times,"

SC-7.07 Amend the first sentence of Paragraph 7.07.H to read as follows:

"No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in strict accordance with the Contract Documents.

7.08 Patent Fees and Royalties

SC-7.08 Delete paragraph 7.08.B in its entirety.

7.09 Permits

SC-7.09 Amend paragraph 7.09.A to read as follows:

"Owner **may** assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). **Contractor** shall pay all charges of utility owners for connections for providing permanent service to the Work.

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

B. Owner will provide the following permits:

1. Edwards Aquifer Protection Plan.
2. City Building Permit.

7.10 Taxes

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

B. The Owner enjoys tax-exempt status as a public entity. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the Owner by the Contractor. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

7.11 Laws and Regulations

SC-7.11 Amend Paragraph 7.11.B to read as follows:

"If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear **and be liable for** all ~~resulting~~ **claims,** costs**, expenses,** ~~and~~ losses, **and damages** (including but not limited to all fees and charges of engineers, architects, **consultants,** attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

SC-7.11 Delete Paragraph 7.11.C in its entirety.

7.12 Record Documents

SC-7.12 Amend Paragraph 7.12.A to read as follows:.

C. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications **in good order and annotated to show changes made during construction.** These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to **Owner. Delivery of a complete set of record documents to Owner is a condition precedent to Final Completion.**

7.17 Contractor's General Warranty and Guarantee

SC-7.17 Amend Paragraph 7.17.A to read as follows:

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will strictly conform to the requirements of the Contract Documents and will be performed in a good and workmanlike manner, and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective.

SC-7.17 Delete subparagraph 7.17.B. in its entirely.

SC-7.17 Add the following new paragraph immediately after Paragraph 7.17.E.

F. The Contractor warrants and guarantees for two (2) years from Final Completion, or for a longer period if expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Contractor must correct any and all defects in material or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within years (2) year of Final Completion even if discovered more than two (2) years after Final Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no

cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

7.18 Indemnification

SC-7.18 Delete Paragraph 7.18.A and 7.18.B in their entirety and insert the following in their place:

G. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT OR OTHERWISE, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM LOSSES, DAMAGES, COSTS, AND JUDGMENTS (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 FROM THIRD-PARTY CLAIMS OR ACTIONS RELATING TO OR RESULTING FROM THE PERFORMANCE OR FURNISHING OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, ACTION, LOSS, COST, JUDGMENT OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO DAMAGE TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT 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.

B. IN ADDITION TO THE ABOVE AND ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT DOCUMENTS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER FROM LOSSES, EXPENSES, DAMAGES, COSTS, CLAIMS, CAUSES OF ACTION, AND JUDGMENTS (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, CONSULTANTS, EXPERT WITNESSES, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS) ARISING FROM ACTIONS RELATING TO OR RESULTING FROM THE FAILURE TO PERFORM MATERIAL OBLIGATIONS REQUIRED BY THE CONTRACT DOCUMENTS OR THE FURNISHING OF THE WORK.

7.19 Delegation of Professional Design Services

SC-7.19 Delete Paragraph 7.19.A in its entirety and insert the following in its place:

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.**

SC-7.19 Amend paragraph 7.19.B. to read as follows:

H. **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 to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional.

SC-7.19 Amend paragraph 7.19.D. to read as follows:

D. Owner ~~and Engineer~~ shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under ~~an Owner~~ **a** delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

SC-7.19 Amend paragraph 7.19.E. to read as follows:

"Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to **a** delegated design will be only for the following limited purposes:"

ARTICLE 8 — OTHER WORK AT THE SITE

8.03 Legal Relationships

SC-8.03 Amend Paragraph 8.03.A to read as follows:

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event.

SC-8.03 Delete Paragraph 8.03.B.1 in its entirety.

SC-8.03 Amend Paragraph 8.03.C to read as follows:

C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any

such other contractor or utility owner against Contractor, Owner, or Engineer, then CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND ENGINEER, AND THE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM FROM AND AGAINST ANY SUCH CLAIMS, AND AGAINST ALL COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO SUCH DAMAGE, DELAY, DISRUPTION, OR INTERFERENCE.

ARTICLE 9 — OWNER'S RESPONSIBILITIES

9.01 Communications to Contractor

SC-9.01 Delete Paragraph 9.01.A in its entirety and insert the following in its place:

A. **For all Project and performance of Work matters, Owner will issue all communications to Contractor through Engineer. However, Owner may, at its discretion, issue communications related to the Project directly to Contractor. In all such direct communications, Owner will endeavor to copy Engineer.**

9.02 Replacement of Engineer

SC-9.02 Delete Paragraph 9.02.A in its entirety and insert the following in its place:

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

9.06 Insurance

SC-9.06 Amend paragraph 9.06.A to read as follows:

Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6 **and Exhibit A to the Contract Agreement**.

ARTICLE 10 — ENGINEER'S STATUS DURING CONSTRUCTION

10.01 Owner's Representative

SC-10.01 Amend Paragraph 10.01.A to read as follows:

A. Engineer will **assist the** Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract **Documents and will not be changed without written consent of Owner and Engineer. Engineer shall not have the authority to bind the Owner as that authority lies with the Owner's representative designated in Paragraph 2.07, but Engineer may communicate on behalf of Owner in all Project matters**.

10.03 Resident Project Representative

SC-10.03 Amend Paragraph 10.03.A to read as follows:

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

SC-10.03 Amend Paragraph 10.03.B to read as follows:

A. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the **General** Conditions **or elsewhere in the Contract Documents**.

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.B:

C. The Resident Project Representative (RPR) will be Engineer's representative at the Site. RPR's dealings in matters pertaining to the Work in general will be with Engineer and Contractor. RPR's dealings with Subcontractors will only be through or with the full knowledge or approval of Contractor. The RPR will:

1. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
2. Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
3. Liaison
    a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Contract Documents.
    b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    c. Assist in obtaining from Owner additional details or information, when required for Contractor's proper execution of the Work.
4. Review of Work; Defective Work
    a. Conduct on-Site observations of the Work to assist Engineer in determining, to the extent set forth in Paragraph 10.02, if the Work is in general proceeding in accordance with the Contract Documents.
    b. Observe whether any Work in place appears to be defective.

c. Observe whether any Work in place should be uncovered for observation, or requires special testing, inspection or approval.

5. Inspections and Tests

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

b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work.

6. Payment Requests: Review Applications for Payment with Contractor.

7. Completion

a. Participate in Engineer's visits regarding Substantial Completion.

b. Assist in the preparation of a punch list of items to be completed or corrected.

c. Participate in Engineer's visit to the Site in the company of Owner and Contractor regarding completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

d. Observe whether items on the final punch list have been completed or corrected.

D. The RPR will not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction.

5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

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

10.04 Engineer's Authority

SC-10.04 Delete Paragraph 10.04.A in its entirety and insert the following in its place:

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

10.05 Determinations for Unit Price Work

SC-10.05 Amend Paragraph 10.05.A to read as follows:

B. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. **Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the Contract Documents.**

10.06 Decisions on Requirements of Contract Documents and Acceptability of Work

SC-10.06 Amend Paragraph 10.06.A to read as follows:

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work.

SC-10.06 Add the following new paragraphs immediately after Paragraph 10.06.A:

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Article 12.

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

D. When functioning as interpreter and judge under this Paragraph, Engineer will not show partiality to Owner or Contractor.

10.07 Limitations on Engineer's Authority and Responsibilities

SC-10.07 Delete section 10.07 in its entirety and insert the following in its place:

10.07 **Authorized Variations in the Work**

A. Owner and 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.

10.09 Limitations on Engineer's Authority and Responsibilities

SC-10.09 Add the following new paragraphs immediately after Paragraph 10.08.A:

10.09 Limitations on Engineer's Authority and Responsibilities

A. Engineer's authority, responsibility, or actions as Owner's representative shall not give rise to any liability to Contractor. Contractor expressly waives any claims it has against Engineer for the performance of its responsibilities as Owner's representative.

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.

C. 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 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.

D. The limitations upon authority and responsibility set forth in this Paragraph shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 11 — CHANGES TO THE CONTRACT

11.01 Amending and Supplementing the Contract

SC-11.01 Delete Paragraph 11.01.B in its entirety.

11.02 Change Orders

SC-11.02 Insert the following new subparagraphs immediately following Paragraph 11.02.A.4:

5. In signing a Change Order, the Owner and Contractor acknowledge and agree that:

    a. the stipulated compensation (Contract Price or Contract Times, or both) set forth in the Change Order includes not only all direct costs of Contractor such as labor, material, job overhead, and profit markup, but also includes any costs for modifications or changes in sequence of work to be performed, delays, rescheduling, disruptions, extended direct overhead or general overhead, acceleration, material or other escalation which includes wages and other impact costs. This document will become a supplement to the Contract and all Contract provisions will apply hereto. It is understood that this Change Order shall be effective on the date approved by the Owner's Representative;

    b. the Change Order constitutes full mutual accord and satisfaction for the change to the Work;

    c. no reservation of rights to pursue subsequent claims on the Change Order will be made by either party; and

    d. no subsequent claim or amendment of the Contract Documents will arise out of or as a result of the Change Order.

11.03 Work Change Directives

SC-11.03 Amend subparagraph 11.03.B.2 to read as follows:

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall **indicate the basis and scope of said adjustment in the Work Change Directive or associated documents, or, in the alternative, the Owner may, but is not required to,** submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.08 Change of Contract Times

SC-11.08 Add the following new paragraphs immediately after Paragraph 11.08.B:

C. Use of Float:

1. A request for adjustment of Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only when the time lost or gained exceeds the float for the activity at the time of the event giving rise to the claim. Float, the amount of time between the early start date and the late start date, or the early finish date and the late finish date, is jointly owned by both Owner and Contractor whether expressly disclosed or implied in any manner.

2. Contractor shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to Engineer.

D. Weather Days:

1. The Contract Time includes a weather day allowance of 20 working days. No extension in Contract Time will be allowed for the first 20 working days lost due to weather conditions.

11.09 Change Proposals

SC-11.09 Amend subparagraph 11.09.B.4 to read:

4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either **recommend approval or denial of** approve the Change Proposal in whole **or in part and in any combination thereof.**

SC-11.09 Delete subparagraph 11.09.B.5 in its entirety.

SC-11.09 Amend subparagraph 11.09.C to read as follows:

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer

will notify the parties in writing that the Engineer is unable to resolve the Change Proposal.

SC-11.09 Delete subparagraph 11.09.D in its entirety.

11.10 Notification to Surety

SC-11.10 Delete section 11.10 in its entirety.

ARTICLE 12 — CLAIMS

12.01 Claims

SC-12.01 Amend subparagraph 12.01.A.1 to read:

1. Appeals by Owner or Contractor of Engineer's **recommendations or** decisions regarding Change Proposals;

SC-12.01 Delete subparagraph 12.01.A.4 in its entirety.

SC-12.01 Amend Paragraph 12.01.B to read as follows:

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim.

SC-12.01 Amend Paragraph 12.01.F to read as follows:

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding **and the party asserting the Claim shall be deemed to have expressly waived such Claim,** unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes**, subject to controlling Laws and Regulations**.

ARTICLE 13 — COST OF WORK; ALLOWANCES, UNIT PRICE WORK

13.01 Cost of the Work

SC-13.01 Amend subparagraph 13.01.B.2 to read as follows:

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 **trade** discounts accrue to and Contractor shall make provisions so that they may be obtained.

SC-13.01 Adding the following new language at the end of Paragraph 13.01.B.2:

a. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. For purposes of this paragraph, “small tools and hand tools” means any tool or equipment whose current price if it were purchased new at retail would be less than $500.

SC-13.01 Amending subparagraph 13.01.B.3 to read as follows:

Payments made by Contractor to Subcontractors for Work performed by Subcontractors. 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 will be determined in the same manner as Contractor’s Cost of the Work and fee as provided in this Paragraph 13.01.

SC-13.01 Delete subparagraphs 13.01.B.5.c.2) in its entirety and insert the following in its place:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of the Rental Rate Blue Book for Construction Equipment.

SC-13.01 Delete subparagraph 13.01.B.5.c.3) in its entirety.

SC-13.01 Delete subparagraph 13.01.B.5.e) in its entirety.

SC-13.01 Delete subparagraph 13.01.B.5.f) in its entirety.

SC-13.01 Delete subparagraph 13.01.B.5.h) in its entirety.

SC-13.01 Amend subparagraph 13.01.C.1. to read as follows:

1. Payroll costs and other compensation of Contractor’s **employees,** and other personnel not specifically included in Paragraph 13.01.B.1 **whether at the Site or in Contractor’s principal or branch office for general administration of the Work, all of which are** to be considered administrative costs covered by the Contractor’s fee.

13.03 Unit Price Work

SC-13.03 Delete Paragraph 13.03.D in its entirety.

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

E. Adjustments in Unit Price

1. Contractor or Owner may make a Claim for man adjustment in the unit price with respect to an item of Unit Price Work if:

   a. the extended price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than 20 percent from the estimated quantity of such item indicated in the Agreement; and

   b. the cost to perform the item of Unit Price Work have changed materially as a result of the quantity change; and

   c. there is no corresponding adjustment with respect any other item of Work.

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

ARTICLE 14 — TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.03 Defective Work

SC-14.03 Amend Paragraphs 14.03.B. to read as follows:

B. *Engineer's Authority*: **In addition to the Owner,** Engineer has the authority to determine whether Work is defective, and to reject defective Work.

SC-14.03 Amend Paragraphs 14.03.C. to read as follows:

C. *Notice of Defects*: **Written** notice of ~~all~~ defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

SC-14.03 Amend Paragraphs 14.03.F. to read as follows:

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall **be liable for and shall** pay all **expenses,** claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, **any professional costs, expenses and fees associated with any aspect of identification, evaluation, a correction of defective work, any** fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work.

14.04 Acceptance of Defective Work

SC-14.04 Amend Paragraphs 14.04.A. to read as follows:

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so subject to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety. Contractor shall pay all **expenses, fees,** claims, costs, losses, and damages **of any kind** attributable to Owner's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor.

14.05 Uncovering Work

SC-14.05 Amend subparagraphs 14.05.C.1. to read as follows:

1. If it is found that the uncovered Work is defective, **Contractor's obligations shall be as provided in section 14.03D and F**.

SC-14.03 Amend subparagraphs 14.05.C.2. to read as follows:

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

14.06 Owner May Stop the Work

SC-14.06 Amend subparagraphs 14.06.A. to read as follows:

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

14.07 Owner May Correct Defective Work

SC-14.07 Amend subparagraphs 14.07.A. to read as follows:

A. If Contractor fails within a reasonable time after written notice from Engineer **or Owner** to correct defective Work, or to remove and replace **rejected or** defective Work as required by **Owner or** Engineer, **or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents** then Owner may, after 7 days' written notice to Contractor cure such default, make demand on Contractor's surety to perform as required in the performance bond issued for the Work, utilize its own forces, or hire a supplemental or replacement contractor to correct or remedy any such deficiency. In electing to exercise any remedy allowed under this Paragraph, Owner is not required to terminate Contractor's rights of continued performance for the entirety of the Work but may eliminate such scope of work from Contractor as may be necessary to exercise its rights under this section~~.~~

SC-14.07 Amend subparagraphs 14.07.C. to read as follows:

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 14.07 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.

14.08 Notice of Defects

SC-14.08 Adding the following new language immediately after Paragraph 14.07.D:

14.08 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.

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

15.01 Progress Payments

SC-15.01 Amend Paragraph 15.01.B.1 to read as follows:

1. At least 30 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

SC-15.01 Add the following new subparagraph immediately after subparagraph 15.01.B.2 and renumber accordingly:

Payments for stored materials and equipment shall be based only upon the actual cost of the materials and equipment to Contractor and shall not include any overhead or profit to Contractor. Partial payments will not be made for undelivered materials or equipment, except for payments associated with prepurchase vendor contracts initiated by Owner and assigned to Contractor.

SC-15.01 Delete subparagraph 15.01.C.4. in its entirety.

SC-15.01 Amend subparagraph 15.01.C.6.c. to read as follows:

c. Owner has been required to correct defective Work ~~in accordance with Paragraph 14.07,~~ or has accepted defective Work ~~pursuant to Paragraph 14.04~~;

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

1. In accordance with Texas Government Code, Section 2252.031 et seq., Owner will make progress payments on the basis of Contractor's Applications for Payment within 30 days after receipt, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract.

SC-15.01 Add the following new paragraph immediately after Paragraph 15.01.D.1:

2. Contractor shall disburse money paid to him, including any interest Contractor receives, to Subcontractors and Suppliers within 15 days after Contractor receives the money, in direct proportion to the Subcontractors' and Suppliers' basis in the total Contract between Contractor and Owner. Any money which is payable to a Subcontractor pursuant to this Section accrues interest at the legal rate. Contractor may withhold a portion of any partial payment as may be set forth in a subcontract. Thereafter Contractor shall pay any additional funds if, in the opinion of Contractor, satisfactory progress is being made in the work under the subcontract, and the payment must be equal to that paid by Owner to Contractor for the Work performed by the Subcontractor.
   a. The Contractor may retain the amount withheld under the subcontract until the subcontract is satisfactorily completed.
   b. The amount withheld under the subcontract is due within 15 days after the acceptance of the subcontract work by Contractor.
3. Whenever Contractor receives a payment of interest earned on the amount withheld from the Contract, Contractor shall within 15 days pay to each Subcontractor that portion of the interest received from the state which is attributable to the amount of money withheld from the Subcontractor.

SC-15.01 Amend subparagraph 15.01.E.1. to read as follows:

1. Owner is entitled to impose a set-off against payment **or refuse to make payment as recommended by Engineer** based on any of the following:

SC-15.01 Amend subparagraph 15.01.E.1.a. to read as follows:

a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work;

SC-15.01 Amend subparagraph 15.01.E.1.g. to read as follows:

g. Owner has been required to correct defective Work ~~in accordance with Paragraph 14.07,~~ or has accepted defective Work ~~pursuant to Paragraph 14.04~~;

SC-15.01 Amend subparagraph 15.01.E.2. to read as follows:

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld if Contractor remedies the reasons for such action.

SC-15.01 Delete subparagraph 15.01.E.3. in its entirety.

15.02 Contractor's Warranty of Title

SC-15.02 Amend paragraph 15.02.A

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than the time of payment by Owner.

15.03 Substantial Completion

SC-15.03 Amend paragraph 15.03.A. to read as follows:

B. 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. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

SC-15.03 Add the following new subparagraphs immediately after Paragraph 15.03.A:

1. The Work shall be Substantially Complete when the Work can treat wastewater to required quality and discharge in the quantity in accordance with the Contract Documents. All process equipment shall be installed and operational, or temporary arrangements satisfactory to Owner shall have been made. Operational testing must be completed prior to the date of Substantial Completion.

SC-15.03 Amend paragraph 15.03.B. to read as follows:

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. **At that inspection, Owner and Engineer will review, supplement, and edit the initial punch list prepared by Contractor or prepare an additional punch list.** If **Owner or** Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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

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

SC-15.03 Amend paragraph 15.03.C. to read as follows:

C. If **Owner and** Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

SC-15.03 Delete paragraph 15.03.D. in its entirety.

15.04 Partial Use or Occupancy

SC-15.04 Amend subparagraph 15.04.A.4. to read as follows:

4. No use or occupancy or separate operation of part of the Work **will relieve Contractor of its insurance obligations under these Contract Documents**.

15.05 Final Inspection

SC-15.05 Add the following new paragraph immediately after Paragraph 15.05.A:

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

15.06 Amend paragraph 15.06.B. to read as follows:

SC-15.06 Add the following new paragraph immediately after Paragraph 15.05.B.:

C. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. 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.

SC-15.06 Delete paragraphs 15.06.C, in its entirety.

SC-15.06 Delete paragraphs 15.06.D, in its entirety.

15.07 Waiver of Claims

SC-15.07 Delete paragraph 15.07.A in its entirety and insert the following in its place:

A. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner **unless Contractor has previous reserved its rights for any specific Claims**.

15.08 Correction Period

SC-15.08 Amend paragraph 15.08.A. to read as follows:

A. If within two years after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or 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 that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

SC-15.08 Delete paragraph 15.08.B. in its entirety.

SC-15.08 Amend paragraph 15.08.C. to read as follows:

C. 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) **shall be paid by Contractor**.

ARTICLE 16 — SUSPENSION OF WORK AND TERMINATION

16.02 Owner May Terminate for Cause

SC-16.02 Amend subparagraph 16.02.A.4. to read as follows:

4. Contractor's ~~repeated~~ disregard of the authority of Owner or Engineer.

SC-16.02 Amend subparagraph 16.02.C. to read as follows:

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work **and** all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient. **Owner shall have the right with respect to Contractor and Contractor's surety to demand performance of said surety within ten (10) days following termination. Further, Owner shall have the right to determine and/or approve and replacement contractor desired by Surety to correct and complete the Work.**

SC-16.02 Amend subparagraph 16.02.D. to read as follows:

D. **Contractor's services will not be terminated pursuant to** Paragraph 16.02.B if Contractor **commences curative measures** within 7 days of receipt of notice of intent to terminate ~~begins~~ to correct its failure to perform and proceeds diligently to cure such failure.

SC-16.02 Amend subparagraph 16.02.E. to read as follows:

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed**, nor shall Owner be required to publicly bid any completion work should Owner exercise its right to complete the Work on its own as completion work shall be deemed by the Owner, Contractor, Contractor's surety, and Engineer to qualify for an exemption to public bidding as found in the Texas Local Government Code chapter 252**.

SC-16.02 Amend subparagraph 16.02.F. to read as follows:

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which

may thereafter accrue. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

SC-16.02 Delete paragraph 16.02.G. in its entirety.

ARTICLE 17 — FINAL RESOLUTIONS OF DISPUTES

17.01 Methods and Procedures

SC 17.01 Delete paragraph 17.01.B. in its entirety and insert the following in its place:

B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:
   1. **for any disputes subject to this Article, Owner and Contractor shall endeavor to resolve their Claims by mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction;**
   2. **for any claim not resolved by mediation, the parties agree to submit such claims to the jurisdiction of the State District Court of Hays County, Texas, which is the exclusive venue for final dispute resolution.**

17.02 Arbitration

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

17.02 Arbitration

A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of $100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.

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

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

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

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

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

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

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

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

3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and

4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.

H. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.

I. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

ARTICLE 18 — MISCELLANEOUS

18.01 Giving Notice

SC-18.01 Amend subparagraph 18.01.A.3 to read as follows:

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line **or with a corresponding confirmation of delivery or read receipt to the individual or to a member of the firm or to an officer of the corporation for whom it is intended**.

18.04 Limitation of Damages

SC-18.04 Add the following new paragraph immediately after Paragraph 18.04.A.:

B. The Contractor and Owner waive claims against each other for the following enumerated consequential damages arising out of or relating to this Contract. This mutual waiver includes and is expressly limited to the following:

1. damages incurred by the Owner for lost revenue, profit, financing costs, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, bonding capacity, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

18.07 Controlling Law

SC-18.07 Amend paragraph 18.07.A. to read as follows:

C. This Contract is to be governed by the law of the **State of Texas without regard to its conflict of law principals**.

18.08 Assignment of Contract

SC-18.08 Delete paragraph 18.08.A. in its entirety and insert the following in its place:

A. **Contractor shall not, without the written consent of the Owner assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents, other than to an affiliate. An assignment to an affiliate shall not relieve the assignor of its obligations under this Agreement**.

18.11 Prevailing Wage

SC-18.11 Add the following new paragraph immediately after Paragraph 18.10.A.:

18.11 Prevailing Wage

A. Contractor shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage.

18.12 Right to Audit

A. Whenever the Owner enters into any type of contractual arrangement with the Contractor, then the Contractor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. The Owner's representative, or an outside representative engaged by the Owner, may perform such audits. The Contractor shall maintain all records relating to this Agreement for four (4) years from the date of final payment under this Agreement.

B. The Owner shall have the exclusive right to examine the records of the Contractor. The term "records" as referred to herein shall include any and

all information, materials and data of every kind and character, including without limitation records, books, papers, documents, contracts, schedules, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the Owner's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records shall include (hard copy, as well as computer-readable data if it can be made available), written policies and procedures, time sheets, payroll registers, cancelled checks, personnel file data, correspondence, general ledger entries, and any other record in the Contractor's possession which may have a bearing on matters of interest to the Owner in connection with the Contractor's dealings with the Owner (all of the foregoing are hereinafter referred to as "records"). In addition, the Contractor shall permit interviews of employees as well as agents, representatives, vendors, subcontractors and other third parties paid by the Contractor to the extent necessary to adequately permit evaluation and verification of the following:

1. **The Contractor's compliance with contract requirements;**
2. **The Contractor's compliance with the Owner's business ethics policies; and**
3. **If necessary, the extent of the Work performed by the Contractor at the time of contract termination.**

C. The Contractor shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this Article 17.10 by securing the requirements hereof in a written agreement between the Contractor and payee. Such requirements include a flow-down right of audit provision in contracts with payees that also apply to subcontractors and sub-subcontractors, material suppliers, etc. The Contractor shall cooperate fully and shall require Related Parties and all of the Contractor's subcontractors to cooperate fully in furnishing or in making available to the Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials, and data.

D. The Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article 17.10.

E. If an audit inspection or examination in accordance with this Article 17.10 discloses overpricing or overcharges of any nature by the Contractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, then the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments or payments, which must be made as a result of any such audit or inspection of the Contractor's invoices or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Owner's findings to the Contractor.

18.13 Trust Funds

A. This Project is subject to the Texas Trust Fund Statute, Chapter 162 of the Texas Property Code, and the Parties acknowledge that the payment

obligations contained herein for the Contractor to receive funds from the Owner and then use those funds to pay such Subcontractors, Suppliers, Vendors, Consultants, and the like, are subject to the Trust Fund Statute and the Owner's audit rights outline in this Article 18

18.14 Severability

A. If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted

18.15 Amendments

A. The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party

18.16 Confidential Information

A. Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (a) the transmitting party identifies as either confidential or proprietary; (b) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (c) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

B. A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

C. Any information deemed to be confidential or proprietary by the Contractor should be clearly annotated on the pages where confidential or proprietary information is contained. The Owner cannot guarantee that it will not be required to disclose all or part of any public record under Texas Public Information Act ("TPIA"), since information deemed to be confidential or proprietary by the Contractor may not be confidential or proprietary under Texas Law, or pursuant to a Court order. Pursuant to SB 943, the Owner must disclose certain contracting information and the law presumes that most contracting information is public. Certain types of contracting information must generally be released under the TPIA: overall price; price and description of items or services to be delivered; delivery and service deadlines; remedies for breach of contract; identity of the parties to a contract; execution and effective dates; and information connected to a vendor or contractor's performance on the contract. Additionally, information regarding performance under the contract, including breaches of contract,

contract variances, amendments, liquidated damages, and other penalties for non-performance, must generally be released under the TPIA

18.17 Texas Public Information Act Requests

A. The Contractor recognizes that this Project is publicly owned and the Owner is subject to the disclosure requirements of the TPIA. As part of its obligations within the Contract Documents, the Contractor agrees, at no additional cost to the Owner, to cooperate with the Owner for any particular needs or obligations arising out of the Owner's obligations under the TPIA. This acknowledgement and obligation are in addition to and complimentary to the Owner's audit rights in section 17.10.

B. This provision applies if the Contract has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by Owner or results in the expenditure of at least $1 million in public funds for the purchase of goods or services by Owner in a fiscal year of the Owner. The Contractor must (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to Owner for the duration of the Contract; (2) promptly provide to Owner any contracting information related to the contract that is in the custody or possession of the entity on request of Owner; and (3) on completion of the contract, either:

1. **provide at no cost to Owner all contracting information related to the Contract that is in the custody or possession of the entity; or**
2. **preserve the contracting information related to the Contract as provided by the records retention requirements applicable to Owner.**

C. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the contractor or vendor agrees that the Contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

END OF DOCUMENT

Exhibit A to Contract Agreement
Owner's Insurance Requirements of Contractor

1. Specific Insurance Requirements

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	Amounts of coverage shall be no less than: ▪ $1,000,000 Per Occurrence ▪ $2,000,000 General Aggregate ▪ $2,000,000 Products/Completed Operations Aggregate ▪ $1,000,000 Personal and Advertising Injury ▪ Designated Construction Project(s) General Aggregate Limit	▪ Current ISO edition of CG 00 01 ▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 04 13 and CG 20 37 04 13. ▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing. ▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state. ▪ The following exclusions/limitations (or their equivalent(s), are prohibited: o Contractual Liability Limitation CG 21 39 o Amendment of Insured Contract Definition CG 24 26 o Limitation of Coverage to Designated Premises or Project, CG 21 44 o Exclusion-Damage to Work Performed by Subcontractors on Your Behalf, CG 22 94 or CG 22 95 o Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43 o Any Classification limitation o Any Construction Defect Completed Operations exclusion o Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it o Any endorsement modifying or deleting Explosion, Collapse or Underground coverage o Any Habitational or Residential exclusion applicable to the Work o Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured o Any Punitive, Exemplary or Multiplied Damages exclusion o Any Subsidence exclusion

Business Auto Liability	Amount of coverage shall be no less than: ▪ $1,000,000 Per Accident	▪ Current ISO edition of CA 00 01 ▪ Arising out of any auto (Symbol 1), including owned, hired and non-owned
Workers' Compensation and Employer's Liability	Amounts of coverage shall be no less than: ▪ Statutory Limits ▪ $1,000,000 Each Accident and Disease ▪ Alternate Employer endorsement ▪ USL&H must be provided where such exposure exists.	▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page ▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted. ▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.
Excess Liability (Occurrence Basis)	Amounts of coverage shall be no less than: ▪ $5,000,000 Each Occurrence ▪ $5,000,000 Annual Aggregate	▪ Such insurance shall be excess over and be no less broad than all coverages described above. ▪ Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.
Professional Liability	Amounts of coverage shall be no less than: ▪ $1,000,000 Each Occurrence ▪ $2,000,000 Annual Aggregate ▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be $3,000,000 Each Loss and Aggregate. ▪ Such insurance shall cover all services rendered by the Contractor and its consultants under the Agreement, including but not limited to design or design/build services. ▪ Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement.	▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement. ▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: o bodily injury or property damage where coverage is provided in behalf of design professionals or design/build contractors o habitational or residential operations o mold and/or microbial matter and/or fungus and/or biological substance o punitive, exemplary or multiplied damages. ▪ Any retroactive date must be effective prior to beginning of services for the Owner. ▪ Policies written on a Claims-Made basis shall have an extended reporting period of at least

		two years beyond termination of the Agreement. Vendor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.
Contractors Pollution Liability	Amounts of coverage shall be no less than: ▪ $1,000,000 Each Loss ▪ $2,000,000 Annual Aggregate ▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be $3,000,000 Each Loss and Aggregate. ▪ The policy must provide coverage for: o the full scope of the named insured's operations (on-going and completed) as described within the scope of work for this Agreement o loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall o third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations; o diminution of value and Natural Resources damages o contractual liability o claims arising from non-owned disposal sites utilized in the performance of this Agreement.	▪ The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured. ▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: o Insured vs. insured actions. However, exclusion for claims made between insured within the same economic family are acceptable. o impaired property that has not been physically injured o materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval. o property damage to the work performed by the contractor o faulty workmanship as it relates to clean up costs o punitive, exemplary or multiplied damages o work performed by subcontractors ▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work. ▪ The policy will offer an extended discovery or extended reporting clause of at least three (3) years. ▪ Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least two (2) years after the property owner accepts the project or this contract is terminated. The purchase of an extended discovery period or an extended reporting period on a Claims Made policy or the purchase of occurrence-based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.

Builders Risk	▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence. ▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing. ▪ The policy must provide coverage for: o Agreed Value — Included o Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse — Included o Debris removal additional limit — $1,000,000 o Earthquake and Earthquake Sprinkler Leakage — $5,000,000 o Flood — $5,000,000 o Freezing — Included o Mechanical breakdown including hot & cold testing — Included o Ordinance or law — $1,000,000 o Pollutant clean-up and removal — $ 25,000 o Preservation of property — Included o Theft — Included • Deductible shall not exceed — $10,000 o All Risks of Direct Damage, Per Occurrence, except — 2% subject to $50,000 minimum o Named Storm, Earthquake and Earthquake Sprinkler Leakage, Per Occurrence — $100,000 o Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V — $100,000	▪ Insureds shall include Owner, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds. ▪ Such insurance shall cover: o all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling; all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site; o all property including materials and supplies on site for installation; o all property including materials and supplies at other locations but intended for use at the site; o all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and o other Work at the site identified in the Agreement to which this Exhibit is attached. • No protective safeguard warranty shall be permitted. • The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: o the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated; o occupancy, in whole or in part; o the date on which release of substantial completion is executed; or o the date on which the insurable interests of Contractor in the Covered Property has ceased. • A waiver of subrogation provision shall be provided in favor of all insureds.

~~**Unmanned Aerial Vehicle Liability Insurance.** If Contractor uses unmanned aerial vehicles (UAV – common referred to as drones) at the Site or in support of any aspect of the work, Contractor shall obtain UAV liability insurance in the amount of $XX per claim/$XX general aggregate, name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.~~

2. General Insurance Requirements

A. Definitions. For purposes of this Agreement:

i. "ISO" means Insurance Services Office.
ii. "Contractor" shall include the Builder and its subcontractors of any tier.
iii. "Owner Parties" means (a) City of Dripping Springs, Texas (collectively referred to as "Owner"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Contract Documents.

B. Policies.

i. Contractor shall maintain such Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall maintain such General Liability insurance in identical coverage, form and amount, including required endorsements, for at least ten (10) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
ii. All policies must:
    a. Contain a cross liability or severability of interest clause or endorsement.
    b. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
    c. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
    d. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
    e. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
iv. Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.
v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

C. Limits, Deductibles and Retentions

i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

ii. No deductible or self-insured retention shall exceed $25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.

D. Forms

i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit A are superseded or discontinued, Owner will have the right to require other equivalent forms.
ii. Any policy or endorsement form other than a form specified in this Exhibit A must be approved in advance by Owner.

E. **Evidence of Insurance**. Insurance must be evidenced as follows:

i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
iv. ACORD Forms specify:
    a. Owner as certificate holder at Owner's mailing address;
    b. Insured's name, which must match that on this Agreement;
    c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
    d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
    e. Additional Insured status in favor of Owner Parties;
    f. Amount of any deductible or self-insured retention in excess of $25,000;
    g. Designated Construction Project(s) General Aggregate Limit;
    h. Primary and non-contributory status;
    i. Waivers of subrogation; and
    j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
v. Copies of the following shall also be provided:
    a. General Liability Additional insured endorsement(s);
    b. General Liability Schedule of Forms and Endorsements page(s); and
    c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

F. Contractor Insurance Representations to Owner Parties

i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall

not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

iii. This Exhibit A is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

G. Insurance Requirements of Contractor's Subcontractors

i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.

ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

H. Use of the Owners Equipment

The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. IF THE CONTRACTOR OR ANY OF ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS UTILIZE ANY OF THE OWNERS EQUIPMENT FOR ANY PURPOSE, INCLUDING MACHINERY, TOOLS, SCAFFOLDING, HOISTS, LIFTS OR SIMILAR ITEMS OWNED, LEASED OR UNDER THE CONTROL OF THE OWNER, THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND BE LIABLE TO THE OWNER PARTIES FOR ANY AND ALL LOSS OR DAMAGE WHICH MAY ARISE FROM SUCH USE.

I. Release and Waiver

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible or uninsured portion thereof, maintained or required to be maintained by the Contractor or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**

SECTION 00800 - PROJECT SPECIAL CONDITIONS

ITB, ACCELERATION, SCHEDULE, AND LONG-LEAD EQUIPMENT CONDITIONS

Project: South Regional Water Reclamation Plant Expansion | TWDB Project No. 73819

Governing General Conditions: Document 00700, Standard General Conditions of the Construction Contract, City of Dripping Springs, August 2026, based on EJCDC C-700 (2018) with Owner modifications.

ARTICLE 1 - PURPOSE, INCORPOATION, AND PRECEDENCE

1.1 These Project Special Conditions are Contract Documents and modify or supplement Document 00700 only as expressly stated. Provisions of Document 00700 not modified remain in force.

1.2 Each incorporated Addendum controls the provision it expressly modifies. The Agreement and post-award written amendments control as provided in the Contract Document hierarchy. Funding-program requirements control only to the extent the applicable funding source legally requires them.

ARTICLE 2 - CONFORMING ITB TERMINOLOGY

2.1 In Paragraph 1.01.A of Document 00700, replace "Request for Proposals (RFP), Bidding Requirements or Contract Documents" with "Bidding Requirements or Contract Documents."

2.2 In the definition of Addenda, references to "Bids or Proposals" mean "Bids." In the definition of Bidding Requirements, delete "RFP." Nothing in the Contract Documents authorizes comparative proposal scoring, ranking, highest-ranked-offeror selection, or post-selection negotiation of material bid terms.

ARTICLE 3 - CONTRACT TIME AND OPERATIONAL SUBSTANTIAL COMPLETION

3.1 **Selected Bid Component.** The Agreement must identify the Bid Component selected for award and the corresponding Contract Time. The current procurement direction is:

Bid Component	Operational Substantial Completion	Final Completion
Bid	730 consecutive calendar days after Contract Times commence	30 days

The Contract Time stated is the controlling time requirement.

3.2 **Operational Substantial Completion.** In addition to the requirements of Paragraph 15.03 of Document 00700, Operational Substantial Completion requires:

(a) demonstrated capacity to process 399,000 gallons per day of wastewater in compliance with TPDES Permit No. WQ0014488003;

(b) satisfaction of the final design, permit, startup, commissioning, SCADA, backup-system, operator-training, documentation, and acceptance criteria stated in the Technical Specifications;

(c) required treatment processes and essential tie-ins are complete and operational;

(d) required performance and reliability testing has been completed for [[INSERT ENGINEER-CONFIRMED CONTINUOUS TEST PERIOD]];

(e) no incomplete or defective Work materially impairs safety, treatment capacity, permit compliance, reliability, access, or intended operation.

3.3 Minor punch-list Work may remain only to the extent permitted by the Contract Documents and only if it does not impair the conditions in Paragraph 3.2.

ARTICLE 4 - WORKING HOURS

4.1 The City has approved work hours of Monday through Saturday, 7:00 a.m. to 5:30 p.m. Overtime, weekend, holiday, and nighttime-work rules in Document 00700 apply. Contractor remains responsible for all contractor-controlled measures necessary to meet the 730-day Operational Substantial Completion requirement.

4.2 The City will provide only the accommodations expressly stated in this Section. Contractor remains responsible for staffing, supervision, safety, lighting, noise mitigation, traffic/delivery controls, fatigue management, prevailing-wage compliance, and all other Contractor obligations.

4.3 Contractor remains solely responsible for means and methods, adequate supervision, fatigue management, lighting, safety, traffic and delivery control, prevailing-wage compliance, and compliance with Laws and Regulations. Expanded hours are an accommodation, not a transfer of Contractor responsibility.

ARTICLE 5 - SUBMITTALS, RFIS, AND EXPEDITED REVIEW

5.1 The City/Engineer service levels are:

Review Item	Committed Period
Ordinary submittals	20 days
Standard RFIs	14 days
Complex delegated-design / process / electrical / controls submittals	30 days

The review period begins only upon receipt of a complete submittal or RFI. A missed review period does not constitute approval; it triggers the escalation procedure below and any time/cost relief otherwise available under the Contract Documents.

Matter	City First Escalation Contact	Escalation Deadline	City Final Decision Contact	Final Decision Deadline
Ordinary submittal	Gray Lahrman	14 days	Ginger Faught	30 days
Standard RFIs	Gray Lahrman	7 days	Ginger Faught	14 days

5.2 Rolling submittal packages, electronic review, consolidated comments, weekly critical-issues meetings, and prompt notice of materially incomplete submissions are permitted and required as applicable to the accepted schedule.

5.3 **No Deemed Technical Approval.** The sentence in Paragraph 7.16.E.1.b stating that a Submittal not returned within the Schedule of Submittals review period will be deemed accepted is deleted for this Project. No Shop Drawing, Sample, Submittal, RFI response, substitution, or other technical matter is deemed accepted solely because a review period expires. Expiration of a committed review period triggers escalation and any relief otherwise available under the Contract Documents; it does not constitute technical approval.

ARTICLE 6 - SCHEDULE ADMINISTRATION AND RECOVERY

6.1 Before full construction NTP, Contractor must submit an Engineer-acceptable cost- and resource-loaded CPM baseline Progress Schedule that demonstrates completion within the selected Contract Time and identifies critical and near-critical activities, long-lead equipment, submittals, fabrication, deliveries, tie-ins, startup, commissioning, performance testing, Operational Substantial Completion, and Final Completion.

(a) monthly CPM updates using the accepted logic, activity coding, and scheduling platform;

(b) short-interval look-ahead schedules updated every 4 weeks;

(c) current procurement and submittal logs;

(d) narrative explanation of variances, float consumption, critical-path changes, and anticipated delay;

(e) prompt written notice of actual or anticipated delay;

(f) contemporaneous time-impact analysis for requests affecting Contract Time; and

(g) schedule meetings attended by decision-capable Contractor personnel.

6.2 **Recovery.** If an accepted update shows that a contractor-caused delay threatens a Milestone or the selected Contract Time, or available float falls below 20 calendar days, Owner may require a recovery schedule and reasonable corrective measures, including resequencing, additional crews, additional equipment, additional shifts, increased supervision, or supplier expediting, at Contractor cost to the extent the delay is Contractor-caused. City-directed compensable acceleration remains subject to Article 11 of Document 00700. The recovery threshold is an early-warning administration tool and does not itself establish compensable delay, noncompensable delay, or entitlement to a Contract Time extension.

6.3 Schedule float, concurrent delay, weather, excusable delay, compensable delay, and noncompensable delay remain governed by Document 00700 as supplemented by the Technical Specifications. Contractor must support time requests with contemporaneous schedule evidence.

6.4

ARTICLE 7 - STORED EQUIPMENT AND PAYMENT

7.1 Paragraph 15.01 of Document 00700 governs payment for stored materials and equipment. Payment is available only for equipment delivered and suitably stored at the Site or another location approved in writing, with the required invoice/payment, title/lien, and insurance protection.

7.2 Except for an Owner-initiated prepurchase vendor contract assigned to Contractor or another express TWDB-approved modification, no progress payment is due for undelivered equipment.

7.3 If the City elects to permit payment for equipment at an offsite location, the storage must be approved, insured, segregated from other inventory, clearly marked for this Project, reasonably available for inspection, and protected during storage and transit.

ARTICLE 8 - PHASED COMMISSIONING AND PARTIAL USE

8.1 Any certificate authorizing partial use must state whether warranty commencement, insurance allocation, operations responsibility, testing responsibility, access, and acceptance obligations change for that portion of the Work.

8.2 Partial use or occupancy does not waive remaining Contract requirements, does not constitute Final Completion, and does not alter warranty commencement except as expressly stated in the written certificate or amendment governing that portion of the Work.

ARTICLE 9 - OWNER/ENGINEER DECISION PROCESS AND CHANGE AUTHORITY

9.1 Carollo Engineers is the Engineer and is designated in Document 00700 as Owner's Representative for contract administration within the duties and limitations of the Contract Documents. Technical review and Engineer authority remain governed by Articles 7, 10, 11, and 15 of Document 00700.

9.2 No Engineer, RPR, inspector, project manager, or City staff member may change Contract Price or Contract Times except through a written instrument authorized by the Contract Documents and executed by the person(s) with delegated authority. Field Orders may not change Contract Price or Contract Times. Work Change Directives are governed by Paragraph 11.03 and are followed by a Change Order or other authorized determination of price/time impact.

Decision/Action	City Responsible/Deadline
Ordinary submittal escalation	Gray Lahrman within 14 days
Standard RFI escalation	Gray Lahrman within 7 days
Shutdown / operator coordination	Gray Lahrman within 30 days
Change Order approval within delegated authority	Ginger Fraught/ $50,000
Council-required change	City Council under applicable law/policy

No response deadline grants technical approval, changes Contract Price, or changes Contract Time. Contract Price or Contract Time may be changed only by the written instruments authorized in the Agreement and Document 00700.

ARTICLE 10 - LIQUIDATED DAMAGES

10.1 $2,000 per calendar day after the applicable Operational Substantial Completion deadline.

10.2 $1,500 per calendar day after the applicable Final Completion deadline.

10.3 Any interim-milestone liquidated damages require a separately documented City loss and may not duplicate damages for the same period or injury.

ARTICLE 11 - FUNDING PROGRAM CONDITIONS

11.1 No NTP stored-equipment payment, domestic-preference determination, material procurement, or other funding-sensitive action may proceed unless it complies with the controlling TWDB commitment, the incorporated TWDB funding and regulatory addendum, current required program forms, and written project-review direction.

.

END OF SECTION 00800

Monthly Davis-Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient)

TWDB Project No. _____

Loan No. _____

This executed certificate must be submitted with each Outlay report for labor included within construction contracts.

I,_____, _____
(Name) (Title)
_____ hereby certify that periodic reviews of a
(Name of entity)
representative sample of the weekly payroll data, and contractor weekly payroll certifications, such as OMB No. 1235-0008, have been performed to verify that contractors and subcontractors are paying the appropriate wage rate for compliance with section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) for the Clean Water State Revolving Fund or with section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) for the Drinking Water State Revolving Fund. These laws require payment of prevailing wages in accordance with 40 U.S.C. §§ 3141–3144, 3146, and 3147 (contained within the Davis-Bacon Act, as amended).

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

_____ _____
Signature Date

DB-0156
Rev 6/24

TEXAS WATER DEVELOPMENT BOARD

Texas Water Development Board Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Programs

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Forms and Guidance:

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB Financial Assistance website at:

http://www.twdb.texas.gov/financial/instructions/index.asp

Search by either the document number or name.

I. OVERVIEW

Davis-Bacon and Related Acts (Davis-Bacon) prevailing wage requirements apply to the construction, alteration, or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) and to any construction project carried out, in whole or in part, by assistance made available by the Drinking Water State Revolving Fund (DWSRF). The Lead Service Line Replacement (LSLR) Program and Emerging contaminants (EC) Programs are funded under DWSRF (LSLR and EC) and CWSRF (EC) and are subject to Davis-Bacon.

For the CWSRF and DWSRF programs, the Davis-Bacon prevailing wage requirements apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair, including painting and decorating, of public buildings or public works. This includes any treatment works project under the CWSRF or any construction project under the DWSRF.

Contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The prevailing wage requirements apply to all State Revolving Fund (SRF) financial assistance projects, under which the Environmental Protection Agency assists through federal grants and loans, and loan guarantees.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act (CWHSSA), as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

II. ROLES AND RESPONSIBILITIES

The following generally lists the roles and responsibilities. The responsibilities are not all-inclusive, but a general summary for each party.

TWDB Responsibilities include:

- Verify bidding documents include wage determinations.
- Verify prime contractor contacts contain wage determinations and labor provisions.
- Responsible for reviewing weekly contractor certified payroll submissions.
- Conduct onsite interviews with laborers and mechanics.
- Conduct spot-check reviews of payrolls and related records, as necessary.
- Report potential violations.
- Maintain full documentation for at least 3 years.

Applicant/Subrecipient Responsibilities include:

- Obtaining Department of Labor's wage determinations from the SAM.gov website.
- Verify bidding documents include wage determinations.
- Verify prime contractor contacts contain wage determinations and labor provisions.
- Responsible for reviewing weekly contractor certified payroll submissions.
- Conduct onsite interviews with laborers and mechanics.
- Conduct spot-check reviews of payrolls and related records, as necessary.
- Report potential violations.
- Maintain full documentation for at least 3 years.

Prime Contractor Role Responsibilities Include:

- Post Davis-Bacon Posters at the job site.
- Post prevailing wage rates at the job site.
- Provide confidential space for interviews.
- Provide records upon request.
- Prepares and submits certified payrolls for its own employees to contracting officer weekly.
- Submits certified payrolls for all subcontractor employees to contracting officer weekly.
- Reviews wage determination and works with contracting officer to request additional classifications when needed.
- Provides subcontractors with labor standards, guidance, and responsibilities concerning Davis-Bacon requirements.

Subcontractor Role Responsibilities Include:

- Prepares & submits certified payrolls each week for its own employees to prime contractor.
- Provides lower tier subcontractors with labor standards, guidance, and responsibilities concerning Davis-Bacon requirements.
- Reviews wage determination and works with prime contractor to obtain additional classifications if needed.
- Posts Davis-Bacon Poster and wage determinations on job site.
- Gives interviewer confidential access to employees onsite.

III.WAGE RATE REQUIREMENTS

The following wage rate requirements apply to entities receiving financial assistance under the CWSRF and DWSRF programs and will be incorporated into the associated legal instruments. **These entities, such as cites, districts, water supply corporations or private companies, are referred to as "subrecipients" within this document.**

Subrecipients must adhere to the requirements in Sections 1-5 in Appendix 1 (for governmental entities) or Appendix 2 (for non-governmental entities).

1. CWSRF

A subrecipient must comply with the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) in all procurement contracts and must require contractors to include compliance with section 513 of the Federal Water Pollution Control Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the treatment works construction project must contain in full in any contract in excess of $2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 513 requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements.

2. DWSRF

A subrecipient must comply with the requirements of section 1452(a)(5) of the Safe Drinking Water Act (42 U.S.C.300j-12(a)(5)) in all procurement contracts and must require contractors to include compliance with section 1452(a)(5) of the Safe Drinking Water Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction project must contain in full in any contract in excess of $2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 1452(a)(5) (42 U.S.C.300j-12(a)(5)) requires compliance with 42 U.S.C.300j-9(e) which in turn requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements.

IV. COMPLIANCE PROCEDURES

To be held in compliance and satisfy this federal requirement, entities will need to do the following:

1. Wage Determination

U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at https://sam.gov/content/wage-determinations. Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the subrecipient's contracting organization must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur (generally this is the project county). While the solicitation remains open, the subrecipient must monitor https://sam.gov/content/wage-determinations on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipient may request a finding from TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination.

If a contract is not awarded within 90 days after bid opening, any revised general wage determination issued prior to award of the contractor is effective for that contract; unless the TWDB, at the request of the subrecipient, requests and obtains an extension of the

90-day period from DOL (29 CFR 1.6(c)(2)(ii)(D)).

Wage determinations must be updated after contract award when (1) the contract has a change order that adds substantial construction, alternation, and/or repair work not within the original scope and the contract time is extended, or (2) the contract is a "work order" type contract (a general commitment to construction as the need arises, but exact construction is not necessarily specified). For "work order" type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract's award (or each anniversary date of the beginning of construction when there is no award). (29 CFR 1.6(c)(2)(iii))

2. Insert wage rate requirements in full for all contracts and subcontracts in excess of $2,000

The subrecipient must ensure all prime contracts require the same full text in any subcontracts. Davis Bacon applies regardless of whether the terms and conditions are included or not in all contracts and subcontracts. **Include the following text in all contracts**, "By accepting this award, the EPA Subrecipient acknowledges and agrees to the terms and conditions provided in the DBRA requirements for contractors."

If the subrecipient is a governmental entity such as a city or district, it must insert in full the contract clauses found in Appendix 1, Section 3, Section 4 (if the contract exceeds $100,000), and Section 5.

If the subrecipient is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in Appendix 2, Section 3, Section 4 (if the contract exceeds $100,000), and Section 5.

3. Monthly Certification

A Monthly Davis Bacon Wage Rate Certificate of Compliance must be completed by the subrecipient of the SRF funding and submitted monthly to TWDB once construction has begun. **(Use Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient) DB-0154).**

4. Contractor Payroll Requirements

The contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of 29 CFR 5.5, which are incorporated into the actual construction contract. Contractors/subcontractors must furnish weekly a statement with respect to the wages paid to each employee during the preceding week. The signature by the contractor, subcontractor, or authorized officer/employee must be an original handwritten signature or a legally valid electronic signature (e.g., DocuSign). They may use the Department of Labor (DOL) Payroll Form WH-347 and weekly Statement of Compliance on the reverse, or their own payroll form with all of the same data elements as the DOL Payroll Form WH-347, and the TWDB's form, Statement of Compliance Certification by Contractor for SRF, DB-0155. The DOL Payroll Form WH-347 can be found under the forms section of this document or at the following link: www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification. **(See DOL Payroll Form WH-347)**

5. Interviews

The subrecipient must periodically interview a sufficient number of employees entitled to the Davis-Bacon prevailing wages to verify that contractors or subcontractors are paying the appropriate wage rates. All interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) found at the following link: https://www.gsa.gov/system/files/SF_1445.pdf or equivalent documentation to memorialize the interviews. The subrecipient must establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with Davis-Bacon. Subrecipients must immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. (See Section 5 of Appendix 1 [governmental entities] and Appendix 2 [non-governmental entities]).

6. Payroll Records

Certified payroll must be delivered by the contractor or subcontractor within seven (7) days after the regular payment date of the payroll period. Certified payroll records are required to be retained by the subrecipient and contractor for three (3) years after completion of the construction project. The subrecipient must periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. (See Section 5 of Appendix 1 and 2).

The payroll records must include the following: the name, Social Security number, last known address, telephone number, and email address of each laborer and mechanic; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

7. Wage Rates Poster

Post the required Poster (WH-1321) and applicable wage rates at the construction site in a prominent and accessible place where it can be easily seen by the workers. The wage rate poster may be found at www.dol.gov/whd/programs/dbra/wh1321.htm. **(See Davis-Bacon Wage Rate Poster, WH-1321)**

8. Report Violations

Subrecipients must immediately report violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the appropriate DOL Wage and Hour Division (WHD) Office listed at http://www.dol.gov/whd/america2.htm. (See Section 5 of Appendix 1 and Appendix 2.)

V. DAVIS-BACON GENERAL WAGE DETERMINATIONS

A "wage determination" is the listing of wage and fringe benefit for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. DOL has determined to be prevailing in a given area for a particular type of construction.

In general, the project area is the county where the project will take place. For the type of construction, the Davis-Bacon Wage Determinations are classified by the nature of the construction projects performed, specifically listed as "schedules": residential, building, highway, and heavy construction. A brief outline of the definitions for each schedule is listed below.

- **Construction Type: Residential determination**
  This determination includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

- **Construction Type: Building determination**
  This determination includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.

- **Construction Type: Highway determination**
  This determination includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

- **Construction Type: Heavy determination**
  This determination includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Entities should review their contractor’s wage decisions and confirm they provide an adequate classification of the labor required for the specific construction contract. Most CWSRF and DWSRF projects will fall under the “Heavy” construction type, but entities should ask their consulting engineers if unsure.

Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work (i.e. a building is constructed in a water

treatment facility). This is described in more detail in DOL's All Agency Memorandum 130 with Addendum 131. See the DOL's website http://www.dol.gov/whd/programs/dbra/memorand.htm. In such cases, the contracting agency must incorporate the applicable wage determination for each type of construction involved that is anticipated to be substantial. The contracting agency is responsible for designating the specific work for which each incorporated wage determination applies (29 CFR 1.6(b)(1)). The contracting agency should designate the work or part thereof applies per Federal Acquisition Regulations (FAR) 22.404-2 thru 404-3 (www.acquisition.gov/far/22.404-2). Should overlaps occur in the wage classification schedules for the contract(s), the Owner may consider adopting the higher rate classification.

https://www.acquisition.gov/browse/index/far

In all cases, the entity is responsible to ensure an adequate classification is provided for compliance with the law. Where Contractors alert the Owner that the classification is inadequate, the Owner should work with the Contractor and the DOL to address any valid concerns. See the Contact Information in Section VI, herein, for additional resources.

VI. REQUESTING ADDITIONAL WAGE DETERMINATION (USING SF-1444)

If the wage determinations found at https://sam.gov/content/wage-determinations are missing a wage rate needed for the specific job classification, construction type, and/or project location, it will be necessary to seek a conformance from U.S. Department of Labor (DOL). A conformance is a customized wage rate generally negotiated by the contractor and his or her employee(s) and approved by DOL and is only valid for the particular project for which it is granted.

Contractors are responsible for (1) determining the appropriate staffing necessary to perform the contract work, (2) complying with minimum wage and benefits requirements for each classification performing work; and (3) initiating the request for approval for additional classification along with the proposed wage and benefit rates.

The awarded Contractor initiates the request to prepare the form SF 1444. Ideally, the conformance process should be initiated after the bid is awarded, but before work has started on the project. Once the bid is awarded, the subrecipient should ask the winning bidder to review the wage determination to assess whether any job classifications necessary for the completion of the project are missing from the DOL's wage determination for the project's area.

The prime contractor for the SRF construction contract initiates the conformance request by completing a Standard Form (SF) 1444 – Request for Authorization of Additional Classification and Rate.

See Appendix 3 for instructions on completing SF 1444 – Request for Authorization of Additional Classification and Rate.

VII. CONTACT INFORMATION

All questions regarding Davis-Bacon guidance can be directed to:

- U.S. Department of Labor Wage and Hour Division
  1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627,
  Monday-Friday 8 a.m. to 8 p.m. Eastern Time.

If you require further information about Davis-Bacon and how to apply it to your project, please contact the Texas Water Development Board Project Team Manager for your region.

Additional Resources:

1. For Wage Determinations applicable to construction projects in Texas: https://sam.gov/content/wage-determinations

2. For more information on prevailing wage and wage determinations visit the Prevailing Wage Resources: www.dol.gov/agencies/whd/government-contracts/construction/seminars/resources

3. The United States Department of Labor website: www.dol.gov/whd/govcontracts/dbra.htm

   The webpage provides an overview, compliance assistance material, poster information, recordkeeping, DOL contact information and more.

4. Davis-Bacon and Related Acts (DBRA) Frequently Asked questions
   More in-depth information can be accessed at the Department of Labor (DOL) website:
   www.dol.gov/whd/programs/dbra/faqs.htm

5. All Agency Memorandum No. 244 Final Rule: Updating the Davis-Bacon and Related Acts Regulations at DOL website:
   www.dol.gov/sites/dolgov/files/WHD/AAM/AAM244.pdf

   Memorandum No. 244 provides an overview of the most significant provisions of the Department's recently published final rule, Updating the Davis-Bacon and Related Acts Regulations, as well as an explanation of when the various provisions became effective.

   All Agency Memoranda are available on the DOL website:
   www.dol.gov/agencies/whd/government-contracts/construction/all-agency-memorandum.

6. Updating the Davis-Bacon and Related Acts Regulations on the DOL website: www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon

   This webpage provides additional information on the Final Rule for the Davis-

Bacon and Related Acts, that took effect on October 23, 2023. It includes a webinar, comparison chart, and text of the final rule.

7. Davis-Bacon and Related Acts for EPA grant awards including links to EPA requirements for subrecipients and contract provisions for Contractors and Subcontractors on EPA website: www.epa.gov/grants/davis-bacon-and-related-acts-dbra

1. Contact Information – Department of Labor Texas Offices

Dallas District Office US Dept. of Labor Wage & Hour Division 575 S. Griffin, Ste. 707 Dallas, TX 75202	Phone: (817) 861-2150 1-866-4-USWAGE (1-866-487-9243)	Jesus Valdez District Director
Houston District Office US Dept. of Labor Wage & Hour Division 8701 S. Gessner Drive, Suite 1164 Houston, TX 77074-2944	Phone: (713) 339-5500 1-866-4-USWAGE (1-866-487-9243)	Robin Mallet District Director
McAllen District Office US Dept. of Labor Wage & Hour Division 1101 E. Hackberry Ave., Suite 400 McAllen, TX 78501	Phone: (956) 682-4631 1-866-4-USWAGE (1-866-487-9243)	Cynthia Cantu-Flores District Director
Corpus Christi Area Office US Dept. of Labor Wage & Hour Division Wilson Plaza 606 N. Carancahua, Suite 618 Corpus Christi, Texas 78401	Phone: (361) 888-3152 1-866-4-USWAGE (1-866-487-9243)	Vacant District Director
San Antonio District Office US Dept. of Labor Wage & Hour Division Northchase 1 Office Building 10127 Morocco, Suite 140 San Antonio, TX 78216	Phone: (210) 308-4515 1-866-4-USWAGE (1-866-487-9243)	Cynthia Ramos District Director
Austin District Office US Dept. of Labor Wage & Hour Division Thornberry Federal Building 903 San Jacinto Blvd., Suite 1600 Austin, TX 78701	Phone: (512) 916-5638 1-866-4-USWAGE (1-866-487-9243)	Nicole Sellers District Director
El Paso Area Office US Dept. of Labor Wage & Hour Division 700 E. San Antonio St., Rm. B-400 El Paso, TX 79901	Phone: 915-534-6426 1-866-4-USWAGE (1-866-487-9243)	Jacobo Valenzuela District Director
Lubbock Area Office US Dept. of Labor Wage & Hour Division 71205 Texas Ave., Room 607 Lubbock, TX 79401	Phone: 806-472-6450 1-866-4-USWAGE (1-866-487-9243)	Ryan Martin District Director

Reference: www.dol.gov/agencies/whd/contact/local-offices#tx

VIII. FORMS

The following forms are available on the TWDB Program Guidance & Manuals website at www.twdb.texas.gov/financial/instructions/index.asp

- Monthly Davis-Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient), DB-0154
- Statement of Compliance Certification by Contractor for State Revolving Funds Federal Davis-Bacon Requirements, DB-0155

The following forms are available on the Department of Labor website at www.dol.gov/agencies/whd/government-contracts/construction/forms

- Standard Form 1445, Labor Standards Interview
- U.S. Department of Labor Payroll form WH-347

The following poster is available on the Department of Labor website at www.dol.gov/whd/programs/dbra/wh1321.htm

- Davis-Bacon Poster, WH-1321

IX. Appendix 1 – Applies to Governmental Entities (such as Cities and Districts)

1. Applicability of the Davis-Bacon and Related Acts (DBRA) Prevailing Wage Requirements

DBRA prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the Clean Water State Revolving Fund and to any construction project carried out in whole or in part by assistance made available by the Drinking Water State Revolving Fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DBRA applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DBRA will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DBRA. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor https://sam.gov/content/wage-determinations weekly to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. In the request, the subrecipient shall include documentation of the bid date and time and the DOL wage modification date. The TWDB will review the documentation and provide a report of its findings to the subrecipient. The subrecipient shall keep the report in the project contract file.

(ii) If the subrecipient does not award the contract within 90 days of bid opening, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the subrecipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor https://sam.gov/content/wage-determinations on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DBRA by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather

than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from https://sam.gov/content/wage-determinations into the ordering instrument. For “work order” type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract’s award (or each anniversary date of the beginning of construction when there is no award). (29 CFR 1.6(c)(2)(iii))

(c) Subrecipients shall review all subcontracts subject to DBRA entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient’s contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL’s wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient’s contractor must be compensated for any increases in wages resulting from the use of DOL’s revised wage determination.

3. Contract and Subcontract Provisions

The subrecipient shall insert in full in any contract to which Davis-Bacon and Related Acts apply the following clauses. Reference to www.epa.gov/grants/contract-provisions-davis-bacon-and-related-acts and 29 CRF 5.5.

The Contractor acknowledges that by entering into this contract with a contracting agency, funded by an EPA Assistance agreement (grant), the Contractor agrees to comply with the following terms and conditions in accordance with 29 CFR 5.5, if this contract is for activities covered under Davis-Bacon and Related Acts (DBRA) and exceeds (or will exceed) $2,000. Definitions for many of the terms used below are provided in 29 CFR 5.2.

(1) Minimum wages.

(i) Wage rates and fringe benefits

All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage

determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Frequently recurring classifications

(A) In addition to wage and fringe benefit rates that have bene determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to 29 CFR 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:

(1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(2) The classification is used in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is used in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the

classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to the TWDB. The TWDB will transmit the request to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker, or it must be posted as part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest

In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding.

(i) Withholding requirements

The EPA, grant recipient, subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2).

The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv) of this section, the **EPA, grant recipient, subrecipient at any tier, and/or contracting agency** may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or 29 CFR 5.5(b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) Records and certified payrolls

(i) Basic record requirements

(A) Length of record retention

All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required

Such records must contain the name; Social Security number; last known address, telephone number, and email of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship.

Contractors with apprentices working under approved programs must maintain written evidence of the apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements

(A) Frequency and method of submission

The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts- covered work is performed, certified payrolls to the **contracting agency** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the **contracting agency.** The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) Information required

The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and las known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) Statement of Compliance

Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(iii), and such information and

records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of Optional Form WH-347

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(C).

(E) Signature

The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) Length of certified payroll retention

The contractor or subcontractor must preserve all certified payrolls during the course of the work for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents

The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access

(A) Required record disclosure and access to workers

The contractor or subcontractor must make the records required under

paragraph (a)(3)(i) through (iii) of this section, and any other documents that the **EPA, recipient, or subrecipient at any tier, and/or contracting agency**, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of the **TWDB, EPA, recipient, or subrecipient at any tier, and/or contracting agency,** or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements

If the contractor or subcontractor fails to submit the required records or to make them available, or refuse to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures

Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the Environmental Protection Agency if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the EPA, recipient, or subrecipient at any tier, contracting agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and Equal Employment Opportunity

(i) Apprentices

(A) Rate of pay

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits

Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio

The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates

Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker’s hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) Equal employment opportunity

The use of apprentices and journey workers under this part must be in conformity

with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Is reserved.

(6) Subcontracts

The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section or a link to the **DBRA Requirements for Contractors and Subcontractors Under EPA Grants** document on EPA's Contract Provisions for Davis-Bacon and Related Acts webpage, along with the applicable wage determination(s) and such other clauses or contract modifications as the Environmental Protection Agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier Subcontractors, and may be subject to debarment, as appropriate.

(7) – (9) are reserved.

(10) Certificate of Eligibility

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any

proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

4. Contract Provisions for Contracts in Excess of $100,000

For contracts over $100,000, additional Terms and Conditions apply. The DBRA Requirements for Contracts in Excess of $100,000 Under EPA Grants document is available on EPA's Contract Provisions for Davis-Bacon and Related Acts webpage provides the additional requirements provided under 29 CFR 5.5. This information is included as follows:

(b) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a), above or 29 CFR 4.6. As used in this paragraph, the terms "laborers and mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of $32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).

(3) Withholding for unpaid wages and liquidated damages.

(i) Withholding process. The subrecipient may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this 29 CFR 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be

withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or 29 CFR 5.5(b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Subrecipient must insert a clause requiring that the contractor or subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each workers' correct classification(s) of work actually performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by 29 CFR 5.1. Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of 29 CFR 5.5. No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of 29 CFR 5.5 or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1 is entered into without the incorporation of the clauses required by 29 CFR 5.5, the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by 29 CFR 5.5 must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under 29 CFR 5.13.

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with 29 CFR 5.5(e).

(2) (i) Certified payrolls submitted pursuant to 29 CFR 5.5(a)(3)(ii) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to 29 CFR 5.5(a)(3)(ii), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by 29 CFR 5.5 and the applicable statutes referenced in 29 CFR 5.1. Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under 29 CFR 5.5(a)(3). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of 29 CFR 5.5(a)(11) or (b)(5), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(1) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by 29 CFR 5.1.

(2) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(3) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(4) Where the underpayments disclosed by such an investigation or other compliance action total $1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of 29 CFR 5.5(a)(11) or (b)(5). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the “Freedom of Information Act” (5 U.S.C. 552, see part 70 of this subtitle) and the “Privacy Act of 1974” (5 U.S.C. 552a, see part 71 of this subtitle).

X. Appendix 2 – Applies to Non-Governmental Entities (such as Water Supply Corporations and Private Companies)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations

(a) Subrecipients must obtain proposed wage determinations for specific localities at https://sam.gov/content/wage-determinations. After the subrecipient obtains its proposed wage determination, it must submit the wage determination to the TWDB for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the TWDB.)

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor https://sam.gov/content/wage-determinations on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor https://sam.gov/content/wage-determinations on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from https://sam.gov/content/wage-determinations into the ordering instrument.

(d) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

The subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the following clauses:

(1) Minimum wages.

(i) Wage rates and fringe benefits.

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(v); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CRF 5.5(a)(1)(iii)) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, https://sam.gov/content/wage-determinations.

(ii) Frequently recurring classifications.

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR Part 5.5(a)(1)(iii), provided that:

(1) The work to be performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(2) The classification is utilized in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance.

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is used in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the TWDB. The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor via email to DBAconformance@dol.gov, and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5(a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5(a)(1)(iii)(C) and (D) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with t criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met.

The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest. In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding.

(i) Withholding requirements. The subrecipient(s) may, upon its own action or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor, so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CRF 5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay laborers and mechanics, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), the EPA may, on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with 29 CFR (a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) Records and certified Payrolls.

(i) Basic Record requirements.

(A) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor any subcontractor during the course of the work and preserved for all laborers and mechanics working at the stie of the work (or otherwise work in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required. Such records shall contain the name, last known address, social security number, telephone number, and email address of each such worker, each worker's correct classification(s) of work actually performed, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act), daily and weekly number of hours actually worked in total and on each covered contract, deductions made, and actual wages paid.

(C) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements.

(A) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the subrecipient, that is, the entity that receives the funds from the TWDB. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature (e.g. DocuSign); the system allows the contractor, the contracting agency, and the Department

of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system. Such documentation shall be available on request of the TWDB or EPA.

(B) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full social security numbers and last known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the employee's social security number). The required weekly certified payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf or its successor site. It is not a violation of this section for a prime contractor to require a subcontractor to provide full social security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the TWDB (or the applicant, sponsor, owner, or other entity as the case may be, that maintains such records).

(C) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or their agent who pays or supervises the payment of the persons working on the contract and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5 (a)(3)(i), and that such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of the Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347

will satisfy the requirement for submission of the “Statement of Compliance” required by paragraph 29 CFR 5.5(a)(3)(ii)(C).

(E) Signature. The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature (e.g., DocuSign).

(F) Falsefication. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(G) Length of certified payroll retention. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access.

(A) Required record disclosures and access to workers. The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i) through (iii) of this section, and any other documents that the EPA or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statues referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the TWDB, EPA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CRF 5.12. In addition, any Contractor or other person that fails to submit the required records or make those records available to TWDB and WHD within the time TWDB/WHD requests that the records be produced will be precluded from introducing as evidence in an administrative

proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the EPA if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the TWDB, EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and equal employment opportunity

(i) Apprentices.

(A) Rate of pay. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CRF 5.5(a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of rations and wage rates. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) applicable within the locality in which construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) Equal employment opportunity. The use of apprentices and journeymen under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11) along with the applicable wage determination(s) and such other clauses or contract modifications as the EPA determines may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1,

3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), TWDB, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

(11) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

4. Contract Provision for Contracts in Excess of $100,000

(b) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a), above or 29 CFR 4.6. As used in this paragraph, the terms “laborers and mechanics” include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of $32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).

(3)Withholding for unpaid wages and liquidated damages.

(ii) Withholding process. The subrecipient may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this 29 CFR 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or 29 CFR 5.5(b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in 29 CFR

5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Subrecipient must insert a clause requiring that the contractor or subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each workers' correct classification(s) of work actually performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by 29 CFR 5.1. Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of 29 CFR 5.5. No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of 29 CFR 5.5 or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1 is entered into without the incorporation of the clauses required by 29 CFR 5.5, the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by 29 CFR 5.5 must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses

into its contract, and must promptly refer the dispute to the Administrator for further proceedings under 29 CFR 5.13.

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with 29 CFR 5.5(e).

(2) (i) Certified payrolls submitted pursuant to 29 CFR 5.5(a)(3)(ii) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to 29 CFR 5.5(a)(3)(ii), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by 29 CFR 5.5 and the applicable statutes referenced in 29 CFR 5.1. Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under 29 CFR 5.5(a)(3). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of 29 CFR 5.5(a)(11) or (b)(5), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing

Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(5) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by 29 CFR 5.1.

(6) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(7) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(8) Where the underpayments disclosed by such an investigation or other compliance action total $1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of 29 CFR 5.5(a)(11) or (b)(5). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the “Freedom of Information Act” (5 U.S.C. 552, see part 70 of this subtitle) and the “Privacy Act of 1974” (5 U.S.C. 552a, see part 71 of this subtitle).

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XI. Appendix 3 – Requesting Additional Wage Determinations

As discussed in Section V, Requesting Additional Wage Determination, herein, the awarded contractor initiates the request for preparing an SF 1444. The prime contractor for the SRF construction contract initiates the conformance request by completing a **Standard Form (SF) 1444 – Request for Authorization of Additional Classification and Rate** (found at the end of this document and at https://www.gsa.gov/system/files/2023-10/SF1444-23.pdf).

The following is an overview of the process that the TWDB and its subrecipients are required by EPA and DOL to follow:

1. Prime Contractor completes the SF 1444 and submits the fully executed form, along with the applicable existing DOL Wage Decision for the area, to the subrecipient (such as the City, District, or Water Supply Corporation).
2. Subrecipient reviews and, if it concurs, submits the SF 1444 and existing DOL Wage Decision for the area to the TWDB by emailing a scan of the completed form and Wage Decision to Wages@twdb.texas.gov.
3. TWDB reviews and submits the request to the DOL, along with a copy to EPA.
4. DOL responds to the TWDB with a decision.
5. TWDB informs the subrecipient of DOL's decision to approve, modify or deny the request.
6. Subrecipient incorporates the approved conformance wage determination into the construction contract and awards the contract within 180 days of the conformance issuance date. Copies of the conformance approval should be maintained with Davis-Bacon records.

Questions: Email TWDB at Wages@twdb.texas.gov

Before completing and submitting the SF 1444, please note:

All classes of laborers or mechanics that are not listed in an existing DOL wage determination and that are to be employed under the contract must be classified in conformance with the existing DOL wage determination for the area. Therefore, any additional classification, along with the associated wage rate and fringe benefits, may only be approved by DOL when the following have been met:

(1) The work to be performed by the classification being requested on the SF 1444 is not performed by a classification that is already in an existing DOL wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates contained in the existing DOL wage determination for the area.

Instructions for boxes on SF 1444:

Check “Construction Contract” at the top of the form

Box 2. Insert the following:

Texas Water Development Board
Austin, TX

Box 3. Prime Contractor’s name

Box 4. Date the signed form was emailed to TWDB

Box 5. TWDB’s Project Number

Box 6. The date the bid was opened (Bid letting date)

Box 7. The date the contract was awarded.

Box 8. The actual date the contractor will be starting or started work.

Box 9. *Leave blank - this section is not applicable.*

Box 10. List all subcontractors that will utilize the labor classification listed in box 13a. If none, enter "N/A."

Box 11. Project title and description of the project work.

Box 12. Location of project (include city, county and state).

Box 13. The information for “Number” and “Date” are found on the front page of the DOL’s General Decision for the area.

Number: Look for the "General Decision Number" (for example: TX180116).

Dated: The date is immediately after the General Decision Number.

Box 13a. List all jobs for which you are requesting a wage (for either the prime or the subcontractor). **Include a detailed job description and duties to be performed. (Note: If the proposed job classification is not one that is commonly used by DOL in their Wage Determination in Texas, such as a "CARPENTER", "ELECTRICIAN", or "TRUCK DRIVER", it is important to include a detailed description with the initial request. The DOL needing to follow up with a request for a detailed job description for a new classification name will delay their review and response significantly.)**

Boxes 13b and 13c. The proposed wage and fringe rates should bear a reasonable likeness to the category classification wage and fringe rates (operator, laborer, truck driver, etc.) listed in the existing DOL wage determination for the area.

Box 14. If there is a subcontractor listed on line 10, its representative signs on this line (include title).

Box 15. The prime contractor's representative must sign on this line (include title).

Box 16. If the prime contractor or subcontractor has a specific employee who will be performing the labor classification(s) listed in box 13a, or if the employees' have legal representation (such as a union), the employee or representative must sign and include their title. (Note: the designated representative of an existing employee cannot be the contractor's personnel office or any other contractor representative.) If no existing employee is known or identified to perform work under the listed classification, then enter "Unknown" in Box 16. The "Agree" or "Disagree" boxes are checked by anyone signing in boxes 14, 15, and 16.

STATE OF TEXAS §
§
COUNTY OF _____ §

SITE
CERTIFICATE

Before me, the undersigned notary, on this day personally appeared _____, a person whose identity is known to me or who has presented to me a satisfactory proof of identity. After I administered an oath, this person swore to the following:

(1) My name is_____. I am over 18 years of age and I am of sound mind, and capable of swearing to the facts contained in this Site Certificate. The facts stated in this certificate are within my personal knowledge and are true and correct.

(2) I am an authorized representative of _____, an entity that has filed an application for financial assistance with the Texas Water Development Board for a (water) (wastewater) project.

Please complete only those sections that apply to your project:

LEGAL CERTIFICATION – LEASE/CONTRACT

I certify that: _____
(Legal Name of Applicant, i.e., City, District, etc.)

has executed a written lease or other contractual agreement to use the property needed for this (water)(wastewater) project that extends through _____(date), the life of the Texas Water Development Board loan or grant that will be used to finance this project, either in whole or in part. A copy of this lease or agreement is attached hereto.

LEGAL CERTIFICATION – PROPERTY EASEMENT

I certify that: _____
(Legal Name of Applicant, i.e., City, District, etc.)

has executed an express easement to use the property needed for this (water) (wastewater) project that extends through the life of the Texas Water Development Board loan or grant that will be used to finance this project, either in whole or in part. The express easement to use the property needed for this (water) (wastewater) project extends through _____(date). A copy of the express easement agreement is attached hereto.

LEGAL CERTIFICATION – OWNERSHIP INTEREST

I certify that_____
(Legal Name of Applicant, e.g. City, District, etc.)

☐ Option A: has acquired the necessary real property interest, as evidenced by fee simple purchase, deed, fully executed earnest money contracts, or completion of eminent domain proceedings; that such acquisition will guarantee access and egress; and such interest will contain the necessary easements, rights of way, or unrestricted use as is required for the project being financed by the Texas Water Development Board. The legal description is referenced below.

The property has been acquired with the use of eminent domain: ☐ True ☐False

OR

☐ Option B: is in the process of acquiring the necessary real property interest, as evidenced by earnest money contracts, contracts for sale, firm option agreements to purchase the subject property, or the initiation of eminent domain procedures; that such acquisition will guarantee access and egress; and such interest will contain the necessary easements, rights of way, or unrestricted use as is required for the project being financed by the Texas Water Development Board. The legal description is referenced below. The anticipated date of acquisition is: _____.

The property will be acquired with the use of eminent domain: ☐ True ☐False

If True, then reasonable considerations should be investigated with relevant stakeholders to reduce the necessity of exercising the power of eminent domain to obtain interests in real property by identifying opportunities to utilize existing transportation and utility easements.

Location and Description of Property Interests acquired for Project:

Any deeds or other instruments required to be recorded to protect the title(s) held by _____(Legal Name of Applicant) have been recorded or filed for the record in the County deed records or other required location. The following documents are attached hereto:

Description of documents that were used or will be used to acquire the property:

EXECUTED this_____day of _____, 20_____.

_____(Signature)

_____(Print Name)

_____(Title)

Sworn to and subscribed before me by _____on this _____day of_____,20_____.

_____(Notary Public in and for the State of Texas)

[SEAL]

CONTRACTOR'S ACT OF ASSURANCE

STATE OF TEXAS §
§
COUNTY OF_____§

BEFORE ME _____, a Notary Public duly commissioned and qualified in and for the County of _____ in the State of Texas came and appeared _____, as represented by _____, the Corporation's _____, who declares he/she is authorized to represent _____ pursuant to provisions of a resolution adopted by said Corporation on the _____ day of _____, 20_____(a duly certified copy of such resolution is attached to and is hereby made a part of this document).

_____, as the representative of, _____declares that _____ assures the Texas Water Development Board that it will construct _____ project at _____, Texas, in accordance with sound construction practice, all laws of the State of Texas, and the rules of the Texas Water Development Board.

GIVEN UNDER MY HAND and seal of office this _____ day of _____, 20_____.

_____ (Notary Public in and for the State of Texas)

_____ (Print Name)

[SEAL]

CONTRACTOR'S ACT OF ASSURANCE RESOLUTION

I hereby certify that it was RESOLVED by a quorum of the directors of the _____(Name of Corporation), meeting on the_____day of _____ 20_____, that:

Authorized Representative(s):

be, and hereby is/are authorized to act on behalf of _____ (Name of Corporation), as its representative in all business transactions conducted in the State of Texas, and;

That all above resolution was unanimously ratified by the Board of Directors at said meeting and that the resolution has not been rescinded or amended and is now in full forces and effect; and;

In authentication of the adoption of this resolution, I subscribe my name and affix the seal of the Corporation this _____ day of _____, 20_____.

_____(Secretary)

[SEAL]

Debarment / Suspension Certification

I, _____, hereby certify that I have checked on the federal
(Authorized Representative of Recipient)
System for Award Management (www.sam.gov) website and determined that
_____ is not shown as an "excluded party" that is debarred,
(Name of entity)
suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. (See 2 CFR Part 180 and 2 CFR Part 1532 for additional information on the federal governmentwide debarment and suspension system for nonprocurement programs and activities.)

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

_____ _____
Signature Date

_____
Title

_____
Name of Recipient

Verifying prime contractors and subcontractors for construction, equipment, supplies and services: Using the www.sam.gov website, the recipient must verify prior to awarding the contract that the prime contractor is not listed as an "excluded party" that is debarred, suspended or otherwise excluded from or ineligible. Once any subcontractors are known, they also must be verified as not listed as an "excluded party" prior to award of a subcontract. The recipient must print a dated record of the verification from the www.sam.gov website and retain a copy that is available for review by TWDB. The prime contractors and subcontractors must be verified prior to the contract award or the costs may be disallowed.

FOR OFFICE USE ONLY
Commitment #_____

TWDB-0216
TEXAS WATER DEVELOPMENT BOARD
AFFIRMATIVE STEPS SOLICITATION REPORT

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF)
			☐ Clean Water SRF (CWSRF)

Project Name: _____

Solicitation By: ☐ Applicant/Entity OR ☐ Prime Contracted Business: _____

Project Phase: ☐ Prior to Closing ☐ Release of funding for PADs ☐ Construction Contract #_____

II. SOLICITATION METHOD(S) UTILIZED

At least two methods of solicitation are required. Select the method(s) utilized for the solicitation. Copies of the actual postings, direct contact email/phone log, etc. must be attached to this form as support documentation for each method used. Failure to adequately follow these steps will result in the requirement to complete additional steps in order to become compliant.

☐ Newspaper Advertisements ☐ Meetings or Conferences ☐ Trade Association Publications

☐ Minority Media ☐ Internet & Web Postings ☐ Other Government Publications

☐ Direct Contact by Phone, Fax, USPS Mail, or Email*

If using direct contact, entities must solicit to a **minimum of 3 businesses/firms (at least one being a DBE) for each category of contract sought (i.e., construction, supplies, equipment, or services) to demonstrate a Good Faith Effort.*

III. PROJECT BIDDERS LIST:

List on the following table, or provide on a separate list, each business entity directly solicited for procurement or that submitted a bid for consideration.

Instructions for Columns 1 - 4	1 - Full business name (line one) & point of contact (line two) 2 - Business address 3 - Telephone number 4 - Email address for the business
Instructions for Column 5	Enter one of the following procurement or contract categories: **CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES** *For detailed definitions, review guidance document, TWDB-0210.*
Instructions for Column 6	Enter the type of business: **MBE** - Minority Business Enterprise, **WBE** - Women-owned Business Enterprise, or **OTHER** - Company or firm is Non-MBE or WBE

Notice: Entities receiving State Revolving Fund financial assistance must create and maintain a Bidders List if the entity is subject to, or chooses to follow, competitive bidding. The Bidders List must include all firms that bid or quoted on contracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. Entities must keep all Bidders Lists until project completion or the recipient is no longer receiving EPA funding under the loan, whichever is later. Entities with loans totaling less than $250,000 during a state fiscal year are exempt from the Bidders List requirement, but must still meet DBE program requirements. The Bidders List requirement also applies to all Prime Contracted Businesses/Firms that make subcontracting.

	Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**
	Business Name & Point of Contact	Business Address	Telephone Number	E-Mail Address	Procurement Category	MBE/WBE Status
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						

Use additional sheets if necessary

Signature – Authorized Representative	**Title (print legibly)**	**Date**

IV. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE requirements.

DBE Coordinator	**Approval Date**

FOR OFFICE USE ONLY: Commitment #

TWDB-0217
Revised 08/14/2018

TWDB-0217
TEXAS WATER DEVELOPMENT BOARD (TWDB)
PRIME CONSULTANT/CONTRACTOR CERTIFICATION

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total of TWDB Funding	Program Type (insert "X" for all that apply)	
			☐	Drinking Water SRF (DWSRF)
			☐	Clean Water SRF (CWSRF)

Prime Consultant/Contractor: _____

Contract Number: _____ **Contract Amount:** _____

II. GOOD FAITH EFFORT (Applicable to all subcontracts awarded by the prime contractor/consultant)

I understand that it is my responsibility to comply with all state and federal regulations and guidance in the utilization of Minority and Women-owned Businesses in procurement. I certify that I will make a "good faith effort" to afford opportunities for Minority Business Enterprise (MBE), and Women-owned Business Enterprise (WBE) by:

1.	Including qualified MBEs and WBEs on procurement solicitation lists
2.	Soliciting potential MBEs and WBEs
3.	Reducing contract size/quantities when economically feasible to permit maximum participation by MBEs and WBEs
4.	Establishing delivery schedules to encourage participation by MBEs and WBEs
5.	Using the services and assistance of the Small Business Administration, Minority Business Development Agency, U.S. Department of Commerce, and Texas Marketplace
6.	Submitting documentation to the Applicant/Entity to verify good faith effort, steps 1-5.
☐	**EXCEPTION**: As the Prime Consultant/Contractor, I certify that I have reviewed the contract requirements and found no available subcontracting opportunities. I also certify that I will fulfill 100 percent of the contract requirements with my own employees and resources. (Check if applicable)

Signature – Prime Consultant/Contractor	Title (print legibly)	Certification Date

III. PROJECT PARTICIPATION ESTIMATES

The Cost Categories mentioned below are goals. These goals are neither standards nor quotas. Recipients of financial assistance are not required to meet the fair share objectives. They must, however, acknowledge that they are aware of and are actively pursuing the fair share objectives with their procurements.

	Potential **MBE** Participation	Potential **WBE** Participation
Cost Category	**Goal**	**Goal**
Construction	**19.44%**	**9.17%**
Supplies	**25.34%**	**8.82%**
Equipment	**16.28%**	**11.45%**
Services	**20.41%**	**13.66%**

The fair share goals listed above are required by 40 CFR Part 33 Subpart D and are directly negotiated with EPA Region 6. Entities receiving federal financial assistance are subject to the TWDB's goals and may not be substituted with other agency or program goals.

IV. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE Requirements.

DBE Coordinator	Approval Date

FOR OFFICE USE ONLY
Commitment #_____

TWDB-0373
TEXAS WATER DEVELOPMENT BOARD
PARTICIPATION SUMMARY

I. PROJECT INFORMATION

TWDB Project Number	Applicant/Entity Name	Total TWDB Funding Request	Program Type (insert "X" for all that apply)
			☐ Drinking Water SRF (DWSRF)
			☐ Clean Water SRF (CWSRF)

Project Name: _____

Solicitation By: ☐ Applicant/Entity OR ☐ Prime Contracted Business: _____

Project Phase: ☐ Prior to Closing ☐ Release of funding for PADs ☐ Construction Contract # _____

Instructions	
Column 1	Enter the full name, street address, city/state/zip for each firm awarded a contract for the project.
Column 2	Enter one of the following procurement or contract categories: **CONSTRUCTION – SUPPLIES – EQUIPMENT – SERVICES**
Column 3	Enter the type of business: **MBE (Minority Business Enterprise), WBE (Women-owned Business Enterprise), or OTHER (NOTE: OTHER = Company or firm is Non-MBE or WBE)**
Column 4	Enter the exact amount of the awarded contract.
Column 5	Enter the exact date the contract was executed or the proposed date of contract execution.

If valid MBE/WBE firms are awarded contracts, a copy of their certification is required to be attached with this form for each MBE/WBE business listed.

Notice: Brokers may not be listed below as an MBE or WBE. A broker is a firm that does not perform, manage, or supervise the work of its sub/contract in a manner consistent with the normal business practices for sub/contractors in its line of business. For more specifics, review guidance document, TWDB-0210.

II. LIST OF ACTUAL CONTRACTS/PROCUREMENTS

	Column 1	Column 2	Column 3	Column 4	Column 5
	Name & Address of Contracted Firm/Vendor	Procurement Category	MBE/WBE Status	Contract Amount ($)	Contract Execution Date
1.					
2.					
3.					
4.					
5.					
6.					

(Table continues on the next page)

	Column 1 Name & Address of Contracted Firm/Vendor	Column 2 Procurement Category	Column 3 MBE/WBE Status	Column 4 Contract Amount ($)	Column 5 Contract Execution Date
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

Use additional sheets if necessary

Signature – Authorized Representative	Title (print legibly)	Date

III. TWDB APPROVAL SIGNATURE

Signature indicates the form meets DBE requirements.

DBE Coordinator	Approval Date

TWDB-0550
Rev. 4/2026

Texas Water Development Board Supplemental Construction Contract Conditions

For Equivalency Projects under the Clean Water State Revolving Fund and Drinking Water State Revolving Fund Programs

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Forms and Guidance:

The Texas Water Development Board (TWDB) forms and guidance documents noted in this instruction document may be accessed through the TWDB's Financial Assistance web site at:
http://www.twdb.texas.gov/financial/instructions/index.asp

Search by either the document number or name.

I. INSTRUCTIONS FOR APPLICANTS

1. Applicability

These Supplemental Contract Conditions contain provisions that are worded to comply with certain statutes and regulations, which specifically relate to all Drinking Water State Revolving Fund (DWSRF) Equivalency Program and Clean Water State Revolving Fund (CWSRF) Equivalency Program projects. Provisions that are applicable to the project's funding source or dollar value of the contract are noted within these provisions.

Construction projects which are considered Non-Equivalency projects do not use these conditions but instead use Texas Water Development Board (TWDB) Supplemental Conditions TWDB-0551. Projects with State Loan funding use Supplemental Conditions TWDB-0552

2. Use of Conditions

The conditions and forms listed under ***Section II: Instructions to Bidders*** are to be included in the instructions to bidders for construction services. The provisions listed under ***Section III: Construction Contract Supplemental Conditions*** must be included, in their entirety, with the other general and special conditions that are typically included in the construction contract documents by the Engineer[1].

3. Modifications to Provisions

The Applicant may need to modify parts of these provisions to better fit the other provisions of the construction contract; however, everything herein must be included in the contract documents. The Applicant and the Engineer should carefully study these provisions before incorporating them into the construction contract documents. In particular, Water Districts and other types of Districts should be aware of statutes relating to their creation and operation, which may affect the application of these conditions. **The TWDB Project Engineer/Reviewer should be consulted if the Applicant thinks there is a need to modify parts of these provisions**.

Section III Supplemental Condition No. 17 (Archeological Discoveries and Cultural Resources) and Section III Supplemental Condition No. 18 (Threatened and Endangered Species) may be superseded or modified by project-specific environmental conditions established during the environmental review process.

These documents may confer certain duties and responsibilities on the Engineer that are beyond, or short of, what the Applicant intends to delegate. The Applicant should ensure that the contractual agreement with the Engineer provides for the appropriate services. Otherwise, the Applicant should revise the wording in these special conditions to agree with actual delegated functions.

[1] Throughout this document “Engineer” is used to mean Design Engineer/Engineer of Record, Prime Engineer, Consulting Engineer, or Owner’s Engineer, depending on the contract type between the Applicant and the Engineer and depending on the phase of the project (i.e., planning, design, or construction).

4. Good Business Practices

There are other contract provisions that the Applicant and Engineer need to include as a matter of good business practice. It is recommended that provisions addressing the following matters be included in the construction contract.

(a) Specifying the timeframe for accomplishing the construction of the project, and the consequences of not completing construction on time, including liquidation damages.

(b) Specifying the type, dollar value, and documentation of insurance the Contractor is to carry. At a minimum, the Contractor should carry worker's compensation, liability, and builder's risk insurance that will meet state statutory limits.

(c) Identifying the responsibility of the Contractor, including warranty of work.

(d) Price reduction for defective pricing of negotiated costs.

(e) Differing site conditions – notice and claims regarding site conditions differing from indicated conditions.

(f) Specifying maximum time permitted to submit an official Change Order after a field change has been authorized and implemented.

(g) Covenants against contingent fees – prohibit contingent fees for securing business.

(h) Gratuities – prohibitions against offering and accepting gratuities.

(i) Auditing and accessing records.

(j) Suspension of work – conditions under which the Applicant may suspend work.

(k) Termination – conditions under which the Applicant may terminate.

(l) Remedies – how disputes will be remedied.

5. Other Requirements

If applicable, Trench Safety requirements shall adhere to the Health and Safety Code Chapter 756, Subchapter C, which includes reference to the Occupational Safety and Health Administration (OSHA) standards for trench safety in effect during the period of construction of the project and Owner's Geotechnical information to assist Contractor in design of Trench Safety System

There may be other local government requirements and applicable Federal and State statutes and regulations which are not included or addressed by these conditions. It is the Applicant's responsibility to ensure that the project and all contract provisions are consistent with all relevant statutes and regulations.

6. Advertisements for Bids

State procurement statutes **require advertising a contract for bid at least once a week for at least two (2) consecutive weeks**[2]. By not following this requirement, the project may need to be re-advertised (i.e., rebid). The official advertisement for bids that is published in the newspaper must include certain information such as, but not limited to, the following:

(a) A clear description of what is being procured.

(b) How to obtain plans and specifications, necessary forms and information.

(c) The date and time by which bids are to be submitted (deadline).

(d) The address where bids are to be provided.

(e) A statement that the contract is contingent upon release of funds from the TWDB.

(f) A statement that any contract(s) awarded under this Invitation for Bid (IFB), Request for Proposals (RFP), or Request for Qualifications (RFQ) is/are expected to be funded in part by financial assistance from the TWDB. Neither the U.S. Environmental Protection Agency (EPA) nor the State of Texas, nor any of its departments, agencies, or employees, are or will be a party to this IFB, RFP, RFQ, or any resulting contract.

(g) As directed by the TWDB, **one** of the following must be included:

a. Beginning with SRF Equivalency projects approved under the 2023 Intended Use Plan (IUP) or later - Any contract(s) awarded under this Invitation for Bids is/are subject to the Build America, Buy America (BABA) Act requirements of Section 70901 of P.L. 117-58 of the Bipartisan Infrastructure Law, 2021; **or**

b. For SRF Equivalency projects approved under the 2022 IUP or earlier – Any contract(s) awarded under this Invitation for Bids is/are subject to the American Iron and Steel (AIS) requirements of federal law, including federal appropriation acts and/or Section 608 of the Federal Water Pollution Control Act.

(h) *The following is specific text that should be included as-is:* Equal Opportunity in Employment - All qualified Applicants will receive consideration for employment.

(i) Acknowledgement of any special requirements such as mandatory pre-bid conference.

(j) Right to reject any and all bids.

(k) A statement that Davis-Bacon prevailing wage requirements apply to the construction, alteration, or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean or Drinking Water State

[2] From LGC 252.041, Municipalities are required to advertise in a newspaper at least once a week for two consecutive weeks.

Revolving Fund Programs (CWSRF or DWSRF).

(l) For additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract, please consult TWDB Guidance No. DB-0156.

7. Bid Proposal

The Bid proposal form should account for the following:

(a) If a lump sum bid, include a list of the materials used and associated costs.

(b) Distinguish TWDB-funding Eligible and Ineligible items.

(c) Accommodate Trench Safety requirements with separate per unit pay item for trench excavation safety protection in accordance with Health and Safety Code Chapter 756, Subchapter C and as briefly noted below:

1. Separate pay item for special shoring requirements; and

2. Separate pay item for trench excavation safety protection.

(d) Include space for the Contractor to acknowledge receipt of each Addendum issued during the bidding process.

8. Bidding Process

The Plans and Specifications (P&S) should include an explanation of how the bids will be processed and should include the following components:

(a) Whether a Pre-bid Conference will be held, whether it is optional or mandatory, and where and when it will be held. If possible, it is recommended to hold the pre-bid via Zoom, Microsoft Teams, or other online platform, as well as in person. The TWDB Project Engineer/Reviewer is to be invited to the Pre-Bid Conference.

(b) Specify the criteria and process for determining responsiveness and responsibility of the bidder.

(c) Specify the method of determining the successful bidder and award (e.g., award to the lowest responsive, responsible bidder, accounting for any multiple parts to bids).

(d) Allow for withdrawal of a bid due to a material mistake.

(e) Identify the time frame that the bids may be held by the Applicant before awarding a contract (i.e., typically for 60 or 90 days).

(f) Acknowledge the right of the Applicant to reject any and all bids.

9. Debarment and Suspension Certification

Financial assistance recipients must fully comply with the requirements of Subpart C of 2 CFR Part 180 – "*Responsibilities of Participants Regarding Transactions Doing Business with Other Persons*" - as implemented and supplemented by 2 CFR Part 1532. The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 – *"Covered Transactions"*

– includes a term or condition requiring compliance with Subpart C.

The recipient is fully responsible for requiring the inclusion of a similar term or condition in any subsequent lower-tier covered transactions.

Recipient acknowledges that failing to disclose the information required under 2 CFR 180.355 may result in the delay or negation of the financial assistance, or pursuance of legal remedies including debarment and suspension.

The recipient must complete and submit the **Debarment/Suspension Certification** (**SRF-404*),*** certifying that it has checked the federal System for Award Management website (https://sam.gov/content/home) and determined that the Contractor is not an "excluded party" that is debarred, suspended, or otherwise excluded from participation in federal assistance programs under Executive Order 12549, as required by 2 CFR Part 180 and 2 CFR Part 1532.

10. Release of Funds

Prior to the TWDB's authorization for the Applicant to issue a notice to proceed (NTP), and subsequent release of funds for construction (according to program specific requirements), the Applicant and its Engineer must provide the following bid documents for TWDB review:

(a) Submittal of Bid Documents to the TWDB Project Engineer/Reviewer to allow contingent award of contract:

- Advertisement and Affidavit of Advertisement (for municipalities, the project must be bid at least once a week for two (2) consecutive weeks in a newspaper),
- Bid tabulation,
- All Addenda submitted and approved for the contract,
- Bid proposal of apparent low bidder (or chosen bidder with explanation), including the Contractor's bid guarantee or bid bond,
- Applicant's Debarment/Suspension Certification for the Contractor,
- Site Certificate (ED-101),
- Engineer's recommendation to award letter,
- A description of any bidding irregularities, and
- Construction inspection proposal.

Then the TWDB can issue authorization for the Applicant to issue the contingent Notice of Award for the construction contract.

(b) Once the Applicant has issued their contingent Notice of Award of the construction contract, they must submit a bound copy (single file PDF document) of the **executed contract documents (including specifications)** and a bound copy (single file PDF document) of the **Approved Plan Set.** A complete set of bound executed contract documents should include:

- Front-End Documents, Addenda, Executed Agreement, and Technical Specifications as approved by the TWDB and TCEQ (as applicable),
- Contractor's Act of Assurance (TWDB Form ED-103),
- Contractor's Act of Assurance Resolution (TWDB Form ED-104),
- Payment and Performance Bonds (must be executed on or after the date of the contract),
- Contractor's Wage Rate Determination(s),
- Contractor's Certificate of Insurance, and
- **If applicable**, the Applicant's **Sufficiency of Funds letter.**

After reviewing and approving the executed contract documents, the TWDB will issue an authorization for the Applicant to issue a Notice to Proceed (NTP). At this time, the TWDB staff can begin releasing construction funds **in accordance with program requirements**.

Once construction begins, the Applicant must submit **monthly** Outlay Requests. Outlay Requests that include requests for construction contract funds, must include the following documents:

- DB-0154 – Monthly Davis Bacon Wage Rate Certificate of Compliance; and either
- TWDB-1110-A Monthly Build America, Buy America (BABA) (as applicable) **or**
- TWDB-1106-A – Monthly American Iron and Steel Certificate (as applicable)

In addition, the first Outlay Request for construction contract funds must include the State Revolving Fund Project Public Awareness Certification (TWDB-1109-A)**.**

Failure to provide these certificates will result in denial of release of funds.

For any questions or proposed modifications to these conditions, please contact your TWDB Project Engineer/Reviewer.

II. INSTRUCTIONS TO BIDDERS

The language and conditions listed in this Section must be included in the "Instructions to Bidders" section of the construction contract documents.

1. Contingent Award of Contract

This contract is contingent upon release of funds from the TWDB. Any contract(s) awarded under this Invitation for Bids is/are expected to be funded in part by a loan or loan with principal forgiveness from the TWDB and a grant from the EPA. Neither the State of Texas, the EPA, nor any of its departments, agencies, or employees, are or will be a party to this Invitation for Bids or any resulting contract.

2. Davis-Bacon Wage Rate Requirements

Davis-Bacon prevailing wage requirements apply to the construction, alteration or repair of treatment works carried out, in whole or in part, with assistance made available by the Clean Water State Revolving Fund (CWSRF) or a construction project financed, in whole or in part, from the Drinking Water State Revolving Fund (DWSRF).

The Davis-Bacon prevailing wage requirements apply to Contractors and Subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration or repair (including painting) of a treatment works project under the CWSRF or a construction project under the DWSRF.

For prime contracts in excess of $100,000, Contractors and Subcontractors must also, under the provisions of the Contract Wage Hours and Safety Standards Act (CWHSSA), as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The Fair Labor Standards Act may also apply to Davis-Bacon covered contracts.

Any contracts in excess of $2,000 must include the provisions of the Davis-Bacon Wage Rate Requirements. See Section III, Paragraph 11, Option 1 (governmental entities) and Option 2 (non-governmental entities) for contract clauses required for Davis-Bacon requirements. This information is also included in TWDB Guidance DB-0156, as follows (Applicant = Owner (sub-recipient)):

- If the Owner (sub-recipient) is a governmental entity such as a city or district, it must insert in full the contract clauses found in TWDB Guidance DB-0156, Appendix 1: Section 3, Section 4 (if the contract exceeds $100,000), and Section 5.

- If the Owner (sub-recipient) is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses found in TWDB Guidance DB-0156, Appendix 2: Section 3, Section 4 (if the contract exceeds $100,000), and Section 5.

The Owner (sub-recipient) must ensure all prime contracts require the same full text in any subcontracts. See TWDB Guidance DB-0156 for the text of the contract language that must be included.

Additional information on Davis-Bacon Wage Rate Requirements and its applicability to this contract can be found in TWDB Guidance DB-0156.

3. American Iron and Steel

Any contract(s) awarded under this Invitation for Bids (under the 2022 IUP or earlier) is/are subject to the American Iron and Steel (AIS) requirements of 33 U.S.C §1388 for Clean Water State Revolving Fund projects or Public Law 114-113, Consolidated Appropriations Act, 2016, or subsequent appropriations acts, for Drinking Water State Revolving Fund projects. The Contractor must complete the statement of understanding regarding this requirement, found in Supplemental Contract Conditions, Item No. 9. The statement of understanding must be signed by the Contractor.

4. Build America, Buy America (BABA) Act

Any contract(s) awarded under this Invitation for Bids (under the 2023 IUP or later) is subject to the Build America, Buy America (BABA) Act requirements of Section 70901 of P.L. 117-58 of the Bipartisan Infrastructure Law, 2021. The Contractor must complete the statement of understanding regarding this requirement, found in Supplemental Contract Conditions, Item No. 10. The statement of understanding must be signed by the Contractor.

6. Equal Employment Opportunity

All qualified applicants will receive consideration for employment.

7. Debarment and Suspension Certification

This contract is subject to the federal requirements of Subpart C of 2 CFR Part 180 and Part 1532 regarding Debarment and Suspension. The Contractor will comply with the assurances provided with the bid that leads to a contract.

8. Bid Guarantee

Each bidder must furnish a bid guarantee equivalent to five percent (5%) of the bid price (Water Code 17.183). If a bid bond is provided, the Contractor must utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

9. Summary of Forms to be submitted with the Bid Documents:

- SRF-404, Certification Regarding Debarment, Suspension and Other Responsibility Matters, (to be completed and submitted by the sub-recipient).

III. SUPPLEMENTAL CONTRACT CONDITIONS

1. Supersession

The Owner and the Contractor agree that the TWDB Supplemental Conditions apply to that work eligible for TWDB assistance to be performed under this construction contract and these clauses supersede any conflicting provisions of this contract.

2. Privity of Contract

Funding for this project is expected to be provided in part by the TWDB. Neither the State of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower-tier contract. This contract is subject to applicable provisions 31 TAC Chapter 371 (DWSRF) or 375 (CWSRF) in effect on the date of the assistance award for this project.

3. Definitions

(a) The terms “Owner” or “Applicant” means the local entity contracting for the construction services.

(b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Executive Administrator, or the authorized representative thereof.

(c) The term “Engineer” means the engineer the Owner has authorized to work on the project.

4. Laws to be Observed

In the execution of the Contract, the Contractor must comply with all applicable Local, State and Federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall be familiar with and at all times must observe and comply with all Federal, State, and Local laws, ordinances and regulations which in any manner affect the conduct of the work, and must indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

5. Review by Owner and TWDB

(a) The Owner, authorized representatives and agents of the Owner, EPA, and TWDB must, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.

(b) Any such inspection or review by the TWDB must not subject the State of Texas, or its representatives, to any action for damages.

6. Performance and Payment Bonds

Each Contractor awarded a construction contract must furnish performance and payment bonds that include the following explicit conditions in the body of the bond:

(a) the performance bond must include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;

(b) the performance and payment bonds must be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the Engineer of the political subdivision; and

(c) the Contractor must utilize a surety company which is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

7. Payment Schedule and Cost Breakdown

(a) The Contractor must submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work.

(b) The following paragraph applies only to contracts awarded on a lump sum contract price:

COST BREAKDOWN - The Contractor must submit to the Owner a detailed breakdown of the estimated cost of all work to be accomplished under the contract, arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown must be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the contract. After approval by the Owner, the unit prices established in the breakdown must be used in estimating the amount of the partial payments to be made to the Contractor.

8. Workman's Compensation Insurance Coverage (as applicable, consistent with Texas Labor Code § 406.096)

(a) The Contractor must certify in writing that the Contractor provides workers' compensation insurance coverage for each employee of the Contractor employed on the public project.

(b) Each Subcontractor on the public project must provide such a certificate relating to coverage of the Subcontractor's employees to the general Contractor, who shall provide the Subcontractor's certificate to the governmental entity.

(c) A Contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

i. "Building or construction" includes:

- erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- remodeling, extending, repairing, or demolishing a structure; or
- otherwise improving real property or an appurtenance to real property through similar activities.

ii. "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

9. American Iron & Steel

*If BABA does **not** apply,* then the following AIS statement must be completed by the Contractor and made a part of the agreement between the Owner and the Contractor. The statement must be on a dedicated page within the contract that includes the Contractor signature and date; or the Contractor can choose to sign and date this page of the TWDB-0550.

*The Contractor acknowledges to and for the benefit of the Owner ("Purchaser") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or the Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel" that require all of the iron and steel products used in the project to be produced in the United States **("American Iron and Steel Requirement")** including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification, or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation attorney's fees incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the Owner).*

Additional information on the American Iron and Steel (AIS) and its applicability to this contract can be found in the TWDB-1106 guidance.

The Owner must receive and maintain files documenting the Contractor's use of

AIS. Monthly compliance with AIS must be verified by the Owner through the submittal of the TWDB form TWDB-1106-A.

10. Build America, Buy America (BABA) Act

The following statement must be completed by the Contractor and made a part of the agreement between the Owner and the Contractor. The statement must be on a dedicated page within the contract that includes the Contractor signature and date; or the Contractor can choose to sign and date this page of the TWDB-0550:

> *The Contractor acknowledges to and for the benefit of the Owner ("Purchaser") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund that have statutory requirements commonly known as "Build America, Buy America;" that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States* ***("Build America, Buy America Requirements")*** *including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the Owner).*

Additional information on the Build America, Buy America (BABA) Act and its applicability to this contract can be found in the TWDB-0559 guidance.

The Owner must receive and maintain files documenting the Contractor's use of BABA. Monthly compliance with BABA must be verified by the Owner through the submittal of the TWDB form TWDB-1110-A.

11. Davis-Bacon Wage Rate Requirements

(a) Compliance Procedures

To be held in compliance and satisfy this federal requirement, the following must be fulfilled:

i. **Wage Determinations** - U.S. Department of Labor (DOL) wage determination must be included in the bidding and contract documents. DOL wage determinations may be obtained online at https://sam.gov/content/wage-determinations. Once it is determined that Davis-Bacon wage rates will apply to a construction contract, the Owner must state in the solicitation that Davis-Bacon prevailing wage rates are applicable and bid packages must include the current Davis-Bacon general wage determination for the area where construction will occur (generally this is the project county). While the solicitation remains open, the Owner must monitor https://sam.gov/content/wage-determinations on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Owner must amend the solicitation if the DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Owner may request a finding from the TWDB that there is not a reasonable amount of time to notify interested Contractors of the modification of the wage determination.

   If a contract is not awarded within 90 days after bid opening, any revised general wage determination issued prior to award of the contractor is effective for that contract; unless the TWDB, at the request of the Owner, requests and obtains an extension of the 90-day period from DOL (29 CFR 1.6(c)(2)(ii)(D)).

   Wage determinations must be updated after contract award when (1) the contract has a change order that adds substantial construction, alternation, or repair work not within the original scope and the contract time is extended, or (2) the contract is a “work order” type contract (a general commitment to construction as the need arises, but exact construction is not necessarily specified). For “work order” type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract’s award (or each anniversary date of the beginning of construction when there is no award). (29 CFR 1.6(c)(2)(iii))

ii. **Insert wage rate requirements in full for all contracts and subcontracts in excess of $2,000** - If the Owner is a governmental entity such as a city or district, it must insert in full the contract clauses shown herein as Option 1: Section 3, Section 4 (if the contract exceeds $100,000), and Section 5. If the Owner is a non-governmental entity such as a water supply corporation or a private company, it must insert in full the contract clauses shown herein as Option 2: Section 3, Section 4 (if the contract exceeds $100,000), and Section 5.

   The Owner must ensure all prime contracts require the same full text in any subcontracts. Davis Bacon applies regardless of whether the terms and

conditions are included or not in all contracts and subcontracts. **Include the following text in all contracts:** "By accepting this award, the EPA Subrecipient acknowledges and agrees to the terms and conditions provided in the DBRA requirements for contractors."

iii. **Monthly Certification** – The Owner must complete and submit monthly a Davis Bacon Wage Rate Certificate of Compliance once construction has begun. **(Use Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Subrecipient) DB-0154).**

iv. **Contractor Payroll Requirements** - The Contractor is required to pay the prevailing wage rates on a weekly basis to laborers and mechanics in accordance with the requirements of 29 CFR 5.5, which are incorporated into the actual construction contract. Contractors/Subcontractors must furnish weekly a statement with respect to the wages paid to each employee during the preceding week. The signature by the contractor, subcontractor, or authorized officer/employee must be an original handwritten signature or a legally valid electronic signature (e.g., Docusign). They may use the Department of Labor (DOL) Payroll Form WH-347 and weekly Statement of Compliance on the reverse, or their own payroll form with all of the same data elements as the DOL Payroll Form WH-347, and the TWDB's form, Statement of Compliance Certification by Contractor for SRF, DB-0155. The DOL Payroll Form WH-347 can be found under the forms section of this document or at the following link: www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification. **(See DOL Payroll Form WH-347)**

v. **Interviews -** The Owner must periodically interview a sufficient number of employees entitled to the Davis-Bacon prevailing wages to verify that Contractors or Subcontractors are paying the appropriate wage rates. All interviews must be conducted in confidence. The Owner must use Standard Form 1445 (SF 1445) found at the following link: https://www.gsa.gov/system/files/SF_1445.pdf or equivalent documentation to memorialize the interviews. The Owner must establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by Contractors or Subcontractors and the duration of the contract or subcontract. The Owner must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the Contractor or Subcontractor is not complying with Davis-Bacon. The Owner must immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. (See Section 5 of Option 1 [governmental entities] and Option 2 [non-governmental entities]).

vi. **Payroll Records** - Certified payroll must be delivered by the Contractor or Subcontractor within seven (7) days after the regular payment date of the payroll period. Certified payroll records are required to be retained by the Owner and Contractor for three (3) years after completion of the construction project. The Owner must periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or Subcontractors are paying the appropriate wage rates. (See Section 5 of Options 1 and 2).

The payroll records must include the following: the name, Social Security number, last known address, telephone number, and email address of each laborer and mechanic; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

vii. **Wage Rate Poster** – The Contractor must post the required Poster (WH-1321) and applicable wage rates at the construction site in a prominent and accessible place where it can be easily seen by the workers. The wage rate poster may be found at www.dol.gov/whd/programs/dbra/wh1321.htm. **(See Davis-Bacon Wage Rate Poster, WH-1321)**

viii. **Report Violations** – The Owner must immediately report violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the appropriate DOL WHD Office listed at http://www.dol.gov/whd/america2.htm..

(b) Subcontracts

The Contractor will insert in full the required wage rate requirement in any subcontract in excess of $2,000 as specified in (a)(ii) of this section. Davis Bacon applies regardless of whether the terms and conditions are included or not in all contracts and subcontracts. **Include the following text in all contracts:** "By accepting this award, the EPA Subrecipient acknowledges and agrees to the terms and conditions provided in the DBRA requirements for contractors."

(c) Davis-Bacon General Wage Determinations

A "wage determination" is the listing of wage and fringe benefit for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the U.S. DOL has determined to be prevailing in a given area for a construction. In general, the project area is the county where the project will take place. For the type of construction, the Davis-Bacon Wage Determinations are classified by the nature of the construction projects performed, specifically listed as "schedules": residential, building, highway, and heavy construction. A brief outline of the definitions for each schedule is listed below.

Construction Type: Residential determination

This determination includes the construction, alteration or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

Construction Type: Building determination

This determination includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment

or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Construction Type: Highway determination

This determination includes construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Construction Type: Heavy determination

This determination includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

The Owner should review their Contractor's wage decisions and confirm they provide an adequate classification of the labor required for the specific construction contract. Most CWSRF and DWSRF projects will fall under the "Heavy" construction type, but Owners should ask their Consulting Engineers if unsure.

Some contracts or projects may require more than one general schedule to be included depending on the nature and extent of the work (i.e. a building is constructed in a water treatment facility). This is described in more detail in DOL's All Agency Memorandum 130 with Addendum 131. See the DOL's website http://www.dol.gov/whd/programs/dbra/memorand.htm. In such cases, the contracting agency must incorporate the applicable wage determination for each type of construction involved that is anticipated to be substantial. The contracting agency is responsible for designating the specific work for which each incorporated wage determination applies ((29 CFR 1.6(b)(1)). The contracting agency should designate the work or part thereof applies per Federal Acquisition Regulations (FAR) 22.404-2 thru 404-3 (www.acquisition.gov/far/22.404-2). Should overlaps occur in the wage classification schedules for the contract(s), the Owner may consider adopting the higher rate classification.

In all cases, the Owner is responsible to ensure an adequate classification is provided for compliance with the law. Where Contractors alert the Owner that the classification is inadequate, the Owner should work with the Contractor and the DOL to address any valid concerns.

All questions regarding Davis-Bacon guidance can be directed to: U.S. Department of Labor Wage and Hour Division1-866-4USWAGE (1-866-487-9243), TTY: 1-877-889-5627, Monday-Friday 8 a.m. to 8 p.m. Eastern Time.

If you require further information about Davis-Bacon and how to apply it to your project, please contact the Texas Water Development Board Regional Water Project Development (RWPD) Team Manager for your region.

The Owner and Contractor may obtain additional information on the Davis-Bacon Wage Rates requirements in the TWDB's Guidance DB-0156 – "Guidance on Davis-Bacon Wage Rate Requirements".

Option 1 – Applies to Governmental Entities (such as Cities and Districts)

1. Applicability of the Davis-Bacon and Related Acts Prevailing Wage Requirements.

Davis-Bacon and Related Acts (DBRA) prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the Clean Water State Revolving Fund and to any construction project carried out in whole or in part by assistance made available by the Drinking Water State Revolving Fund. If an Owner encounters a unique situation at a site that presents uncertainties regarding DBRA applicability, the Owner must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Owners shall obtain the wage determination for the locality in which a covered activity subject to DBRA will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DBRA. These wage determinations must be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Owner shall monitor https://sam.gov/content/wage-determinations weekly to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. In the request, the subrecipient shall include documentation of the bid date and time and the DOL wage modification date. The TWDB will review the documentation and provide a report of its findings to the subrecipient. The subrecipient shall keep the report in the project contract file.

(ii) If the Owner does not award the contract within 90 days of the bid opening, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the

Owner, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Owner shall monitor https://sam.gov/content/wage-determinations on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the Owner carries out activity subject to DBRA by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Owner must insert the appropriate DOL wage determination from https://sam.gov/content/wage-determinations into the ordering instrument. For "work order" type contracts, the most recent revision(s) of any applicable wage determination(s) on each anniversary date of the contract's award (or each anniversary date of the beginning of construction when there is no award). (29 CFR 1.6(c)(2)(iii))

(c) Owners must review all subcontracts subject to DBRA entered into by Prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to an Owner's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Owner must either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Owner's Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

The subrecipient must insert in full in any contract to which Davis-Bacon and Related Acts apply, the following clauses. Reference to www.epa.gov/grants/contract-provisions-davis-bacon-and-related-acts and 29 CRF 5.5.

The Contractor acknowledges that by entering into this contract with a contracting agency, funded by an EPA Assistance agreement (grant), the Contractor agrees to comply with the following terms and conditions in accordance with 29 CFR 5.5, if this contract is for activities covered under Davis-Bacon and Related Acts (DBRA) and exceeds (or will exceed) $2,000. Definitions for many of the terms used below are provided in 29 CFR 5.2.

(1) Minimum wages.

(i) Wage rates and fringe benefits

All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than

those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Frequently recurring classifications

(A) In addition to wage and fringe benefit rates that have bene determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to 29 CFR 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:

(1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(2) The classification is used in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is used in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to the TWDB. The TWDB will transmit the request to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker, or it must be posted as part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage

determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest

In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) Withholding.

(i) Withholding requirements

The EPA, grant recipient, subrecipient at any tier, and/or contracting agency upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2).

The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv) of this section, the **EPA, grant recipient, subrecipient at any tier, and/or contracting agency** may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or 29 CFR 5.5(b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) Records and certified payrolls

(i) Basic record requirements

(A) Length of record retention

All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required

Such records must contain the name; Social Security number; last known address, telephone number, and email of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship.

Contractors with apprentices working under approved programs must maintain written evidence of the apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements

(A) Frequency and method of submission

The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts- covered work is performed, certified payrolls to the **contracting agency** if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the **contracting agency.** The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) Information required

The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and las known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(C) Statement of Compliance

Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(iii), and such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of Optional Form WH-347

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(C).

(E) Signature

The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) Length of certified payroll retention

The contractor or subcontractor must preserve all certified payrolls during the course of the work for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents

The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access

(A) Required record disclosure and access to workers

The contractor or subcontractor must make the records required under paragraph (a)(3)(i) through (iii) of this section, and any other documents that the **EPA,**

recipient, or subrecipient at any tier, and/or contracting agency, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of the **TWDB, EPA, recipient, or subrecipient at any tier, and/or contracting agency,** or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements

If the contractor or subcontractor fails to submit the required records or to make them available, or refuse to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures

Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the Environmental Protection Agency if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the EPA, recipient, or subrecipient at any tier, contracting agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and Equal Employment Opportunity

(i) Apprentices

(A) Rate of pay

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S.

Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits

Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio

The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates

Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) Equal employment opportunity

The use of apprentices and journey workers under this part must be in conformity with 29 CFR part 30.

(5) Is reserved.

(6) Subcontracts

The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section or a link to the **DBRA Requirements for Contractors and Subcontractors Under EPA Grants** document on EPA's

Contract Provisions for Davis-Bacon and Related Acts webpage, along with the applicable wage determination(s) and such other clauses or contract modifications as the Environmental Protection Agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The Prime Contractor is responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier Subcontractors, and may be subject to debarment, as appropriate.

(7) – (9) are reserved.

(10) Certificate of Eligibility

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

4. Contract Provision for Contracts in Excess of $100,000.

For contracts over $100,000, additional Terms and Conditions apply. The DBRA Requirements for Contracts in Excess of $100,000 Under EPA Grants document is available on EPA's Contract Provisions for Davis-Bacon and Related Acts webpage provides the additional requirements provided under 29 CFR 5.5. This information is included as follows:

(b) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a), above or 29 CFR 4.6. As used in this paragraph, the terms “laborers and mechanics” include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of $32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).

(3) Withholding for unpaid wages and liquidated damages.

(i) Withholding process. The subrecipient may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this 29 CFR 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or 29 CFR 5.5(b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(4) Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Subrecipient must insert a clause requiring that the contractor or subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each workers' correct classification(s) of work actually

performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, the TWDB, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by 29 CFR 5.1. Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of 29 CFR 5.5. No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of 29 CFR 5.5 or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1 is entered into without the incorporation of the clauses required by 29 CFR 5.5, the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required

contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by 29 CFR 5.5 must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under 29 CFR 5.13.

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with 29 CFR 5.5(e).

(2) (i) Certified payrolls submitted pursuant to 29 CFR 5.5(a)(3)(ii) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to 29 CFR 5.5(a)(3)(ii), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by 29 CFR 5.5 and the applicable statutes referenced in 29 CFR 5.1. Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under 29 CFR 5.5(a)(3). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of 29 CFR 5.5(a)(11) or (b)(5), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(1) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by 29 CFR 5.1.

(2) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(3) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(4) Where the underpayments disclosed by such an investigation or other compliance action total $1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of 29 CFR 5.5(a)(11) or (b)(5). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see part 70 of this subtitle) and the "Privacy Act of 1974" (5 U.S.C. 552a, see part 71 of this subtitle).

Option 2 – Applies to Non-Governmental Entities (such as Water Supply Corporations and Private Companies)

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the TWDB before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Owner must obtain proposed wage determinations for specific localities at https://sam.gov/content/wage-determinations. After the Owner obtains its proposed wage determination, it must submit the wage determination to the TWDB for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the TWDB.)

(b) Owner shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Owner shall monitor https://sam.gov/content/wage-determinations on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the TWDB that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The TWDB will provide a report of its findings to the subrecipient.

(ii) If the Owner does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the TWDB, at the request of the Owner, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Owner shall monitor https://sam.gov/content/wage-determinations on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the Owner carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Owner shall insert the appropriate DOL wage determination from https://sam.gov/content/wage-determinations into the ordering instrument.

(d) Owners shall review all subcontracts subject to DB entered into by prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to an Owner's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Owner shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Owner's Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

The subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the following clauses:

(1) Minimum wages.

(i) Wage rates and fringe benefits.

All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual

relationship which may be alleged to exist between the contractor and such laborers and mechanics.

As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(v); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CRF 5.5(a)(1)(iii)) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, https://sam.gov/content/wage-determinations.

(ii) Frequently recurring classifications.

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR Part 5.5(a)(1)(iii), provided that:

(1) The work to be performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(2) The classification is utilized in the area by the construction industry; and

(3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) Conformance.

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is used in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Owner(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Owner(s) to the TWDB. The TWDB will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor via email to DBAconformance@dol.gov, and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Owner(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the TWDB will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the TWDB, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the TWDB or will notify the TWDB within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5(a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5(a)(1)(iii)(C) and (D) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) Fringe benefits not expressed as an hourly rate. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) Unfunded plans. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, in accordance with t criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) Interest. In the event of a failure to pay all or part of the wages required by the contract, the Contractor will be required to pay interest on any underpayment of wages.

(2) Withholding

(i) Withholding requirements. The Owner(s) may, upon its own action or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor, so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the Prime Contractor or any Subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CRF 5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same Prime Contractor (as defined in § 5.2). The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same Prime Contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same Prime Contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Contractor liability for which the funds were withheld. In the event of a Contractor's failure to pay laborers and mechanics, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the Contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), the EPA may, on its own initiative and after written notice to the Contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with 29 CFR (a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) Records and certified Payrolls.

(i) Basic Record requirements.

(A) Length of record retention. All regular payrolls and other basic records must be maintained by the Contractor any Subcontractor during the course of the work and preserved for all laborers and mechanics working at the stie of the work (or otherwise work in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) Information required. Such records shall contain the name, last known address, Social Security Number, telephone number, and email address of each such worker, each worker’s correct classification(s) of work actually performed, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act), daily and weekly number of hours actually worked in total and on each covered contract, deductions made, and actual wages paid.

(C) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the Contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) Certified payroll requirements.

(A) Frequency and method of submission. The Contractor or Subcontractor must submit weekly, for each week in which any DBA-or Related Acts-covered work is performed, certified payrolls to the Owner, that is, the entity that receives the funds from the TWDB. The Prime Contractor is responsible for the submission of all certified payrolls by Subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature (e.g., Docusign); the system allows the Contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system. Such documentation shall be available on request of the TWDB or EPA.

(B) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security Numbers and last known addresses, telephone numbers, and email addresses must not be included on the weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the employee's social security number). The required weekly certified payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division (WHD) Web site at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf or its successor site. It is not a violation of this section for a Prime Contractor to require a Subcontractor to provide full Social Security Numbers and last known addresses, telephone numbers, and email addresses to the Prime Contractor for its own records, without weekly submission by the Subcontractor to the TWDB (or the applicant, sponsor, owner, or other entity as the case may be, that maintains such records).

(C) Statement of Compliance. Each certified payroll submitted must be accompanied by a “Statement of Compliance,” signed by the Contractor or Subcontractor or their agent who pays or supervises the payment of the persons working on the contract and must certify the following:

(1) That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5 (a)(3)(i), and that such information and records are correct and complete;

(2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) Use of the Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 29 CFR 5.5(a)(3)(ii)(C).

(E) Signature. The signature by the Contractor, Subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature (e.g. Docusign).

(F) Falsification. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(G) Length of certified payroll retention. The Contractor or Subcontractor must preserve all certified payrolls during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iii) Contracts, subcontracts, and related documents. The Contractor or Subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The Contractor or Subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime contract is completed.

(iv) Required disclosures and access.

(A) Required record disclosures and access to workers. The Contractor or Subcontractor must make the records required under 29 CRF 5.5 (a)(3)(i) through (iii), and any other documents that the EPA or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statues referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the TWDB, EPA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements. If the Contractor or Subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CRF 5.12. In addition, any Contractor or other person that fails to submit the required records or make those records available to WHD within

the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) Required information disclosures. Contractors and Subcontractors must maintain the full Social Security Number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the EPA if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the Contractor, Subcontractor, or both, must, upon request, provide the full Social Security Number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the TWDB, EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) Apprentices and equal employment opportunity

(i) Apprentices.

(A) Rate of pay. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio. The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CRF 5.5(a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of rations and wage rates. Where a Contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) applicable within the locality in which construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the Contractor's registered program must be observed.

(ii) Equal employment opportunity. The use of apprentices and journeymen under this part must be in conformity with 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11) along with the applicable wage determination(s) and such other clauses or contract modifications as the EPA determines may by appropriate instructions require, and a clause requiring the Subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The Prime Contractor is responsible for the compliance by any Subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5. In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Acts requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the

meaning of this clause include disputes between the contractor (or any of its subcontractors) and Owner(s), the TWDB, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

(ii) No part of this contract shall be Subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

(11) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any Contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

4. Contract Provision for Contracts in Excess of $100,000

(b) Contract Work Hours and Safety Standards Act. The Owner shall insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms “laborers and mechanics” include watchmen and guards.

(1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such Contractor and Subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of $32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).

(3) Withholding for unpaid wages and liquidated damages.

(ii) Withholding process. The Owner may, upon its own action, or must upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the Prime Contractor or any Subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 CFR 5.5(b), any other Federal contract with the same Prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, that is held by the same Prime Contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same Prime Contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or 29 CFR 5.5(b)(3)(i) of this section, or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(4) Subcontracts. The Contractor or Subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime

Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the Prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

(c) CWHSSA required records clause. In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Owner must insert a clause requiring that the Contractor or Subcontractor must maintain payrolls and basic records during the course of the work and must preserve them for a period of three (3) years after all the work on the Prime Contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and Social Security Number of each such worker; each workers' correct classification(s) of work actually performed, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Owner must insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the EPA, the TWDB, and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

(d) Incorporation of contract clauses and wage determinations by reference. Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and Contractors and Subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(e) Incorporation by operation of law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

5. Compliance Verification and Enforcement

(a) Agency responsibilities.

(1)(i) The Federal agency has the initial responsibility to ascertain whether the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by 29 CFR 5.1. Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of 29 CFR 5.5. No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by 29 CFR 5.5 and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of 29 CFR 5.5 or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1 is entered into without the incorporation of the clauses required by 29 CFR 5.5, the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:

(A) Unless the Administrator directs otherwise, the incorporation of the clauses required by 29 CFR 5.5 must be retroactive to the date of contract award or start of construction if there is no award.

(B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.

(C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.

(D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under 29 CFR 5.13.

(E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.

(F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with 29 CFR 5.5(e).

(2) (i) Certified payrolls submitted pursuant to 29 CFR 5.5(a)(3)(ii) must be preserved by the Federal agency for a period of three (3) years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.

(ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to 29 CFR 5.5(a)(3)(ii), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.

(3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by 29 CFR 5.5 and the applicable statutes referenced in 29 CFR 5.1. Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under 29 CFR 5.5(a)(3). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of 29 CFR 5.5(a)(11) or (b)(5), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) Department of Labor Investigations and other compliance actions.

(5) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by 29 CFR 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by 29 CFR 5.1.

(6) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(7) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(8) Where the underpayments disclosed by such an investigation or other compliance action total $1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of 29 CFR 5.5(a)(11) or (b)(5). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) Confidentiality requirements. It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the “Freedom of Information Act” (5 U.S.C. 552, see part 70 of this subtitle) and the “Privacy Act of 1974” (5 U.S.C. 552a, see part 71 of this subtitle).

12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Effective August 13, 2020, all recipients of CWSRF and DWSRF Equivalency funding, regardless of the date of the TWDB commitment, closing date, or Intended Use Plan, must comply with regulations at 2 CFR 200.216, ***Prohibition on certain telecommunication and video surveillance services or equipment***, implementing Section 889 of Public Law 115-232.

The following must be included in *all* project construction contracts associated with equivalency assistance agreements. It must also be in any sub-contract that involves the purchase of telecommunications or video surveillance services or equipment.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management (https://sam.gov/content/home) exclusion list.

Additional details:

Neither the TWDB nor the EPA have an exhaustive list of components and services that fall under the prohibition. The EPA recommends recipients be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g., process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs and the TWDB SRF programs cannot reimburse recipients for these costs.

13. Payments

(a) Progress Payments:

i. The Contractor shall prepare their requisition for progress payment as of the last day of the payment month and submit it, with the required number of copies, to the Owner or Engineer for review. Except as provided in Paragraph (iii) of this subsection, the amount of the payment due to the Contractor shall be determined by:

- Adding to the total value of work completed to date,
- The value of materials properly stored on the site, and
- Deducting (1) five percent (5%) minimum of the total amount, as a retainage and (2) the amount of all previous payments.

The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown approved pursuant to Section 7.b relating to lump sum bids) and adjusted by approved Change Orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoices prices.

Copies of all invoices shall be available for inspection by the TWDB.

ii. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the contract and the delivery of all improvements embraced in the contract complete and satisfactory to the Owner in all details.

iii. Only one of the following clauses applies:

- This clause applies to contracts when the Owner is a District or Authority. This clause applies to contracts when the Owner is a District or Authority. The retainage shall be a minimum of ten percent (10%) of the amount otherwise due until at least fifty (50%) of the work has been completed. After the project is fifty (50%) percent completed, and if the District or Authority's Board finds that satisfactory progress is being made, then the District may authorize any of the remaining progress payments to be made in full. The District is not obligated to pay interest earned on the first 50% of work completed (Texas Water Code Sec. 49.276(d)).

- This clause applies to contracts when the Owner is a Public Entity (i.e., not a District and not an Authority). The five (5%) percent retainage of the progress payments due to the Contractor may not be reduced until the building of the project is substantially complete and a reduction in the retainage has been authorized by the TWDB (Texas Water Code Sec. 17.183(a)(4)).

(b) Withholding Payments.

The Owner may withhold from any payment otherwise due to the Contractor so much as may be necessary to protect the Owner, and if so elects, may also withhold any amounts due from the Contractor to any Subcontractors or material dealers for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any claims or disputes between the Contractor and Subcontractors or material dealers, or to withhold any monies for their protection unless the Owner elects to do so.

The failure or refusal of the Owner to withhold any monies from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this contract.

(c) Payments Subject to Submission of Certificates.

Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of the Subcontractors by general and special conditions pertaining to this contract.

(d) Final Payment.

i. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract, the Contractor shall execute and deliver to the

Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Contractor or his sureties under this contract or applicable performance and payment bonds.

ii. After final inspection and acceptance by the Owner of all work under the contract, the Contractor shall prepare their requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in the Agreement or cost breakdown (if lump sum), as adjusted by approved Change Orders. The total amount of the final payment due to the Contractor under this contract shall be the amount computed as described above, less all previous payments.

iii. The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work (see Item 24 Close-Out Procedures for additional information).

iv. Withholding of any amount due to the Owner, under general or special conditions regarding "Liquidated Damages," shall be deducted from the final payment due the Contractor.

14. Equal Employment Opportunity

This provision applies to Clean Water State Revolving Fund Program and Drinking Water State Revolving Fund projects where the contract agreement is for more than $10,000.

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other

employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will maintain all information and reports by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with the rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications.

15. Debarment and Suspension

Equivalency DWSRF and CWSRF construction contracts are subject to the Title 40 Code of Federal Regulations Part 32 concerning Debarment and Suspension. The Contractor will comply with the assurances provided with the bid that led to this contract. The Contractor can use the Debarment/Suspension Certification (SRF-404) for self-certification. The Applicant/Owner must verify that the selected Contractor is not debarred or suspended by reviewing the www.sam.gov website. The Applicant/Owner can use the Debarment/Suspension Certification (SRF-404) for verification of a contractor's status. Both the Contractor and the Applicant/Owner must submit their Debarment/Suspension Certifications (SRF-404) to the TWDB Project Engineer/Reviewer.

Instructions for Certification

(a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

(b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

(c) The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

(d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

(e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed

for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

(h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(i) Except for transactions authorized under paragraph (e) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions.

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

16. Archeological Discoveries and Cultural Resources

No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or that are designated or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas.

The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 TAC Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR Part 800, are encountered after construction operations are begun, the Contractor must immediately cease operations in that particular area, avoid disturbance of the cultural resources, and notify the Owner, the TWDB, and the

Texas Historical Commission, P.O. Box 12276, Capitol Station, Austin, Texas 78711.

The Contractor must take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer, the Texas Historical Commission, and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor must not resume work in the area of discovery until authorized to do so by the Owner.

17. Threatened and Endangered Species

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), or the State of Texas Parks and Wildlife Code on threatened, endangered and state-listed species, or to destroy or adversely modify the habitat of such species.

If a threatened, endangered, or state-listed species is encountered during construction, the Contractor must immediately cease work in the area of the encounter, avoid disturbance of the animal or plant, and notify the TWDB and the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions must include reporting the encounter to the TWDB, the U. S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, and implementing other mitigation actions as directed. The Contractor must not resume construction in the area of the encounter until authorized to do so by the Owner.

18. Hazardous Materials

Materials utilized in the project must be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the Contractor encounters existing hazardous material on sites owned or controlled by the Owner, or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor must immediately notify the Consulting Engineer and the Owner, who will immediately notify the TWDB and appropriate authorities, depending on the circumstances, such as local emergency responders, the Texas Commission on Environmental Quality (TCEQ), The U.S. Environmental Protection Agency (EPA), and others.

Unless otherwise directed by appropriate authorities, the Owner will be responsible for the testing and removal or disposal of hazardous materials on sites owned or controlled by the Owner, and may suspend work in the area of the encounter, wholly or in part, during testing, removal, or disposal operations.

Funding from the TWDB must not be used for sampling, testing, removing, or disposing of contaminated soils or media at the project site, except for an LSLR project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines. The Obligations within the contract must include an environmental indemnification provision wherein the Owner/Applicant agrees, and agrees to cause its construction contractors, to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action, or damages arising

from activities performed during the project funded by the TWDB, including their officials and employees, in connection with the project, to the extent permitted by law.

19. Project Signage

The Owner must implement one of the signage options below and keep records of proof of compliance as described in TWDB Project Public Awareness (PPA) Guidance (TWDB-1109); and submit the PPA Certification (TWDB-1109-A) with their initial construction outlay request:

- Online signage placed on community website or social media outlet;
- Press release;
- Posters or wall signage in a public building or location;
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility; or
- On-site signage erected in a prominent location at the construction project site or along a major thoroughfare within the community as directed by the Owner.

If the Owner decides on a public or media event to publicize the accomplishment of significant events related to construction of the project, the U.S. Environmental Protection Administration (EPA), Region 6, must be provided with at least a ten (10) working day notice of the event and provided the opportunity to attend and participate. Please contact Section Supervisor Denise Hamilton, who can be reached at (214) 665-2775 or Hamilton.Denise@epa.gov.

20. Changes

*Provisions identified with an asterisk below are consistent with Local Government Code 271.060. Counties and Municipalities may modify the identified provisions, when applicable, to conform to Local Government Code 262.031 (Counties) or 252.048 (Municipalities).

(a) The Owner may at any time, without notice to any surety, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including but not limited to changes:

i. In the specifications (including drawings and designs);

ii. In the time, method, or manner of performance of the work;

iii. To decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished;

(b) *The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

(c) *A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.

(d) *A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less.

(e) Changes that involve an increase in price will be supported by documentation of the cost components. For projects funded through the EDAP program, or with grant proceeds, the TWDB staff may request this information to be provided in a format equivalent to the Cost and Pricing Information form (No. WRD-277).

(f) Any change orders involving a change in the project requiring a relocation of project components, sizing, or process may require additional environmental approval. A map and description of the proposed changes should be sent to the TWDB Environmental Reviewer for coordination and approval as soon as possible to avoid any delay.

21. Operation and Maintenance Manuals and Training

(a) The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor must submit an electronic copy (e.g., PDF) with bookmarks of each complete manual to the Owner's Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location. One (1) hard copy, with divider tabs in a binder, must be submitted to the Owner's Engineer upon request.

(b) The Owner shall require their Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Owner's Engineer rejects the manual, the Contractor must correct and resubmit the manual until it is acceptable to the Owner's Engineer as being in conformance with the design concept of the project and for compliance with information given in the Contract Documents. Owner may assess the Contractor a charge for reviews of the same items in excess of two (2) times. Such procedure shall not be considered cause for delay.

(c) Acceptance of manuals by Owner's Engineer does not relieve the Contractor of any requirements of terms of Contract.

(d) The Contractor shall provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.

(e) Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start-up the equipment. Each manual is to be

bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:

i. A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.

ii. A list of recommended stock of parts, including part number and quantity.

iii. Complete replacement parts list.

iv. Performance data and rating tables.

v. Specific instructions for installation, operation, adjustment, and maintenance.

vi. Exploded view drawings for major equipment items.

vii. Lubrication requirements.

viii. Complete equipment wiring diagrams and control schematics with terminal identification.

22. As-Built Dimensions and Record Drawings

(a) The Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.

(b) Upon completion of each facility, the Contractor must furnish the Owner with one (1) set of full-size direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed (Record Drawings) and one (1) full-size electronic set of these drawings (e.g., PDF). As a minimum, the final drawings shall include the following:

i. Horizontal and vertical locations of work.

ii. Changes in equipment and dimensions due to substitutions.

iii. "Nameplate" data on all installed equipment.

iv. Deletions, additions, and changes to scope of work.

v. Any other changes made.

23. Close-Out Procedures

To close-out the construction contract and release final retainage, the following steps must be completed:

(a) The TWDB Staff must conduct a construction contract Final Site Visit (FSV) and issue a FSV Report;

(b) The following submittals must be received, reviewed, and accepted by the TWDB:

i. The final change order, adjustment of quantities, or a statement that all change orders have previously been submitted and there will be no more change orders;

ii. The final pay request from the Contractor;

iii. A notarized affidavit by the Contractor that all bills have been paid;

iv. Certification by the Owner's Engineer that the work has been completed and was constructed in accordance with the approved plans and specifications and sound engineering principals and construction practices;

v. Acceptance of the project by the Owner in the form of a written resolution or other formal action;

vi. A warranty statement from the Contractor with a duration of at least 12 months from the date of project's completion is required; and the warranty's start date specified;

vii. The Owner's Final AIS Certification (TWDB-1106-C) **OR** Final BABA Certification (TWDB-1110-B), whichever is applicable;

viii. Confirmation that TWDB-1109-A form certifying the Project Public Awareness method of implementation used (applies to the entire SRF project) was submitted with the first outlay for the initial construction contract; Confirmation that the Owner and the Consulting Engineer have both received copies of the Record Drawings from the Contractor; and

ix. If CWSRF or DWSRF funds were used by the entity to prepare a Fiscal Sustainability Plan (FSP) or an Asset Management Plan (AMP), then the Owner must submit a copy of the applicable plan;

(c) Once items (a) and (b) have been completed, the TWDB will be able to issue a Certificate of Approval, which will then allow the release of the construction contract's retainage.

24. Additional Forms and Information

The forms and guidance documents, mentioned throughout this Guidance and below, are available at the following TWDB website:
http://www.twdb.texas.gov/financial/instructions/index.asp
Search by either the document number or name.

Forms:

- Contractor's Act of Assurance (ED-103)
- Contractor's Resolution on Authorized Representative (ED-104)
- Debarment / Suspension Certification (SRF-404)
- Monthly American Iron and Steel Certificate (TWDB-1106-A)
- American Iron and Steel (AIS) De Minimis Log (TWDB-1106-B)
- Final AIS Certification by Owner (TWDB-1106-C)
- Monthly Buy America, Build America (BABA) Act Certificate (TWDB-1110-A)
- Final Buy America, Build America (BABA) Act Certification (TWDB-1110-B)
- State Revolving Fund (SRF) Project Public Awareness Certification (TWDB-1109-A)
- Monthly Davis Bacon Wage Rate Certificate of Compliance Submittal by Owner (Sub-Recipient) (DB-0154)

Guidance Documents:

- CWSRF Guidance Manual (TWDB-0100)
- DWSRF Guidance Manual (TWDB-0115)
- Requirements for American Iron and Steel (AIS) Guidance (TWDB-1106)
- Requirements for Build America, Buy America (BABA) Act Guidance (TWDB-0558)
- Guidance on Davis-Bacon Wage Rate Requirements for State Revolving Fund Projects (DB-0156)

Monthly American Iron and Steel (AIS) Certificate

Compliance Submittal by Owner/Entity (Sub-Recipient)

Delegation of signatory authority by the Entity's governing body must be submitted to the TWDB if a person other than an authorized member of the governing body signs this form.

TWDB Project No. _____
Commitment No. _____
Outlay No. _____
Eligible Project Expenses Through: _____(Month/Year)

Enter ALL TWDB CID No.(s) and Contract Name(s) applicable to the Outlay listed above:

*This executed certificate must be submitted with each Outlay report requesting funds associated with construction contracts for all **AIS-eligible iron and steel products and/or materials** included within the project's construction contracts.*

I, _____, _____
(Name) (Title)
of _____
(Name of Entity)

hereby certify that all iron and steel products and/or materials incorporated into the construction, alteration, maintenance, or repair of the **subject project are in full compliance with the American Iron and Steel requirements** of Section 608 of the Federal Water Pollution Control Act (33 U.S.C. §1388) for the Clean Water State Revolving Fund or applicable federal law, including federal appropriation acts and Section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. §300j-12(a)(4)), as applicable, for the Drinking Water State Revolving Fund, or comply with waivers granted by the U.S. Environmental Protection Agency.

I understand that a false statement herein may subject me to penalties under federal and state laws relating to filing false statements and other relevant statutes.

_____ _____
Signature Date

BIDDER'S CERTIFICATIONS

Project Name: _____

Project Number: _____

Contract For: _____

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

☐ I have developed and have on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-1.7.

I have:

( ) participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375. I have filed all notices, contract specifications, and compliance reports due under the requirements contained in 41 CFR Part 60-4.

( ) **not** participated in previous contracts(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375 and 41 CFR Chapter 60.

B. NONSEGREGATED FACILITIES

☐ I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding $10,000 which is not exempt from the equal opportunity clause as required by 41 CFR Part 60-1.8.

I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

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

_____

Typed Name and Title of Bidder's Authorized Representative

_____

Signature of Bidder's Authorized Representative Date

_____

Name and Address of Bidder