

Bastrop, TX City Council Meeting Agenda

This meeting will be live streamed on the City of Bastrop Facebook Page (www.facebook.com/bastroptx) and broadcast on Spectrum channel 10 and AT&T uVerse channel 99. A recording of the meeting will also be available within 72 hours after the meeting on the City's YouTube channel (YouTube channel name Bastrop TX Network) and in the Agendas & Minutes section of the City website (www.cityofbastrop.org).



April 14, 2020 at 6:30 P.M.

City of Bastrop City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at (512) 332-8800 or write 1311 Chestnut Street, 78602, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.

The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.086 (Economic Development).

The City Council reserves the right to reconvene, recess, or realign the Regular Session, Executive Session, or order of business at any time prior to adjournment. All matters listed below shall be eligible for both discussion and action, unless otherwise specifically noted.

PLEASE NOTE: ANYONE WISHING TO ADDRESS THE COUNCIL MUST COMPLETE A CITIZEN COMMENT FORM WITH COMMENTS AT WWW.CITYOFBASTROP.ORG/CITIZENCOMMENTFORM BEFORE 5:00 P.M. ON APRIL 14, 2020. SUBMITTED COMMENTS WILL BE READ OUT LOUD AT THE MEETING. COMMENTS FROM EACH INDIVIDUAL WILL BE LIMITED TO THREE (3) MINUTES WHEN READ ALOUD.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

TEXAS PLEDGE OF ALLEGIANCE

Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

3. INVOCATION

4. PRESENTATIONS

- 4A. Mayor's Report
- 4B. Councilmembers' Report
- 4C. City Manager's Report

5. WORK SESSION/BRIEFINGS - NONE

6. STAFF AND BOARD REPORTS

- 6A. Receive an update from City of Bastrop Chief Financial Officer on updating the Water and Wastewater Impact Fees.
- 6B. Receive an update from City of Bastrop Chief Financial Officer on implementing changes to the forecast of FY2020 General Fund budget due to COVID-19.

7. CITIZEN COMMENTS

Anyone wishing to address the Council, must complete a citizen comment form with comments at www.cityofbastrop.org/citizencommentform before 5:00 p.m. on April 14, 2020. Submitted comments will be read out loud at the meeting. Comments from each individual will be limited to three (3) minutes when read aloud.

In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Staff for research and possible inclusion on a future agenda.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty and/or integrity of any person or threaten any person. Accordingly, profane, insulting or threatening language will not be read aloud at the meeting.

8. CONSENT AGENDA

The following may be acted upon in one motion. A Councilmember or a citizen may request items be removed from the Consent Agenda for individual consideration.

- 8A. Consider action to approve City Council minutes from March 24, 2020, Regular Meeting.

9. ITEMS FOR INDIVIDUAL CONSIDERATION

- 9A. Consider and adopt on first and final reading Ordinance No. 2020-10 as an emergency measure ratifying temporary Emergency Orders enacted by the Mayor in her capacity as Emergency Management Director in regard to the current Local State of Disaster, for the immediate preservation of the public peace, health or safety.

- 9B. Consider action to approve Resolution No. R-2020-36 of the City Council of the City of Bastrop, Texas authorizing a release of the side and rear Public Utility Easements dedicated with The Colony MUD 1E, Section 1, Block D Plat for Lots 17-23, 26-34, and Reserve Lots E5 and E6, located at the 100 Block of Millsap Court, as attached as Exhibit A; authorizing the City Manager to execute necessary documents; providing for a repealing clause; and establishing an effective date.
- 9C. Consider action to approve the first reading of Ordinance No. 2020-09 of the City Council of the City of Bastrop, Texas, continuing the curfew, for minors, as established in Ordinance 2019-56, Article 8.05, and providing a penalty not to exceed Five Hundred dollars (\$500.00) for each offense; providing for findings of fact, adoption, repealer, severability, and enforcement; establishing an effective date; proper notice and meeting; and move to include on the April 28, 2020 City Council consent agenda for a second reading.
- 9D. Consider action to approve Resolution No. R-2020-35 of the City Council of the City of Bastrop, Texas, awarding a contract for the City of Bastrop Public Works Detention Project to Frontier Development, Inc. in the amount of three hundred fifty-one thousand six hundred sixty-four dollars (\$351,664.00), attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.
- 9E. Consider action to approve Resolution No. R-2020-37 of the City Council of the City of Bastrop, Texas adopting amended Budget Planning Calendar for Fiscal Year 2021, as shown in Exhibit A and directing the Chief Financial Officer to calculate the voter-approval tax rate in the manner provided for a special taxing unit (as specified in Senate Bill 2); repealing all resolutions in conflict; and establishing an effective date.

10. EXECUTIVE SESSION

- 10A. Pursuant to Texas Government Code Sections 551.071, consultation with attorney regarding legal matters involving Declaration of Local State of Disaster, Emergency Orders, and related regulatory issues.

11. TAKE ANY NECESSARY OR APPROPRIATE ACTION ON MATTERS POSTED FOR CONSIDERATION IN CLOSED/EXECUTIVE SESSION

12. ADJOURNMENT

I, the undersigned authority, do hereby certify that this Notice of Meeting as posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Bastrop City Hall, a place of convenient and readily accessible to the general public, as well as to the City's website (www.cityofbastrop.org) and said Notice was posted on the following date and time: Thursday, April 9, 2020 at 5:00 p.m. and remained posted for at least two hours after said meeting was convened.



Ann Franklin, City Secretary

**CITY OF BASTROP
CITY COUNCIL**

**INSTRUCTIONS FOR
PARTICIPATION IN
ONLINE MEETING**



APRIL 14, 2020 AT 6:30 P.M.

Due to the National, State, County, and City Declarations of Disaster related to the COVID-19 Virus and for the safety of the public, the City of Bastrop City Council meeting to be held on April 14, 2020 at 6:30 p.m. will be held online. The meeting will be live streamed on the City of Bastrop Facebook Page (www.facebook.com/bastroptx) and broadcast on Spectrum channel 10 and AT&T uVerse channel 99. A recording of the meeting will also be available within 72 hours after the meeting on the City's YouTube channel (YouTube channel name Bastrop TX Network) and in the Agendas & Minutes section of the City website www.cityofbastrop.org.

Anyone wishing to address the council at this meeting must complete a citizen comment form with comments at www.cityofbastrop.org/citizencommentform before 5:00 p.m. on April 14, 2020. Submitted comments will be read aloud at the meeting. Comments from each individual will be limited to three (3) minutes when read aloud.

In the alternative, those wishing to comment on agenda items before, during, or after the meeting are invited to send email messages to the Mayor and Council Members at council@cityofbastrop.org. Messages sent to this address will be delivered to the Mayor and individual Council Members as soon as is reasonable under the circumstances.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty and/or integrity of any person or threaten to harm any person. Accordingly, profane, insulting or threatening language will not be read aloud at the meeting.



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 4A

TITLE:

Mayor's Report

STAFF REPRESENTATIVE:

Trey Job, Acting City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

ATTACHMENTS:

- Power Point Presentation



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 4B

TITLE:

Councilmembers' Report

STAFF REPRESENTATIVE:

Trey Job, Acting City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 4C

TITLE:

City Manager's Report

STAFF REPRESENTATIVE:

Trey Job, Acting City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 6A

TITLE:

Receive an update from City of Bastrop Chief Financial Officer on updating the Water and Wastewater Impact Fees.

STAFF REPRESENTATIVE:

Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The City of Bastrop has imposed water and wastewater impact fees to finance the demand for improved public facilities which is generated by new development. The last impact fees were adopted on August 27, 2019. At that time, we advised Council that, even though these fees should be reviewed every five years, we would be reviewing them annually based on the number and size of the ongoing projects. Since this time, the city has selected and contracted with Freese & Nichols to design the water plant at XS Ranch. At the February 25, 2020 Council Meeting, Freese & Nichols presented the preliminary design report which included estimates of probable costs. These estimates are significantly more than the estimates used to calculate the impact fees adopted in 2019. The city has contracted with NewGen Strategies to update our last Impact Fee Study and assist the city through the impact fee adoption process.

The impact adoption fee calendar is below for your review. The new calculated fees will be brought to the Advisory Committee which is the Planning and Zoning board with one additional member (required by law). This board will review the land use assumptions and the capital improvement plan along with the new impact fee calculation. This advisory committee will make comments that will be included with the staff report to council.

Adoption Timeline

- 4/14/20 Presentation to Council regarding Impact Fee update
- 6/23/20 Newspaper deadline for 6/27 Notice
- 6/27/20 Post Notice of Public Hearing (30 days prior to hearing) Land Use & CIP available to the Public
- 6/25/20 Advisory Committee meets
- 7/10/20 Comments received from Advisory Committee (atleast 5 days prior to hearing)
- 7/28/20 Public Hearing/First Reading of Ordinance (within 30 days of hearing)
- 8/11/20 Second Reading of Ordinance

POLICY EXPLANATION:

The Texas Local Government Code chapter 395.041 through 395.058 establishes the process that a municipality must follow to approve and adopt impact fees.

FUNDING SOURCE:

N/A

ATTACHMENTS:

N/A





STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 6B

TITLE:

Receive an update from City of Bastrop Chief Financial Officer on implementing changes to the forecast of FY2020 General Fund budget due to COVID-19.

STAFF REPRESENTATIVE:

Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

Considering the restrictions put in place by the Government leaders and the businesses that are having to close due to COVID-19, staff has reviewed the General Fund budgeted revenues and expenditures. Because the General Funds highest revenue category is sales tax, we have calculated what we think are conservative estimates of how much shortfall we will experience. These estimates are reflecting a shortfall of approximately \$639,000 in sales tax revenue. There will be other categories of revenue that will experience shortfalls as well for a total revenue shortfall of \$761,000.

This shortfall in revenue can be offset by the following savings:

- Freeze 12 currently vacant positions through the end of this fiscal year.
- Reduce available Travel & Training budgets – allow only training that is required for current certifications.
- Suspend lease payments from General Fund into the City's Vehicle & Equipment Replacement Fund (VERF) for FY2020.
- Defer loan payments to BP&L from Innovation Fund.
- Hold off on upgrading the Website making these funds available.
- Transfer available funds from the Innovation Fund into the General Fund.
- Identify line item savings throughout the General Fund.

By implementing the above savings, we close the gap on the revenue shortfall completely. Each month staff will update these projects and modify the plan if needed. These updates will be brought to Council during the monthly financial reports. The monthly financial forecast will reflect these changes going forward.

POLICY EXPLANATION:

Update only

FUNDING SOURCE:

General Fund

ATTACHMENTS:

N/A



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 7

TITLE:

CITIZEN COMMENTS

At this time, three (3) minute comments will be taken from the audience on any topic. To address the Council, please submit a fully completed request card to the City Secretary prior to the beginning of the Citizens' Comment portion of the Council meeting. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Staff for research and possible future action.

To address the Council concerning any item on the agenda, please submit a fully completed request card to the City Secretary prior to the start of the meeting.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty and/or integrity of the Council, as a body, or any member or members of the Council individually or collectively, or members of the City's staff. Accordingly, profane, insulting or threatening language directed toward the Council and/or any person in the Council's presence will not be tolerated.



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 8A

TITLE:

Consider action to approve City Council minutes from March 24, 2020, Regular Meeting.

STAFF REPRESENTATIVE:

Robert Wood, Interim City Manager
Ann Franklin, City Secretary

BACKGROUND/HISTORY:

N/A

POLICY EXPLANATION:

Section 551.021 of the Government Code provides as follows:

- (a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.
- (b) The minutes must:
 1. State the subject of each deliberation; and
 2. Indicate the vote, order, decision, or other action taken.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Consider action to approve City Council minutes from March 24 2020, Regular Meeting.

ATTACHMENTS:

- March 24, 2020, DRAFT Regular Meeting Minutes.

MARCH 24, 2020

The Bastrop City Council met in a Regular Meeting on Tuesday, March 24, 2020, at 6:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present physically were: Mayor Schroeder, Mayor Pro Tem Nelson and Council Members Ennis and Rogers. Members present via video were: Council Members Jackson and Peterson. Officers present physically were Acting City Manager Trey Job and City Attorney, Alan Bojorquez. City Secretary Ann Franklin was present remotely.

CALL TO ORDER

At 6:30 p.m. Mayor Schroeder called the meeting to order with a quorum being present.

PLEDGE OF ALLEGIANCE**INVOCATION**

Council Member Ennis, gave the invocation.

PRESENTATIONS

- 4A. Mayor's Report
- 4B. Councilmembers' Report
- 4C. City Manager's Report

WORK SESSION/BRIEFINGS

- 5A. Receive presentation and hold discussion on changes to the B³ Code Technical Manual and other future updates.
Presentation was made by Planning Department, Assistant Director, Jennifer Bills.

STAFF AND BOARD REPORTS

- 6A. Receive presentation on the unaudited Monthly Financial Report for the period ending February 29, 2020.
Presentation was made by Chief Financial Officer, Tracy Waldron.

CITIZEN COMMENTS

**Chrissy
218 Wild Cat Drive
Bastrop TX 78602
512-318-9934**

**Christopher McEwan
601 Chestnut St. Suite D
Bastrop, TX 78602
512-529-2683**

CONSENT AGENDA

A motion was made by Council Member Ennis to approve Items 8A, 8B and 8C listed on the Consent Agenda after being read into the record by Mayor, Connie Schroeder. Seconded by Council Member Peterson, motion was approved on a 5-0 vote.

- 8A. Consider action to approve City Council minutes from the March 10, 2020, Regular meeting; March 13, 2020, Special Called meeting; and March 16, 2020 Special Called and Emergency meetings.
- 8B. Consider action to approve the second reading of Ordinance No. 2020-06 of the City Council of the City of Bastrop, Texas, amending the budget for the Fiscal Year 2020 in accordance with existing statutory requirements; appropriating the various amounts herein as attached in Exhibit A; repealing all prior ordinances and actions in conflict herewith; and establishing an effective date.
- 8C. Consider action to approve the second reading of Ordinance No. 2020-05 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Article 13.02 "Water and Wastewater Rates and Charges", Sections 13.02.002 Wastewater Service Charge, 13.02.004 Water Service Charges, and 13.02.008 Billing, Discontinuance of Service; Amending Appendix A, Fee Schedule, Article A13.02 "Water and Wastewater Rates and Charges", Sections A13.02.002 Wastewater Service Charge, and A13.02.004 Water Service Charge, as attached in Exhibit A; providing for: findings of fact, enactment, repealer, severability, providing for an effective date, codification, and proper notice and meeting.

ITEMS FOR INDIVIDUAL CONSIDERATION**9. ITEMS FOR INDIVIDUAL CONSIDERATION**

- 9A. Consider and adopt on first and final reading an ordinance as an emergency measure ratifying temporary Emergency Orders enacted by the Mayor in her capacity as Emergency Management Director in regards to the current Local State of Disaster, for the immediate preservation of the public peace, health or safety.
Mayor Schroeder approved Emergency Orders Number 3 and 4, dated March 4, 2020.

A motion was made by Council Member Jackson to approve the first and final reading of Ordinance No. 2020-08 as an emergency measure ratifying temporary Emergency Orders enacted by the Mayor in her capacity as Emergency Management Director in regards to the current Local State Disaster, seconded by Council Member Peterson, motion was approved on a 5-0 vote.

- 9B. Consider action to approve Resolution R-2020-30 of the City Council of the City of Bastrop, Texas ("City") responding to the application of CenterPoint Energy Resources Corp., South Texas Division, to increase rates under the gas reliability infrastructure program; suspending the effective date of this rate application for forty-five days; authorizing the city to continue to participate in a coalition of cities known

as the “Alliance of CenterPoint Municipalities;” determining that the meeting at which the resolution was adopted complied with the Texas Open Meetings Act; making such other findings and provisions related to the subject; and declaring an effective date.

Presentation was made by Acting City Manager, Trey Job.

A motion was made by Council Member Ennis to approve Resolution No. R-2020-30, seconded by Council Member Jackson, motion was approved on a 5-0 vote.

- 9C. Consider action to approve the first reading of Ordinance No. 2020-07 of the City Council of the City of Bastrop, Texas, adopting a Water Conservation Plan in accordance with the Texas Commission on Environmental Quality and Texas Water Development Board Regulations; providing for findings of fact, enactment, repealer, severability, effective date, and proper notice and meeting; and move to include on the April 14, 2020 City Council consent agenda for a second reading.

Presentation was made by Acting City Manager, Trey Job.

A motion was made by Council Member Rogers to approve Ordinance No. 2020-07, seconded by Mayor Pro Tem Nelson, motion was approved on a 5-0 vote.

- 9D. Consider action to approve Resolution No. R-2020-31 of the City Council of the City of Bastrop, Texas awarding a contract for annual pricing agreement for ribbon curbing to 304 Construction, LLC, attached as Exhibit A; priced according to the bid proposal sheet attached as Exhibit B; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Presentation was made by Acting City Manager, Trey Job.

A motion was made by Council Member Rogers to approve Resolution No. R-2020-31, seconded by Council Member Ennis, motion was approved on a 5-0 vote.

- 9E. Consider action to approve Resolution No. R-2020-33 of the City Council of the City of Bastrop, Texas abandoning a Public Utility Easement at 1405 Willow Street Bastrop TX., attached as Exhibit A authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Presentation was made by Acting City Manager, Trey Job.

A motion was made by Mayor Pro Tem Nelson to approve Resolution No. R-2020-33, seconded by Council Member Ennis, motion was approved on a 5-0 vote.

EXECUTIVE SESSION

The City Council met at 7:52 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:

- 10A. City Council shall convene into closed executive session pursuant to Section 551.072 of the Texas Government Code to deliberate the acquisition of property and easements associated with the construction of Wastewater Treatment Plant #3.
- 10B. Pursuant to Texas Government Code Sections 551.071, consultation with attorney regarding legal matters involving Declaration of Local State of Disaster, Emergency Orders, and related regulatory issues.

The Bastrop City Council reconvened at 9:03 p.m. into open (public) session.

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON MATTERS POSTED FOR CONSIDERATION IN CLOSED/EXECUTIVE SESSION

- 10A. City Council shall convene into closed executive session pursuant to Section 551.072 of the Texas Government Code to deliberate the acquisition of property and easements associated with the construction of Wastewater Treatment Plant #3.
A motion was made by Mayor Pro Tem Nelson to approve Resolution No. R-2020-34 to approve Task Order No. 4 for professional services to be provided by SevenArrows Land Staff, carrying a cost of Two Hundred Sixty Six Thousand Two Hundred and Fifty dollars (\$266,250.00), seconded by Council Member Ennis, motion was approved on a 5-0 vote.
- 10B. Pursuant to Texas Government Code Sections 551.071, consultation with attorney regarding legal matters involving Declaration of Local State of Disaster, Emergency Orders, and related regulatory issues.
No action taken.

ADJOURNMENT

Adjourned at 9:04 p.m. without objection.

APPROVED:

ATTEST:

Mayor Connie B. Schroeder

City Secretary Ann Franklin

The Minutes were approved on April 14, 2020, by Council Member motion, Council Member second. The motion was approved on a vote.



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 9A

TITLE:

Consider and adopt on first and final reading Ordinance No. 2020-10 as an emergency measure ratifying temporary Emergency Orders enacted by the Mayor in her capacity as Emergency Management Director in regards to the current Local State of Disaster, for the immediate preservation of the public peace, health or safety.

STAFF REPRESENTATIVE:

Robert Wood, Interim City Manager

BACKGROUND/HISTORY

A declaration of local disaster and public health emergency includes the ability to take measures to reduce the possibility of exposure to disease, control the risk, prevent the spread of the disease, and promote the health and safety of individuals in the City of Bastrop; and

POLICY EXPLANATION:

On March 16, 2020 the City Council Confirmed a Declaration of Disaster due to the novel coronavirus (COVID-19). Within that declaration the mayor is granted the authority to take extraordinary measures to protect the health and safety of the citizens of Bastrop.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Consider and adopt on first and final reading Ordinance No. 2020-10 as an emergency measure ratifying temporary Emergency Orders enacted by the Mayor in her capacity as Emergency Management Director in regards to the current Local State of Disaster, for the immediate preservation of the public peace, health or safety.

ATTACHMENTS:

- Resolution No. 2020-10
- Emergency order of the Mayor

EMERGENCY ORDINANCE 2020-10

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, CONFIRMING AND RATIFYING THE EMERGENCY ORDERS ISSUED BY THE MAYOR AS THE EMERGENCY MANAGEMENT DIRECTOR, AS DESCRIBED IN EXHIBIT A; PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, ENFORCEMENT, AND PENALTY; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the novel coronavirus (COVID-19) has been recognized globally as a contagious respiratory virus; and

WHEREAS, on March 13, 2020, Texas Governor Greg Abbott declared a State of Disaster for all counties in Texas, and the President of the United States of America declared a national emergency in relation to COVID-19; and

WHEREAS, on March 16, 2020, the Mayor issued a Declaration of Local Disaster to allow the City of Bastrop to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Bastrop residents; and

WHEREAS, Section 418.108 of the Texas Government Code provides that a declaration of local disaster activates the City's Emergency Management Plan; and

WHEREAS, in furtherance of the declaration of local disaster, the Mayor issued certain orders pursuant to Chapter 418 of the Texas Government Code; and

WHEREAS, Section 3.15(b) of the Bastrop City Charter allows the City Council to adopt an emergency ordinance relating to the immediate preservation of the public peace, health or safety, and such emergency ordinances shall take effect immediately upon adoption and execution without a second consideration; and

WHEREAS, Section 54.001 of the Texas Local Government Code generally provides the maximum penalties for violations of municipal ordinances, rules, or police regulations; and

WHEREAS, Section 418.173 of the Texas Government Code provides that a local emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense punishable by a fine not to exceed \$1,000 or confinement in jail for a term not to exceed 180 days; and

WHEREAS, the City Council of the City of Bastrop, Texas, finds it reasonable and necessary for the protection of the health and safety of the residents of the City of Bastrop to confirm and ratify the orders issued by the Mayor pursuant to Chapter 418 of the Texas Government Code, as described in **Exhibit A**; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS THAT:

SECTION 1. FINDINGS OF FACT: The foregoing recitals are incorporated into this Emergency Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. CONFIRMATION & RATIFICATION: The City Council of the City of Bastrop, Texas, in accordance with the authority vested in the governing body of the City of Bastrop, Texas, by Section 418.108 of the Texas Government Code, hereby confirms and ratifies the emergency orders issued by the Mayor in furtherance of the declaration of local disaster, as described in **Exhibit A**.

SECTION 3. PUBLIC NOTICE: The City Secretary is hereby directed to give prompt and general publicity to this Emergency Ordinance.

SECTION 4. CONFLICTS: In the case of any conflict between other provisions of this Emergency Ordinance and any existing Ordinance of the City, the provisions of this Emergency Ordinance will control.

SECTION 5. SEVERABILITY: If any provision of this Emergency Ordinance or the application thereof to any person or circumstance is held invalid, that invalidity or the unenforceability will not affect any other provisions or applications of this Emergency Ordinance that can be given effect without the invalid provision.

SECTION 6. ENFORCEMENT: The City shall have the power to administer and enforce the provisions of this Emergency Ordinance as may be required by governing law. Any person violating any provision of this Emergency Ordinance violates Section 1.08.011 of the Bastrop City Code. In accordance with Section 418.173 of the Texas Government Code, a violation is a misdemeanor punishable by a fine not to exceed \$1,000 or confinement in jail for a term not to exceed 180 days. Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law and/or equity.

SECTION 7. EFFECTIVE DATE: In accordance with Section 3.15(b) of the Bastrop City Charter, this Emergency Ordinance shall be *effective immediately* upon passage.

SECTION 8. OPEN MEETING: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

READ, ACKNOWLEDGED & APPROVED on the First & Final Reading on this, the 14th day of April 2020.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit A



EMERGENCY ORDER OF THE MAYOR

RE: COVID-19

E.O. # 2020- 5

March 26, 2020

1. **Purpose:** This limitation is intended to hinder the spread of the COVID-19 virus by encouraging social distancing, reducing unnecessary gatherings, and preserving City of Bastrop resources.
2. **Meetings Cancelled:** All regular (reoccurring) or currently scheduled meetings of Boards of the City of Bastrop are hereby cancelled.
3. **Definitions:**
 - *Meeting* as used in this Emergency Order shall mean regularly scheduled meetings of a Board of the City of Bastrop in which one or more items are to be considered.
 - *Board* as used in this Emergency Order shall mean all Boards, boards, commissions, task forces, councils, workgroups, etc., of the City of Bastrop, but does not include the Bastrop City Council.
4. **Exceptions:** The City Manager may call a special meeting of a Board when it is deemed in the best interest of the City. In calling a special meeting, the City Manager shall determine date, time, agenda, and manner of conducting the meeting (e.g., in-person, conference call, or videoconference).
5. **Duration:** This Order is temporary and shall be in effect for the duration of the Local State of Disaster unless earlier repealed.
6. **Penalty:** It shall be unlawful for any person willfully to do any act forbidden by this Emergency Order. Violations shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) or confinement in jail for a term not to exceed 180 days for each violation in accordance with the City of Bastrop Code of Ordinances Section 1.08.011 and 1.01.009, and Texas Government Code Section § 418.173.

7. **Repealer:** Any prior or conflicting Emergency Order is hereby *repealed* to the extent necessary to effectuate this Emergency Order.
8. **Authority:** This Emergency Order is hereby enacted in accordance to the authority vested in my office pursuant to:
- Texas Government Code Chapter 418,
 - City of Bastrop Home Rule Charter Section 3.01,
 - City of Bastrop Home Rule Charter Section 3.08,
 - City of Bastrop Code of Ordinances Article 1.08,
 - City of Bastrop Code of Ordinances Sections 1.02.002(b)(2), 1.04.003,
 - City of Bastrop Emergency Management Plan,
 - Bastrop County Preparedness & Response Plan (Pandemic Influenza), and
 - Declaration of Local Disaster executed on March 16, 2020 (as confirmed and extended by the City Council via Resolution R-2020-32 on March 16, 2020).
9. **Official Determination:** In my official capacity as Mayor, Emergency Management Director, and member of the Policy Coordination Group for Bastrop County, I consider this action to be reasonable, prudent, and necessary for the preservation of life, and disaster mitigation, response, and recovery. This Order is critical to protecting the public health, safety and welfare.

THUS ORDERED:

by: 
Connie B. Schroeder
Mayor, City of Bastrop



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 9B

TITLE:

Consider action to approve Resolution No. R-2020-36 of the City Council of the City of Bastrop, Texas authorizing a release of the side and rear Public Utility Easements dedicated with The Colony MUD 1E, Section 1, Block D Plat for Lots 17-23, 26-34, and Reserve Lots E5 and E6, located at the 100 Block of Millsap Court, as attached as Exhibit A; authorizing the City Manager to execute necessary documents; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

Jennifer C. Bills, AICP, LEED AP, Assistant Planning Director

BACKGROUND/HISTORY:

The applicant is requesting the vacation of the 5-foot side and 7.5-foot Public Utility Easements located on various lots on Millsaps Court in the Colony MUD 1E, Section 1 Subdivision. These lots are still owned by the developer Hunt Companies and build Buffington Homes. The applicant has applied for an Amending Plat to revise most of the lots located on Millsap Court, but Public Utility Easements cannot be removed with an Amending Plat. Letters from telecommunication companies, AT&T, CenterPoint, Spectrum, and Bluebonnet Electric which state they have no objection to releasing this part of the easement. Once the Bastrop Water and Wastewater Department and Bastrop Power & Light have confirmed no utilities are in place, the City will provide authorization as well.

POLICY EXPLANATION:

Historically, a Release of Easement has been reviewed and approved by City Council. These easements are not within the City Limits, but were dedicated on the original plat for The Colony MUD 1E, Section 1 which was approved by City Council as the subdivision authority within the Extraterritorial Jurisdiction.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Consider action to approve Resolution No. R-2020-36 of the City Council of the City of Bastrop, Texas authorizing a release of the side and rear Public Utility Easements dedicated with The Colony MUD 1E, Section 1, Block D Plat for Lots 17-23, 26-34, and Reserve Lots E5 and E6, located at the 100 Block of Millsap Court, as attached as Exhibit A; authorizing the City Manager to execute necessary documents; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution
- Exhibit A – Release of Easement Agreement
- Attachment 1 – Applicant Request for PUE Release
- Attachment 2 – Release from Utility and Telecommunication Companies



RESOLUTION NO. R-2020-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AUTHORIZING A RELEASE OF THE SIDE AND REAR PUBLIC UTILITY EASEMENTS DEDICATED WITH THE COLONY MUD 1E, SECTION 1 BLOCK D PLAT FOR LOTS 17-23, 26-34, AND RESERVE LOTS E5 AND E6, LOCATED AT THE 100 BLOCK OF MILLSAP COURT, AS ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop acquires Public Utility Easements with subdivision plats;
and

WHEREAS, some established Public Utility Easements are no longer needed by municipal or private utility companies; and

WHEREAS, the City of Bastrop has received statements of No Objections for the release of the easements shown in Exhibit A from non-municipal utilities; and

WHEREAS, the City of Bastrop has no infrastructure present in the area shown in Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. The City Manager is hereby authorized to execute a Release of Easements for the side and rear Public Utility Easements dedicated with The Colony MUD 1E, Section 1, - Block D, Lots 17-23, 26-34, and Reserve Lots E5 and E6, located at the 100 Block of Millsap Court, attached in Exhibit A, as well as all other necessary documents.

Section 2. All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, Texas this 14th day of April 2020.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

RELEASE OF PUBLIC UTILITY EASEMENT

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF BASTROP

§

§

This Agreement (this “Agreement”) is made on the 14th day of April, 2020, at Bastrop, Texas, between the City of Bastrop, a Texas home-rule municipal corporation, whose address is P.O. Box 427 Bastrop, Texas 78602, Attn: Bastrop City Secretary (herein referred to as “the City”) and Hunt Communities Bastrop, LLC and Buffington Texas Classic Homes, LLC, represented by Christine Methvin, Agent, (hereinafter referred to as the “Property Owners”).

1. For the good and valuable consideration described in Paragraph 2 below, the City has ABANDONED, RELEASED, and DISCHARGED and hereby does RELEASE, ABANDON, and DISCHARGE and forever QUITCLAIM to the Property Owners, its successors and assigns, any interest the City may have in that certain real property, located in Bastrop County, Texas, described as follows:

Being a part of the Colony MUD 1E, Section 1, Block D, 17-23, 26-34, and Reserve Lots E5 and E6 in the Extraterritorial Jurisdiction of the City of Bastrop, Texas, recorded in Book 4, Pages 197-B, 198-A & 198-B, Bastrop County Plat Records and the Amended Plat of the Colony MUD 1E, Section 1, Block D, Lots 17-23, 26-34 and Reserve Lots E5 and E6 in the Extraterritorial Jurisdiction of the City of Bastrop, Texas, recorded in Cabinet 5, Page 23-A, Bastrop County Plat Records and the easement location being shown in **Exhibit A** attached hereto and made a part hereof for all purposes (herein referred to sometimes as the “Property”).

2. This Release of the Public Utility Easement and the rights and privileges herein conveyed are granted for and in consideration of the sum of One and No/100 Dollars (\$1.00) and other good and valuable consideration to the City in hand paid by the Property Owners, the receipt and sufficiency of which is hereby acknowledged and confessed.
3. This Release of the Public Utility Easement is given specifically to abandon, release, and discharge the 5-foot side and 7.5 foot rear Public Utility Easements dedicated on the Plat in Book 4, Pages 197-A, 198-A, and 198-B and referenced on the Plat in Cabinet 5, Page 23-A, Plat records of Bastrop County, Texas.
4. This Release of the Public Utility Easement is given with the approval other parties as attached in Exhibit B.
5. This Release of Public Utility Easement contains the entire agreement between the parties relating to its subject matter. Any oral representations or modifications

concerning this Agreement shall be of no force and effect. Any subsequent amendment or modification must be in writing and agreed to by all parties.

6. The terms of this Release of Public Utility Easement shall be binding upon the City, and the City's heirs, personal representatives, successors, and assigns; shall bind and inure to the benefit of the Property Owners and any successors or assigns of the Property Owners; and shall be deemed to be a covenant running with the land.

IN WITNESS WHEREOF, the City has caused this instrument to be executed on this _____ day of _____, 2020.

THE CITY OF BASTROP:

By: _____
Trey Job
Acting City Manager

STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This instrument was acknowledged before me on this the _____ day of _____, 2020, by _____, the _____ and the duly authorized representative of the City of Bastrop.

Notary Public, State of Texas

AFTER RECORDING, RETURN TO:
Bastrop City Secretary
P.O. Box 427
Bastrop, Texas 78602

Block D

Millaps Court

Reserve E8

Reserve E9

Reserve E10

Reserve E11

Reserve E12

Reserve E13

Reserve E14

Reserve E15

Reserve E16

Reserve E17

Reserve E18

Reserve E19

Reserve E20

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Reserve E258

Reserve E259

Reserve E260

Reserve E261

Reserve E262

Reserve E263

12012 N. Mopac Expressway
512-808-9830 (Timothy White)

Austin, TX 78758
512/682-8592 (Fax)

EASEMENT RELEASE STATEMENT FOR VACATION OF PROPERTY

A request for release of the P.U.E. easement(s) has been made on the property legally described as:

Subdivision or Section: **Colony MUD 1E, Section 1**

Lot and Block Numbers: **BLOCK D ; LOTS 17-34**

Street Address: **Millsaps Court, Bastrop, TX 78602**

Property Owner: **Hunt Communities Bastrop LLC**

STATEMENT

- x Charter Communications **does not** have a need for an easement on the property as described in the accompanying document.
- Charter Communications **does** have a need for an easement on the property as described in the accompanying document.

Charter Communications

Timothy White
Signature

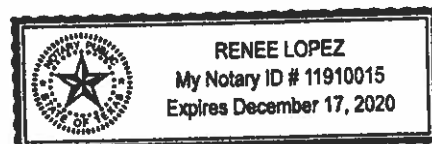
Construction Coordinator
Title

State of Texas
County of Travis

This instrument was acknowledged before me on March 3, 2020 by

Timothy White

Notary Public



Renee Lopez



P. O. Box 1700
Houston, Texas 77251

February 5, 2020

Hunt Communities Bastrop, LLC, et al
PO Box 12220
El Paso, TX 79913-0220

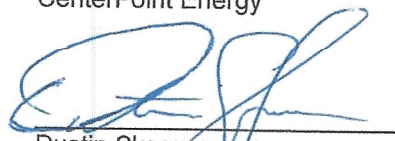
Re: Letter Agreement for Lots 17-34, Block D of the Colony MUD 1E, Section 1

Dear Hunt Communities Bastrop, LLC, et al:

CenterPoint Energy Houston Electric, LLC and CenterPoint Energy Resources Corporation, d/b/a CenterPoint Energy Texas Gas Operations and CenterPoint Energy Intrastate Pipelines, Inc., hereinafter referred to as "CenterPoint Energy", has investigated your request and determined that there are facilities located within the EASEMENT. CenterPoint Energy offers no objection to the release of the rear 7.5' and side 5' UE within Lots 17-34, Reserving E5 and E6, Block D of the Colony MUD 1E, Section 1 as highlighted on the attached drawing subject to the following conditions.

Hunt Communities Bastrop, LLC hereby binds itself, their affiliates, successors and assigns to hold CenterPoint Energy harmless from and against any and all claims or damage to any property arising out of or any way connected with the construction, use and existence of said Lots 17-34, Block D of the Colony MUD 1E, Section 1 within the EASEMENT during the maintenance, construction, relocation or operation of CenterPoint Energy's facilities.

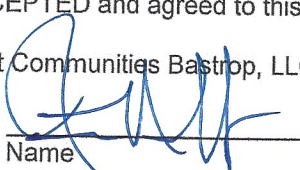
Sincerely,
CenterPoint Energy


Dustin Skogman
Senior Right-of-Way Agent

ACCEPTED and agreed to this 3 day of MARCH, 2020.

Hunt Communities Bastrop, LLC

By:


Name

SR. V.P.

Title

RICK NEFF

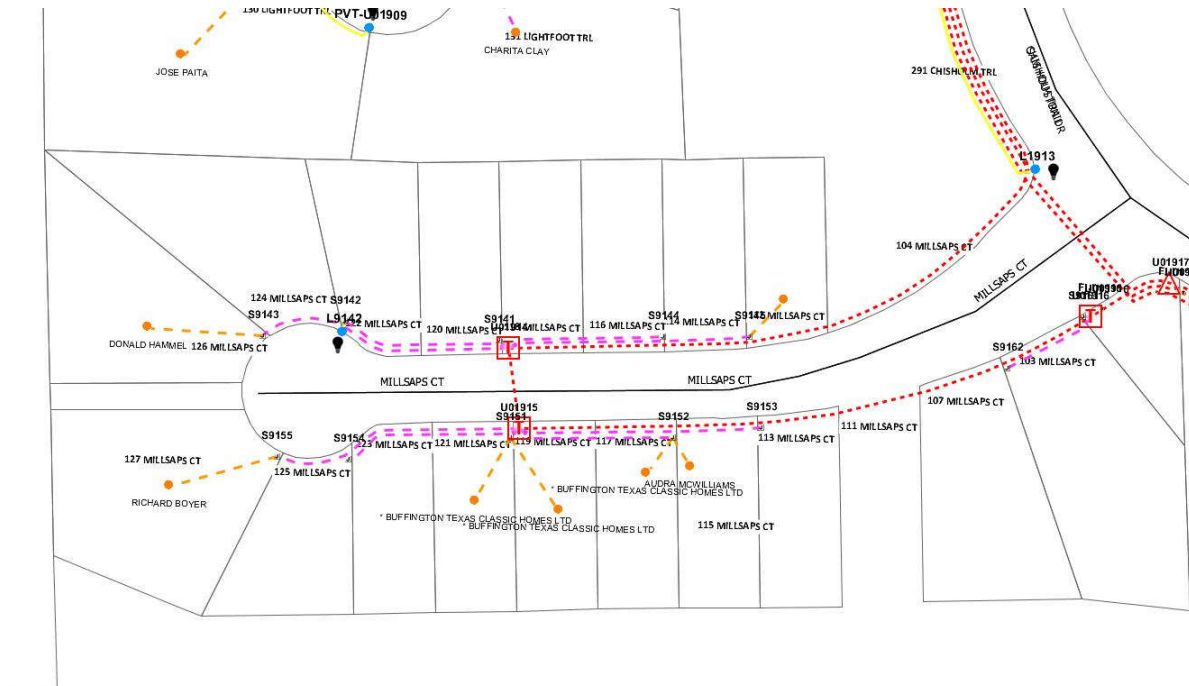
Name typed/printed

From: Shawn Ely
Sent: Monday, January 27, 2020 11:10 AM
To: Christine Methvin
Subject: RE: Request for Easement Release

Christine,

All of Bluebonnet facilities are placed within the PUE adjacent to the road only. See below. We have no issue releasing the sides/rear platted PUE's.

Thanks
Shawn



From: Christine Methvin <christine@cbdeng.com>
Sent: Monday, January 27, 2020 8:45 AM
To: 'Tommy Fikac (tommy.fikac@centerpointenergy.com)' <tommy.fikac@centerpointenergy.com>; Shawn Ely <shawn.ely@bluebonnet.coop>; SOLSBERY, KEVIN W <ks5899@att.com>; PEREZ, JOAQUIN <jp1491@att.com>; ctertheum@prgconsulting.net; 'Acevedo, Jessie' <Jessie.Acevedo@charter.com>; 'White, Timothy R' <Timothy.White@charter.com>
Subject: RE: Request for Easement Release

Good morning to all -

Just following up on the status of this request. Please advise at your earliest convenience.

All the best,

Christine M. Methvin
Project Coordinator



Carlson, Brigrace & Doering, Inc.
Firm ID# F3791
5501 West William Cannon Dr.
Austin, TX 78749
Email: christine@cbdeng.com
Office: 512-280-5160 x175
Cell: 512-484-6591
Website: www.cbdeng.com

From: Christine Methvin
Sent: Wednesday, January 22, 2020 8:30 AM
To: 'Tommy Fikac (tommy.fikac@centerpointenergy.com)' <tommy.fikac@centerpointenergy.com>; shawn.ely@bluebonnet.coop; SOLSBERY, KEVIN W <ks5899@att.com>; PEREZ, JOAQUIN <jp1491@att.com>; ctertheum@prgconsulting.net; 'Acevedo, Jessie' <Jessie.Acevedo@charter.com>; 'White, Timothy R' <Timothy.White@charter.com>
Subject: Request for Easement Release

Good morning -

The Owner/Developer of the Colony MUD 1E, Section 1 is proposing to amend a portion of the recorded plat for multiple lots (17-34 and Reserves E5 & E6) located on Millsaps Court. They are seeking to obtain releases of the existing 5' side and 7.5' rear PUEs for Lots 17-34, highlighted in the attached exhibit. Reserves E5 & 6 will not be effected.

Kindly let me know if your agency has any specific applications required to complete this process. Additionally, please let me know the location of any existing utilities already in place. It is my understanding that these can be addressed via individual easements as necessary.

If this is not something you are able to provide, please be sure to pass along the contact information of the appropriate party in your organization who can assist with this task. Looking forward to hearing back from you soon.

All the best,

Christine M. Methvin
Project Coordinator



Carlson, Brigrace & Doering, Inc.
Firm ID# F3791
5501 West William Cannon Dr.
Austin, TX 78749
Email: christine@cbdeng.com

Office: 512-280-5160 x175
Cell: 512-484-6591
Website: www.cbdeng.com

Christine Methvin

From: COWEN, CHRIS <cc2753@att.com>
Sent: Friday, February 28, 2020 1:20 PM
To: Christine Methvin
Subject: RE: Request for Easement Release

Christine,

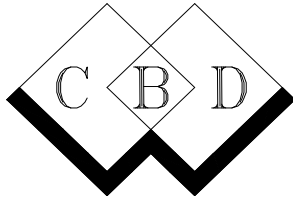
In response to your query:

I approve the release of the 5' side and 7.5' rear PUEs for Lots 17-34, Block D (including Reserve E5 and Reserve E6) of the Colony MUD 1E, Section 1 (a.k.a. "Millsaps Court").

Have a great weekend,

Best Regards,

Chris Cowen
Manager-OSP Planning & Engineering Design
AT&T Texas 
512-870-4471 (office)
512-750-7140 (mobile)
cc2753@att.com



Carlson, Brigrance & Doering, Inc.

Civil Engineering ❖ Surveying

CBD Project Number 4707

Date 3-18-2020

Trey Job
Acting Planning Director
City of Bastrop
511 Jackson Street
Bastrop, Texas 78602

**RE: Colony MUD 1E “Millsaps Court”
Easement Abandonment Application**

Mr. Job,

On behalf of the property owners, Hunt Communities Bastrop, LLC and Buffington Texas Classic Homes, LLC, an Easement Abandonment application is being submitted for the Colony MUD 1E “Millsaps Court” (more specifically the Amended Plat of Lots 17-21, 28-30 & 32-34, Block D, & Reserve E6, of The Colony MUD 1E, Section 1, and Lots 22-23, 26-27, & Reserve E5, Block D, of The Colony MUD 1E, Section 1, Amended Plat of Lots 22-27).

The purpose of this request is to release front, side and rear Public Utility Easements (PUE's) as currently shown on the final plats of record. The PUE's are not needed or required by entities providing service to this area and create unnecessary encumbrances on the subject lots. The sizes of the PUE's were intended for larger lots, creating a hardship for builders that are trying to fit product on smaller lots. Current platting standards do not require side and rear PUE's on lots of this size within the Colony subdivision.

There are no permanent obstructions in the easement nor are there other properties that would need this easement for utilities or drainage in the future.

Thank you for considering this request.

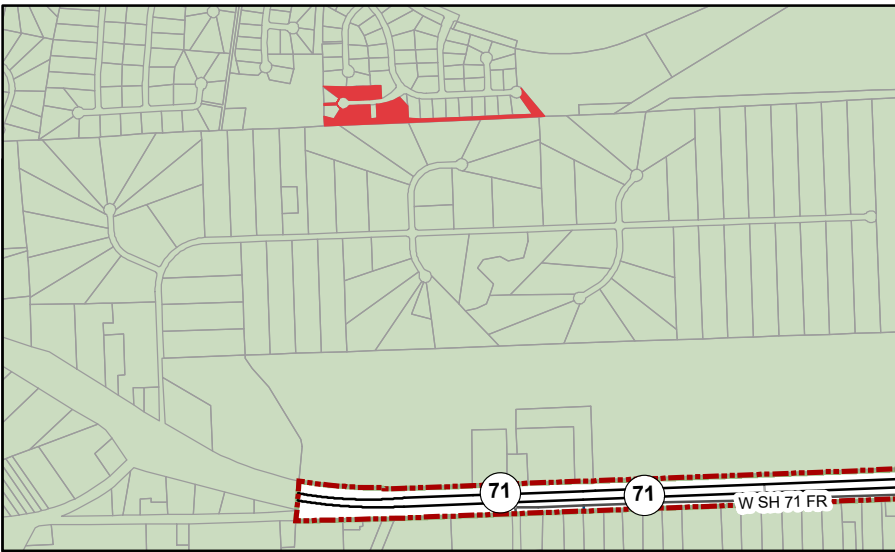
Sincerely,

CARLSON, BRIGRANCE & DOERING, INC.
Firm F-3791

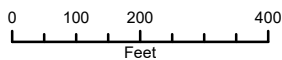
CM Methvin

Christine M. Methvin
Project Coordinator

Attachment 1 Location Map



The Colony MUD 1E Amended Plat Millsaps Ct



1 inch = 300 feet

Date: 4/2/2020

The accuracy and precision of this cartographic data is limited and should be used for information /planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.



Millsaps Ct PUE Release

Consider action to approve Resolution No. R-2020-xx of the City Council of the City of Bastrop, Texas authorizing a Release of Public Utility Easement for approximately 18 feet of a 15-foot wide Public Utility Easement dedicated with The Compound Resubdivision No. 2, located at 1405 Willow Street, also known as the LCRA Riverside Conference Center, as attached as Exhibit A; authorizing the City Manager to execute necessary documents; providing for a repealing clause; and establishing an effective date.



Request

- Release 5-foot side and 7.5 rear Public Utility Easements on various lots in the Colony MUD 1E, Section 1, Block D along Millsaps Court
- No utility infrastructure runs within the easements
- AT&T, Spectrum, and CenterPoint Energy have no objection

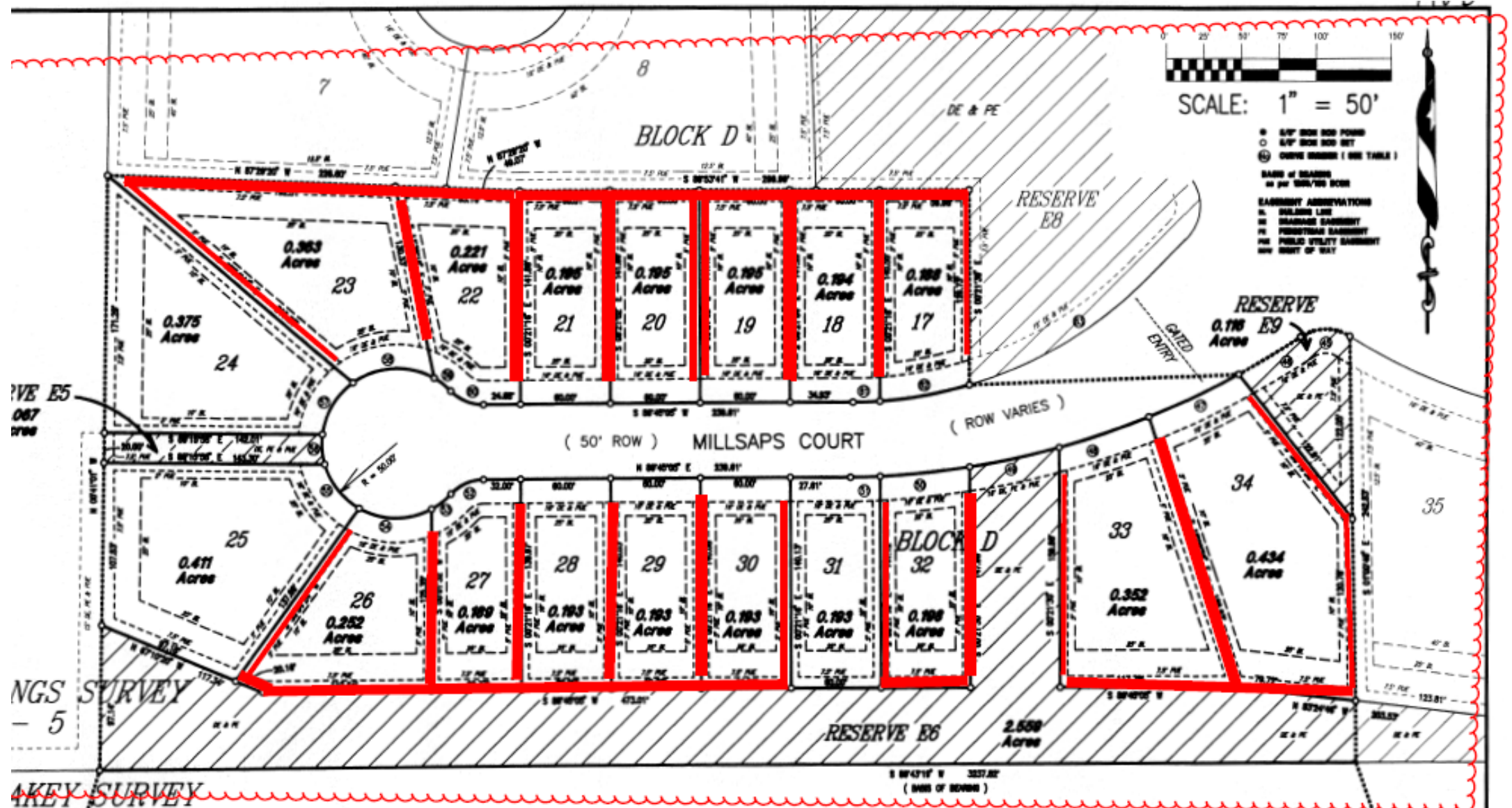


Location

Approximate Easement Location



Easement Area to be Released





STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 9C

TITLE:

Hold a public hearing and consider action to approve the first reading of Ordinance No. 2020-09 of the City Council of the City of Bastrop, Texas, continuing the curfew, for minors, as established in Ordinance 2019-56, Article 8.05, and providing a penalty not to exceed Five Hundred dollars (\$500.00) for each offense; providing for findings of fact, adoption, repealer, severability, and enforcement; establishing an effective date; proper notice and meeting; and move to include on the April 28, 2020 City Council consent agenda for a second reading.

STAFF REPRESENTATIVE:

Clint Nagy, Interim Chief of Police

BACKGROUND/HISTORY:

Texas State Law requires that the City of Bastrop review our Minors Curfew ordinance every three years. The City of Bastrop adopted our first Minors Curfew ordinance in 1994.

The Minors Curfew ordinance was last reviewed on April 11th, 2017 and adopted on April 25th, 2017. In summer 2019, in conjunction with the creation of the nuisance codes, Interim Chief Nagy conducted a review of the Minors Curfew ordinance. On November 26th, 2019, the new nuisance codes and the Minors Curfew were adopted. In 2019, the City of Bastrop most certainly met our three-year obligation to review the Minors Curfew ordinance, but the review was in conjunction with many other ordinances. This staff report, review, and presentation is stand-alone to ensure that we are obeying Texas State law.

POLICY EXPLANATION:

Texas State law, namely the local government code (section 370.002), requires that the City of Bastrop, while in an open meeting, review the City of Bastrop's Curfew for Minors ordinance every three years.

According to the local government code the City of Bastrop shall;

- review the ordinance's effects on the community and on problems the ordinance was intended to remedy;
- conduct public hearings on the need to continue the ordinance or order; and
- abolish, continue, or modify the ordinance or order.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Hold a public hearing and consider action to approve the first reading of Ordinance No. 2020-09 of the City Council of the City of Bastrop, Texas, continuing the curfew, for minors, as established in Ordinance 2019-56, Article 8.05, and providing a penalty not to exceed Five Hundred dollars (\$500.00) for each offense; providing for findings of fact, adoption, repealer, severability, and enforcement; establishing an effective date; proper notice and meeting; and move to include on the April 28, 2020 City Council consent agenda for a second reading.

ATTACHMENTS:

- Article 8.05 Minors Curfew Ordinance, Attachment "A"
- PowerPoint presentation



ORDINANCE NO. 2020-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, CONTINUING THE CURFEW, FOR MINORS, AS ESTABLISHED IN ORDINANCE 2019-56, ARTICLE 8.05, AND PROVIDING A PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; PROVIDING FOR FINDINGS OF FACT, ADOPTION, REPEALER, SEVERABILITY, AND ENFORCEMENT; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council originally adopted a minors curfew ordinance in 1994 and most recently readopted said ordinance on April 25, 2017; and

WHEREAS, Texas Local Government Code Section 370.002 requires home-rule municipalities to review their minor's curfew ordinances every three years to determine the effects on the community and on problems the ordinance was intended to remedy; and

WHEREAS, Texas Local Government Code section 370.002 requires that the City Council conduct public hearings on the need to continue the ordinance or order and consider the efficacy of its regulations related to a curfew for minors in the City of Bastrop, and following the hearing to determine whether, in the judgement of the Council, it is in the best interest of the public safety, health and welfare to either continue, modify or abolish the curfew regulations set out in the City Code; and

WHEREAS, Interim Chief Nagy conducted a review of the minors curfew ordinance during the 2019 nuisance codes ordinance updates and presented his report regarding the curfew ordinance to the City Council; and

WHEREAS, the City Council accepted the findings in Interim Chief Nagy's report and adopted the recommended changes to the curfew ordinance on November 26, 2019 when the City Council adopted Ordinance No. 2019-56; and

WHEREAS, the City Council has reviewed the effects of the City's minors curfew ordinance, codified as Article 8.05 in the City's Code of Ordinances, on the community and its effect on minors, crime and crime victims, in accordance with the Texas Local Government Code; and

WHEREAS, at a regularly scheduled meeting of the City Council, held on April 14th, 2020, the Council conducted a public hearing on the need to continue the ordinance or order and, at the conclusion of the hearing, after considering all information provided and testimony given, the Council found that it is in the best interest of the health, safety and welfare of the citizens of the City, to continue the City's regulations related to a curfew for minors in the City of Bastrop, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. **FINDINGS OF FACT** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 2. **READOPTION** Chapter 8, Article 8.05 of the City of Bastrop Code of Ordinances is hereby readopted, and Chapter 8, Article 8.05 shall continue to read in accordance with Attachment "A", which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on Attachment A.

Section 3. **REPEALER** To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

Section 4. **SEVERABILITY** Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 5. **CODIFICATION** The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

Section 6. **EFFECTIVE DATE** This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, Code of Ordinances, and the laws of the State of Texas.

Section 7. **PROPER NOTICE & MEETING** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & ACKNOWLEDGED on First Reading on the 14th day of April 2020.

READ & APPROVED on Second Reading on the 28th day of April 2020.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Minors Curfew Ordinance

Interim Chief of Police Clint Nagy

April 14th, 2020



Minors Curfew Ordinance

- The City of Bastrop's Minors Curfew Ordinance was originally adopted by the City of Bastrop's City Council in 1994.
- The current Minors Curfew Ordinance was adopted in conjunction with the Nuisance Ordinance overhaul that occurred in November 2019.



Minors Curfew Ordinance

The City of Bastrop's Minors Curfew Ordinance specifies the hours of curfew for daytime during school sessions and nighttime curfew year-round.

- During school hours on any Monday, Tuesday, Wednesday, Thursday, or Friday when Bastrop Independent School District public schools are in session.
- Nighttime curfew hours are 11:00 P.M. until 5:00 A.M. from Sunday night through Thursday morning.
- Friday and Saturday curfew hours are 12:01 A.M. until 5:00 A.M.



Minors Curfew Ordinance

Minor. Any person:

Ten (10) years of age or older and under seventeen (17) years of age; or

Seventeen (17) years of age or older and under eighteen (18) years of age.



Minors Curfew Ordinance

Both the minor and their parent or guardian can be issued citations for curfew violations.

The owner or employee of an establishment also commits an offense if they allow a minor to remain on premises during curfew hours.

Enforcement action is designed to hold a minor's, parents and businesses accountable.



Minors Curfew Ordinance

Any person violating this ordinance shall be guilty of a class C misdemeanor.

- Community service (tutoring, non-profit, church, essay or educational class.)
- Pay fine (e.g. food donation to charity @ \$12.50 a can)
- Or a combination of above
- Deferral (probation) – All compliance cases are deferred rather than a conviction.

Minors Curfew Ordinance

Curfew Violations *

YEAR	BPD	BISD	TOTAL* By Year		BPD Nighttime	BPD School Curfew
2016	15	16	31		3	12
2017	3	48	51		1	2
2018	7	49	56		3	4
2019	8	25	33		4	4
2020 YTD	7	8	15		4	3

*merger with new Reports Management Systems (RMS)

Minors Curfew Ordinance

Detentions for other crimes during nighttime curfew hours

Year	Total Detentions	Class C	Other Misdemeanors	Felony
2020 YTD	7	5	2	0
2019	29	14	10	5

Minors Curfew Ordinance

The Bastrop Police Department believes the curfew ordinance protects minors.

Allows officers a mechanism to address students who walk off campus during school hours.

It is another tool for the Bastrop Police Department to ensure safety for vulnerable minors in our community

The Bastrop Police Department uses common sense and the “spirit of the law” versus “letter of the law” when we enforce the Minors Curfew ordinance.





STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 9D

TITLE:

Consider action to approve Resolution No. R-2020-35 of the City Council of the City of Bastrop, Texas, awarding a contract for the City of Bastrop Public Works Detention Project to Frontier Development, Inc. in the amount of three hundred fifty-one thousand six hundred sixty-four dollars (\$351,664.00), attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

Trey Job, Assistant City Manager

BACKGROUND/HISTORY:

The City of Bastrop, in connection with carrying out the duties of its various ordinances and duties to provide maintenance on the current and future infrastructure, has made drainage improvements a priority. One of the projects that focuses on drainage improvements is the Public Works Detention Pond project on Hill Street. The north area of Bastrop has experienced flooding during previous rain events. Expanding the capacity of the existing detention pond will accommodate larger storm events.

The construction of the Public Works Detention Pond improvements was identified as a need in the FY2020 workplan as a CIP project and in the Comprehensive Plan (2.6) as a focus area for "Community Safety". Engineering services were provided by BEFCO Engineering, Inc. and BEFCO prepared and solicited the RFP and completed the bid tabulation.

On March 24, 2020, thirteen (13) bids were received for the City of Bastrop Pine Street Drainage Improvements project. The lowest submitted bid price was from AIC Construction LLC. However, they did not include the required number of references required in the RFP and therefore their proposal was declared incomplete. The lowest and most responsive bid was from Frontier Development, Inc. As a result, BEFCO reviewed and ranked the proposals and recommends that the Council award the contract for the project to Frontier Development, Inc. in the amount of \$351,664.00.

POLICY EXPLANATION:

The City is required to maintain its infrastructure and is given authority to do so in the Local Government Code.

FUNDING SOURCE:

This project is funded in the FY2019-2020 budget as passed by Council. The project can be found on page 245 of the budget book. The proposed expenditure for FY19-20 is \$501,800. The bid amount is under budget.

RECOMMENDATION:

Consider action to approve Resolution No. R-2020-35 of the City Council of the City of Bastrop, Texas, awarding a contract for the City of Bastrop Public Works Detention Project to Frontier Development, Inc. in the amount of three hundred fifty-one thousand six hundred sixty-four dollars (\$351,664.00), attached as Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution R-2020-35
- Exhibit A BEFCO Public Works Detention Pond Project Specifications and Contract Documents
- BEFCO Engineering Recommendation Letter & Proposal Tabulation



RESOLUTION NO. R-2020-35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AWARDING A CONTRACT FOR THE CITY OF BASTROP PUBLIC WORKS DETENTION PROJECT TO FRONTIER DEVELOPMENT, INC. IN THE AMOUNT OF THREE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED SIXTY-FOUR DOLLARS (\$351,664.00), ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop City Council understands the importance of public safety provided by performing infrastructure improvements; and

WHEREAS, the City of Bastrop City Council understands providing maintenance on current City infrastructure should be cost effective; and

WHEREAS, the City of Bastrop understands the importance of focusing on infrastructure improvements in the area of drainage; and

WHEREAS, the City of Bastrop has utilized BEFCO Engineering, Inc. for the provision of engineering services on the Public Works Detention Pond Project; and

WHEREAS, BEFCO Engineering has received all proposals and found the lowest, most responsive bidder to be qualified.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. That the City Manager is hereby authorized to execute a contract for the City of Bastrop Public Works Detention Pond Project with Frontier Development, Inc. in the amount of \$351,664.00, attached as Exhibit A.

Section 2. The City Council of the City of Bastrop, Texas has found BEFCO Engineering, Inc. to be a subject matter expert in the field of engineering and accepts BEFCO's recommendation to award the contract for the Public Works Detention Pond Project to Frontier Development, Inc.

Section 3. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 14th day of April, 2020.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

**SPECIFICATIONS
AND
CONTRACT DOCUMENTS
for
CITY OF BASTROP
PUBLIC WORKS DETENTION POND
FEMA HMGP DR-4272-0024-TX
BEFCO JOB NO. 16-6780**

MARCH 2020

prepared by

BEFCO Engineering, Inc.

Post Office Box 615

485 North Jefferson

La Grange, Texas 78945

(979) 968-6474

FAX - (979) 968-3056

**Texas Registered
Engineering Firm #F-2011**

www.befcoengineering.com

office@befcoengineering.com



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ADVERTISEMENT AND INVITATION FOR BIDS

Advertisement and Invitation for Bids

The City of Bastrop will receive bids for the Public Works Detention Pond Project (FEMA-DR-4272-0024-TX) until 10:00 a.m. on Tuesday, March 24, 2020 at City Hall, 1311 Chestnut Street, Bastrop, Texas 78602. The bids will be publicly opened and read aloud at 10:00 a.m. on Tuesday, March 24, 2020 at said office.

Bids are invited for the Public Works Detention Pond Project (FEMA project) as described in the plans and specifications, include approximately 43,000 cubic yards of excavation, demolition, concrete pavement, fencing, erosion control, and hydromulch seeding.

Bid/Documents, including Drawings and Technical Specifications, are on file at BEFCO Engineering, Inc., 485 N. Jefferson (P. O. Box 615), La Grange, Texas 78945 (979) 968-6474.

Copies of the Bid/Contract Documents may be obtained by contacting BEFCO Engineering, Inc. via email at office@befcoengineering.com. Electronic copies may be obtained at no charge; hard copies may be obtained by payment of a non-refundable deposit of \$50.00 for each set.

A bid bond in the amount of 5% of the bid issued by an acceptable surety shall be submitted with each bid. A certified check or bank draft payable to the City of Bastrop may be submitted in lieu of the Bid Bond.

The successful bidder may not discriminate against its employees or applicants for employment on the basis of race, color, religion, sex, age or national origin.

The City of Bastrop reserves the right to reject any or all bids or to waive any minor informalities in the bid documents. **The Contract will be awarded to the lowest responsible bidder.**

Bids may be held by the City of Bastrop for a period not to exceed 60 days from the date of the bid opening for the purpose of reviewing the bids and investigating the bidders qualifications prior to the contract award.

All qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin. Bidders will be required to comply with the President's Executive Order No. 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60.

The successful Bidder shall furnish Performance and Payment Bonds on the forms furnished with the Proposal, in the amount of 100% of the total Contract price, from a surety company holding a permit from the State of Texas to act as surety. The surety company must have a minimum Best Key Rating of "B", or the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The surety company and the agency or agent issuing the Payment and Performance Bonds must be authorized to issue and sign Payment and Performance Bonds in Texas in an amount equal to or greater than the total Contract price.


Trey Job, Interim City Manager
City of Bastrop

2-26-2020
Date

INFORMATION FOR BIDDERS

INFORMATION FOR BIDDERS

1. Receipt and Opening of Bids

The City of Bastrop herein called ("Owner"), invites bids on the bid form attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the City of Bastrop at City Hall, 1311 Chestnut Street in Bastrop until 10:00 AM on Tuesday, March 24, 2020 and then at said City Hall publicly opened and read aloud. The envelopes containing the bids must be sealed, addressed to the City of Bastrop and designated as Public Works Detention Pond Project (FEMA HMGP DR-4272-0024-TX).

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 60 days after the actual date of the opening thereof.

Each bid must be submitted on the prescribed form and the sealed envelope shall bear on the outside the name of the bidder, his address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope must be enclosed in another envelope and addressed as specified in the bid form.

2. Subcontracts

The bidder is specifically advised that any person, firm or other party to whom it is proposed to award a subcontract under this contract must receive prior approval from the Owner and Engineer.

3. Qualifications of Bidder

The Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted. See items required with bid.

4. Bid Security

Each bid must be accompanied by cash, certified check of the bidder, or a bid bond prepared on the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety company approved by the Owner, in the amount of 5% of the bid. Such cash, checks or bid bonds will be returned to all except the three lowest bidders within three days after the opening of bids, and the remaining cash, checks, or bid bonds will be returned promptly after the Owner and the accepted bidder have executed the

contract, or if no award has been made within 90 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.

5. Liquidated Damages for Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within 10 days after he has received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his bid.

6. Time of Completion and Liquidated Damages

Bidder must agree to commence work on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project within one hundred fifty (150) calendar days. Bidder must agree also to pay as liquidated damages, the sum of \$210 for each consecutive calendar day thereafter as hereinafter provided in the Special Conditions.

7. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally. Every request for such interpretations should be in writing to BEFCO ENGINEERING INC., P.O. BOX 615, LA GRANGE, TEXAS 78945 and to be given consideration must be received as least five days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed by certified mail with return receipt requested to prospective bidders, not later than three days prior to the date fixed for the opening of bids. Addenda so issued may also be faxed to prospective bidders. Failure of any bidder to receive any such addenda or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

8. Security for Faithful Performance

A performance bond or payment bond will not be required if the bid for this contract is less than \$25,000. If the bid is \$25,000 or more then the contractor shall deliver with the executed contract a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor on the project, as specified in the General Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the Owner.

9. Power of Attorney

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

10. Laws and Regulations

The bidder's attention is directed to the fact that all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

11. Method of Award - Lowest Qualified Bidder

The Owner reserves the right to waive formalities, to reject any and all bids, to accept bids based on alternate items and quantities specified, and to accept the bid most advantageous to the public interest. Owner also retains right to reduce or increase the total proposal amount by up to 25% by reducing or increasing quantities.

12. Obligation of Bidder

At time of the opening of bids, each bidder will be presumed to have inspected the site, and to have read and to be thoroughly familiar with the plans, specifications and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, plan, specification, or document shall in no way relieve any bidder from any obligation in respect to his bid.

13. The following documents will be attached to the bid and made a condition of this Bid:

- A. Executed Bidder's Proposal
- B. Statement of Materials and Other Charges
- C. Required Bid Security
- D. Contractor's Visit Affidavit
- E. Anti-Collusion Affidavit
- F. Statement of Bidder's Qualifications
- G. Conflict of Interest
- H. Safety Record Questionnaire
- I. State Reciprocal Agreement
- J. Form 1295
- K. Chapter 2271 Verification
- L. Chapter 2252 Certification
- M. List of Subcontractors & Suppliers
- N. List of references and phone numbers of last 5 projects of similar size and scope

Bidder must acknowledge addendas; however, Bidder is responsible for all addendas issued, whether received or not.

01/2020

BID PROPOSAL

BIDDER'S PROPOSAL

Date _____

Proposal of _____, a corporation
organized and existing under the laws of the State of Texas, a partnership consisting
of _____, an individual
trading as _____.

TO: Mr. Trey Job, Interim City Manager
City of Bastrop
1311 Chestnut St. (PO Box 427)
Bastrop, Texas 78602

Gentlemen:

Pursuant to the foregoing Notice to Bidders, the undersigned bidder hereby proposes to do all the work and furnish all necessary superintendence, labor, machinery, equipment, tools and materials, and whatever else may be necessary to complete all the work upon which he bids, as provided by the attached specifications and shown on the plans, and binds himself on acceptance of his proposal to execute a contract and bond, according to the accompanying forms, for performing and completing the said work within the time stated and maintaining same as required by the detailed specifications for the following prices to wit:

CITY OF BASTROP
FEMA DR-4272-0024-TX
Public Works Detention Pond
BEFCO JOB NO. 16-6780

BID SCHEDULE
March 24, 2020

<u>Item No.</u>	<u>Est. Qty.</u>	<u>Units</u>	<u>Description in Words</u>	<u>Unit Price</u>	<u>Total Price</u>
1	1	LS	Sawcut, demolish, and remove 16 linear feet of reinforced concrete pipe and concrete outlet structure at northeast corner of pond for _____ dollars and _____ cents.		\$ _____
2	1	LS	Sawcut, demolish, and remove 8 linear feet of reinforced concrete pipe and concrete outlet structure at northwest corner of pond for _____ dollars and _____ cents.		\$ _____
3	1	LS	Sawcut, demolish, and remove 29 linear feet of reinforced concrete pipe and concrete grate inlet at southwest corner of pond for _____ dollars and _____ cents.		\$ _____
4	43,400	CY	Excavate material for expanded detention pond and 5-foot channel at southeast corner of pond, haul to spoil site at west end of Linden Street, and stockpile for _____ dollars and _____ cents per cubic yard.	\$ _____	\$ _____
5	340	SY	Excavate, furnish, and install 5-inch (5") thick reinforced concrete slope pavement and apron including toe beams at all four corners of pond for _____ dollars and _____ cents per square yard.	\$ _____	\$ _____
6	4	AC	Topsoil, hydromulch seed, fertilize, and provide temporary irrigation (if necessary) to ensure full coverage of grassing for _____ dollars and _____ cents per acre.	\$ _____	\$ _____
7	1,368	LF	Furnish and install 6-foot chainlink security fencing and gates around perimeter of detention pond for _____ dollars and _____ cents per linear foot.	\$ _____	\$ _____

<u>Item No.</u>	<u>Est. Qty.</u>	<u>Units</u>	<u>Description in Words</u>	<u>Unit Price</u>	<u>Total Price</u>
8	2	EA	Furnish and install rock berm for erosion control for _____ dollars and _____ cents each.	\$ _____	\$ _____
TOTAL BASE BID (Items 1-8):					\$ _____

The following documents will be attached to the bid and made a condition of this Bid:

- A. Executed Bidder's Proposal
- B. Statement of Materials and Other Charges
- C. Required Bid Security
- D. Contractor's Site Visit Affidavit
- E. Anti-Collusion Affidavit
- F. Statement of Bidder's Qualifications
- G. Conflict of Interest Questionnaire
- H. Safety Record Questionnaire & Statement of Bidder's Safety Experience
- I. State Reciprocal Agreement
- J. Form 1295
- K. Chapter 2271 Verification
- L. Chapter 2252 Certification
- M. List of suppliers & subcontractors.
- N. List of at least five (5) references of projects similar in size and scope. References shall include phone numbers for Owner and Engineer.

Bidder must acknowledge addendas; however, Bidder is responsible for all addendas issued, whether received or not.

NOTES:

1. Contractor shall furnish and implement a storm water pollution prevention plan (SWPPP). This work is considered subsidiary to the project. As such, cost of the SWPPP shall be included in the various bid items. No separate payment will be made.
2. Contractor shall be responsible for temporary pumping of storm water runoff collected within the pond during the course of construction. Temporary pumping is considered subsidiary to the work. No separate payment will be made.
3. Encountering groundwater is not anticipated during the course of construction. However, groundwater elevations can vary seasonally. Should groundwater be discovered, Contractor shall notify City and Engineer immediately to determine proper course of action. If only minimal dewatering operations are necessary, this work will be considered subsidiary to the project; and no additional payment will be made. If significant dewatering operations are required such as a well point system, temporary wells, etc., then a scope of work / change order will be prepared to cover additional costs and time.
4. Mobilization charges are subsidiary to all bid items.
5. Construction time is to start within ten (10) days after receipt of a written "Notice To Proceed." All items shall be substantially complete within one hundred fifty (150) consecutive calendar days. Failure to complete the items by deadline will result in a penalty of liquidated damages in an amount of \$210 per calendar day.
6. Communications concerning this Bid shall be addressed to the e-mail or business address of Bidder indicated herein.
7. Award of contract shall be based upon lowest, most responsible bid. Owner has right to waive any or all bid informalities.

8. In the event of discrepancies in unit prices quoted by written words or by numerical value, the written words will prevail. The total bid amount will be adjusted based on written words.
9. Contract documents will govern over the drawings. The order of importance will be Contract, Bond Documents, Special Conditions, EJCDC Standard General Conditions and Technical Specifications.
10. Failure to fully complete bid form or submit all forms/attachments with bid may result in the dismissal of bid.

I hereby acknowledge the receipt of the following addenda:

1. _____
2. _____
3. _____

The undersigned bidder agrees to commence work within ten (10) days after the date of written notice to commence work.

Enclosed with this proposal is a cashier's check or certified check in the amount of 5% of the greatest amount bid (5% of G.A.B.) for _____ (\$ _____) Dollars, or a proposal bond in the sum of _____ \$ _____) Dollars, which it is agreed shall be collected and retained by the OWNER as liquidated damages in the event this proposal is accepted by the OWNER within ninety (90) days after the date advertised for the receipt of bids and the undersigned fails to execute the contract and the required bond with the OWNER, under the conditions hereof, within five (5) days after the date said proposal is accepted; otherwise, said check or bond shall be returned to the undersigned upon demand.

The undersigned hereby declares that he has visited the site and has carefully examined the contract documents relative to the work covered by the above bid.

Respectfully submitted,

BIDDER: _____ SIGNED: _____

ADDRESS: _____ TITLE: _____

TELEPHONE: _____

Seal - if the bidder is a corporation

STATEMENT OF MATERIALS AND OTHER CHARGES

MATERIALS INCORPORATED INTO THE PROJECT: \$_____

ALL OTHER CHARGES: \$_____

*TOTAL: \$_____

***This total must agree with the contract amount as shown in the bound contract.**

For purposes of complying with the Texas Tax Code, the Contractor agrees that the charges for any material incorporated into the project in excess of the estimated quantity provided for herein will be no less than the invoice price for such material to the Contractor.

BID BOND

BID BOND

Bidder Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: City of Bastrop Address <i>(principal place of business)</i> : 1311 Chestnut St. (PO Box 427) Bastrop, TX 78602	Bid Project <i>(name and location)</i> : Public Works Detention Pond FEMA HMGP DR-4272-0024-TX Bid Due Date: March 24, 2020
Bond Bond Amount: 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
<i>(Full formal name of Bidder)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature) (Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>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.</i>	

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder any difference between the total amount of Bidder's Bid and the total amount of the Bid of the next lowest, responsible Bidder that submitted a responsive Bid, as determined by Owner, for the work required by the Contract Documents, provided that:
 - 1.1. If there is no such next Bidder, and Owner does not abandon the Project, then Bidder and Surety shall pay to Owner the bond amount set forth on the face of this Bond, and
 - 1.2. In no event will Bidder's and Surety's obligation hereunder exceed the bond amount set forth on the face of this Bond.
 - 1.3. Recovery 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, or
 - 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. 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.
5. 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 will not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
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 one year after the Bid due date.
7. Any suit or action under this Bond must 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. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

CONTRACTOR'S VISIT AFFIDAVIT

City of Bastrop
Public Works Detention Pond
FEMA HMGP DR-4272-0024-TX
BEFCO Job No. 16-6780

CONTRACTOR'S VISIT AFFIDAVIT

_____, a representative of
(printed name of representative)

_____ visited the site on this the _____
(printed name of company)

day of _____, 20____ for the above referenced job.

(signature of representative)

ACKNOWLEDGEMENT

The State of _____
County of _____

IN WITNESS WHEREOF the said Representative has executed this instrument this ____ day of _____, 20____.

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____
known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledge to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ day of _____, 20____.

(SEAL)

Notary Public in and for

_____ County,
Commission expires _____

ANTI-COLLUSION AFFIDAVIT

ANTI-COLLUSION AFFIDAVIT

STATE OF TEXAS §
COUNTY OF _____ §

Before me, the undersigned authority, personally appeared,
_____, who, first being duly
sworn, deposed and stated as follows:

My name is _____. I am over the age of
eighteen and am competent to make this affidavit. The facts stated in this affidavit are
within my personal knowledge and are true and correct.

I hereby affirm that that this bid is genuine and not in any manner collusive or a
sham. Further, I affirm that I have not colluded, conspired, connived, or agreed, directly
or indirectly, with any other bidder or any other person to manipulate the bid, to put in a
sham bid, nor have I conspired with another person in order to have another person
refrain from bidding. I have not in any manner, directly or indirectly, colluded,
conspired, connived or agreed with any person to fix the prices proposed and offered by
affiant or any other bidder, or to fix any overhead, profit or cost element of said bid
price.

Name

Company

SWORN TO and SUBSCRIBED before me by _____
on _____, 20__.

Notary Public in and for
the State of Texas

My Commission Expires: _____, 20__

FORM 1295

ADDITIONAL CONDITION OF AWARD —

DISCLOSURE OF INTERESTED PARTY FORM:

NEW OBLIGATION OF THE CITY TO RECEIVE INFORMATION FROM WINNING BIDDER

Effective January 1, 2016, pursuant to Texas Government Code, Section 2252.908 (the “Interested Party Disclosure Act”), the City may not award a contract to a bidder unless the bidder submits a Certificate of Interested Parties Form 1295 (the “Disclosure Form”) to the City as prescribed by the Texas Ethics Commission (“TEC”).

PROCESS FOR COMPLETING THE DISCLOSURE FORM

The Disclosure Form can be found at <https://www.ethics.state.tx.us/forms/1295.pdf>, and reference should be made to the following information in order to complete it:

- (a) item 2 – Name of City (“City of Bastrop, Texas”)
- (b) item 3 – the identification number (“FEMA HMGP DR-4272-0024-TX) and
- (c) item 3 – description of the goods or services assigned to this contract by the City (“Public Works Detention Pond”)

You must:

- 1) complete the Disclosure Form electronically at the TEC’s “electronic portal”, and**
- 2) print, sign and include with bid proposal a copy of the Disclosure Form and Certification of Filing that is generated by the TEC’s “electronic portal.”**

The following link will take you to the electronic portal for filing:
<https://www.ethics.state.tx.us/TECCertInt/pages/login/certLogin.jsf>

Also, a detailed instruction video may be found here:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Neither the City nor its consultants have the ability to verify the information included in a Disclosure Form, and neither have an obligation nor undertake responsibility for advising any business entity with respect to the proper completion of the Disclosure Form.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address: _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

STATEMENT OF BIDDER'S QUALIFICATIONS

STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. **This statement must be notarized.** If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information it desires.

Date: _____

Bidder (Legal Name of Firm): _____

Date Organized: _____

Name of Owner(s): _____

Address : _____

: _____

Date Incorporated: _____

Federal ID Number: _____

Number of Years in contracting business under present name: _____

List all other names under which your business has operated in the last 10 years: _____

Work Presently Under Contract:

Contract	Amount \$	Completion Date
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Type of work performed by your company: _____

Total Staff employed by Firm (Break down by Managers and Trades on separate sheet):

Have you ever failed to complete any work awarded to you? ☐ Yes ☐ No

(If yes, please attach summary of details on a separate sheet. Include brief explanation of cause and resolution)

Have you ever defaulted on a contract? ☐ Yes ☐ No

(If yes, please attach summary of details on a separate sheet.)

Has your organization had any disbarments or suspensions that have been imposed in the past five years or that was still in effect during the five-year period or is still in effect? ☐ Yes ☐ No

(If yes, list and explain; such list must include disbarments and suspensions of officers, principals, partners, members, and employees of your organization.)

List the projects most recently completed by your firm (include project of similar importance):

Project	Amount \$	Mo/Yr Completed
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Major equipment available for **this** contract: _____

Are you in compliance with all applicable EEO requirements? ☐ Yes ☐ No

(If no, please attach summary of details on a separate sheet.)

Are you a Section 3 business? (see below) ☐ Yes ☐ No

Section 3 Business Concerns:

- a) Businesses that are 51 percent or more owned by Section 3 residents;
- b) Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents;
- c) Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above; or
- d) Businesses located within the Grant Recipient's jurisdiction that identifies themselves as Section 3 Business Concerns because they provide economic opportunities for low- and very low income persons.

Bank References

Address: _____ Contact Name: _____
City & State: _____ Zip: _____ Phone Number: _____
Credit available: \$ _____

Has the firm or predecessor firm been involved in a bankruptcy or reorganization? ☐ Yes ☐ No
(If yes, please attach summary of details on a separate sheet.)

List on a sheet attached hereto all judgements, claims, arbitration proceedings, or suits pending or outstanding against bidder over the last five (5) years with amount of claim and brief description.

List on a sheet attached hereto all lawsuits or requested arbitration with regard to construction contracts which bidder has initiated within the last five (5) years and brief explanation of claim and outcome.

Attach resume(s) for the principal member(s) of your organization, including the officers as well as the proposed superintendent for the project.

Signed this _____ day of _____, 20____.

Signature

Printed Name and Title

Company Name

Notary Statement:

_____, being duly sworn, says that he/she is the _____ Position/Title
_____ of _____ (Firm Name), and hereby swears that the answers to the
foregoing questions and all statements therein contained are true and correct. He/she hereby authorizes and
requests any person, firm, or corporation to furnish any information requested City/County of
_____ in verification of the recitals comprising this Statement of Bidder's Qualifications.

Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public

Signature

Printed Name

My Commission Expires: _____.

STATE RECIPROCAL AGREEMENT

STATE RECIPROCAL AGREEMENT

City of Bastrop as a governmental agency of the state of Texas, may not award a contract for general construction, supplies, materials, or equipment to a non-resident bidder unless the non-resident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract in the state in which the non-resident's principal place of business is located (article 601G V.T.C.S.). Bidder shall answer all the following questions by encircling the appropriate response or completing the blank provided.

1. Is your principal place of business in the state of Texas? **Yes** **No**

2. If the answer to question 1 is "yes" no further information is necessary; if "no", please indicate:

a. In which state your principal place of business is located: _____

b. Does that state favor resident bidders (bidders in your state) by some dollar increment or percentage? **Yes** **No**

c. If "Yes", state the dollar increment or percentage: _____

SAFETY RECORD QUESTIONNAIRE

**SAFETY RECORD QUESTIONNAIRE
& STATEMENT OF BIDDER'S SAFETY EXPERIENCE
(To Be Submitted With Bid)**

Project: City of Bastrop—(FEMA HMGP) Public Works Detention Pond

Pursuant to Section 252.0435 of the Local Government Code, City of Bastrop will consider the safety records of potential contractors prior to awarding bids on City of Bastrop contracts. The term "Bidder" includes the firm, corporation, partnership, or other legal entity represented by the Bidder or anyone acting for such firm, corporation, partnership or other entity submitting the bid. The definitions and criteria for determining the safety record of a Bidder are:

"Citations" include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments. Notice of Violations and Notice of Enforcement received from the TCEQ shall include those classified as major violations and moderate violations under the TCEQ'S regulations for documentation of Compliance History, 30 Texas Administrative Code, Chapter 60.2 (c) (1) and (2). "Environmental Protection Agency" includes, but is not limited to the Texas Commission on Environmental Quality (TCEQ), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Texas Department of Health, the Texas Parks and Wildlife Department, the Structural Pest Control Service, agencies of local governments responsible for enforcing environmental protection laws or regulations, and similar regulatory agencies of other states of the United States.

City of Bastrop may consider the responses to each question listed below separately when making a discretionary determination of whether to disqualify a Bidder and it may consider the cumulative impact of the information generated by the Bidder's responses in making the determination.

In order to consider the safety records of potential contractors prior to awarding bids on City of Bastrop contracts, City of Bastrop requires that Bidders answer the following questions and submit them upon request:

QUESTION ONE

Has the Bidder received any Citations for violations of OSHA within the past five (5) years? ☐ Yes ☐ No

QUESTION TWO

Has the Bidder received any Citations for violations of environmental protection laws or regulations within the past five (5) years? ☐ Yes ☐ No

QUESTION THREE

Has the Bidder ever been convicted, within the past ten (10) years, of a criminal offense or has been subject to a judgment for a negligent act or omission, which resulted in serious bodily injury or death? ☐ Yes ☐ No

If the Bidder has indicated "Yes" to any question above, the Bidder must provide to City of Bastrop, with its bid submission, the following information:

Date of Citation or offense and location where violation or offense occurred, type of violation or offense, final disposition of violation or offense, if any, and penalty assessed.

In addition, City of Bastrop will utilize the following information and in its discretion, as additional support to make any discretionary determination of whether to disqualify a Bidder. Accordingly, Bidder must answer the following questions and provide evidence that it meets minimum OSHA construction safety standards and has a lost time injury rate that does not exceed the limits established below:

1. Does the Bidder have a written construction safety program? ☐ Yes ☐ No
2. Does the Bidder conduct regular construction site safety inspections? ☐ Yes ☐ No
3. Does the Bidder have an active construction safety-training program? ☐ Yes ☐ No
4. Does the Bidder or affected subcontractors have competent persons in the following areas (as applicable to the scope of the current Project):
 - A. Scaffolding ☐ Yes ☐ No ☐ N/A
 - B. Excavation ☐ Yes ☐ No ☐ N/A
 - C. Cranes & Hoists ☐ Yes ☐ No ☐ N/A
 - D. Electrical ☐ Yes ☐ No ☐ N/A
 - E. Fall Protection ☐ Yes ☐ No ☐ N/A
 - F. Confined Spaces ☐ Yes ☐ No ☐ N/A
 - G. Material Handling ☐ Yes ☐ No ☐ N/A
 - H. Demolition ☐ Yes ☐ No ☐ N/A
 - I. Steel Erection ☐ Yes ☐ No ☐ N/A
 - J. Underground Construction ☐ Yes ☐ No ☐ N/A
5. Does the company have a lost time injury rate and a total recordable injury rate of less than or equal to the national average for North American Industrial Classification System (NAICS) Category 23 for each of the past five (5) years? (Attach the Bidder's OSHA 300 and 300A logs for the past five (5) years)
☐ Yes ☐ No
6. Does the Bidder have an experience modifier rate of 1.0 or less? (Attach the Bidder's NCCI workers compensation experience rating sheets for the past five (5) years)
☐ Yes ☐ No
7. Has the Bidder had any OSHA inspections within the past six (6) months?
☐ Yes ☐ No

(If "YES", provide sufficient documentation to indicate the nature of the inspection, the findings, and magnitude of the issues.)

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF _____

I certify that my responses and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my bid to be rejected.

Bidder's full name and entity status:

Signature, Authorized Representative of Bidder

Title:

Date:

The State of _____
County of _____

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledge to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ day of _____, 20 ____.

(SEAL)

Notary Public in and for

County,
Commission expires

CONFILCT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

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

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CHAPTER 2271 VERIFICATION

Form TGC 2271
VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2271

Contract identifier: _____
Department: _____

By signing below, Company, as defined below, hereby verifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

SIGNED BY: _____

Print Name of Person: _____
Signing, Title, and _____
Company _____

Date signed: _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public on this day personally appeared _____(Name), on behalf of _____ (Company) who being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Chapter 2271 and said statements contained therein are true and correct..

SWORN AND SUBSCRIBED TO before me, this _____ day of _____, 20____.

NOTARY OF PUBLIC,
FOR THE STATE OF TEXAS

My Commission Expires:

Government Code § 2271.002. Provision Required in Contract

Effective: May 7, 2019

Sec. 2271.002. PROVISION REQUIRED IN CONTRACT.

(a) This section applies only to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

(b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

The following definitions apply:

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

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

(3) "Governmental entity" means a state agency or political subdivision of this state.

State law requires verification from a Company for contracts involving goods or services (regardless of the amount) before the City can enter into the contract.

CHAPTER 2252 CERTIFICATION

Texas Senate Bill 252
CERTIFICATION

Texas Government Code, Chapter 2252
SUBCHAPTER F. PROHIBITION ON CONTRACTS WITH CERTAIN COMPANIES

I, _____, (*Company Representative Name*) the undersigned representative of _____ (*Company or Business Name*), pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named above is:

1. not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.
2. does not have contracts with, provide supplies or services to or are doing business with Iran, Sudan, or a foreign terrorist organization.

Pursuant to Section 2252, 0.001, Texas Government Code

- a) *"Foreign terrorist organization" means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.*
- b) *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

Name of Company Representative (Print)

Signature of Company Representative

Date

NOTICE OF AWARD

NOTICE OF AWARD

Date of Issuance:

Owner: City of Bastrop

Owner's Project No.:

Engineer: BEFCO Engineering, Inc.

Engineer's Project No.: 16-6780

Project: Public Works Detention Pond

Contract Name: Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX)

Bidder:

Bidder's Address:

You are notified that Owner has accepted your Bid dated _____ for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX)

The Contract Price of the awarded Contract is _____ Dollars (\$_____). Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

Four (4) unexecuted counterparts of the Agreement accompany this Notice of Award, and **four (4)** copies of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **four (4)** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **City of Bastrop**

By (signature): _____

Name (printed): Mr. Trey Job

Title: Interim City Manager

Copy: Engineer

STANDARD FORM OF AGREEMENT

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between City of Bastrop ("Owner") and _____ ("Contractor").

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

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: ***Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX)***

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: ***Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX)***

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained **BEFCO Engineering, Inc.** ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by **BEFCO Engineering, Inc.**

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.03 *Contract Times: Days*
- A. The Work will be substantially complete within **one hundred fifty (150)** consecutive days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **one hundred fifty (150)** consecutive days after the date when the Contract Times commence to run.
- 4.05 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time.

Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: Contractor shall pay Owner **Two Hundred Ten & No/100 (\$210.00)** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **Two Hundred Ten & No/100 (\$210.00)** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Work other than Unit Price Work, a lump sum of **(See Bid Schedule)**.
All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					See Bid Schedule

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment)
See Bid Schedule
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.
See Bid Schedule

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **twenty-eighth (28th)** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **Ninety (90)** percent of the value of the Work completed (with the balance being retainage).
 - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work

remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. **Ninety (90)** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **One Hundred (100)** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **Two Hundred (200)** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of **Zero (0.00)** percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - c. Maintenance bond
 - 3. General Conditions.
 - 4. Supplementary (Special) Conditions.
 - 5. Specifications as listed in the table of contents of the project manual.
 - 6. Drawings and pictures (pages __ to __, inclusive).
 - 7. Addenda (numbers __ to __, inclusive).
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.

- b. Documentation submitted by Contractor prior to Notice of Award.
 - c. Affidavit of Site Visit.
 - d. Anti-Collusion Affidavit.
 - e. ~~House Bill 89~~Chapter 2271 Verification.
 - f. Chapter 2252 Certification.
 - g. Form 1295
 - h. Special Conditions.
9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
- a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
 - 5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.01 *Independent Contractor*

Contractor is an independent contractor and is not an employee of Owner. Nothing in this Agreement is intended, or should be construed, to, create a partnership, joint venture or employer-employee relationship between Owner and Contractor.

9.02 *No Third-Party Beneficiary*

Nothing contained in this Agreement creates any duties of Contractor or Owner toward any entity or individual not a party to this Agreement, except as expressly provided in this Agreement or in the Contract Documents.

9.03 *Standard of Care:*

Contractor will perform Services under this Agreement with the degree of skill and diligence normally practiced by contractors performing the same or similar services. Except as otherwise provided in this Agreement or by law, Contractor shall have exclusive control over the manner and means of performing the Services, including the choice of place and time and will use its experience, expertise and analytical skills in performing the Services.

9.04 *No Waiver of Immunities*

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the Parties hereto, their past, present, or future council members, officials, officers, employees, or other agents, nor to create any legal rights or claim on behalf of any third party. Owner does not waive, modify or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

9.05 *Construction*

This Agreement shall not be construed against either Party on the basis of who drafted the Agreement.

9.06 *Notice*

Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing when delivered personally or five (5) days after mailing by first-class, registered, or certified U.S. mail, return receipt requested, postage prepaid and addressed as follows:

<u>Owner:</u>	<u>City of Bastrop</u>
<u>Attention:</u>	<u>Trey Job, Interim City Manager</u>
<u>Address:</u>	<u>Personal Delivery:</u>
	<u>1311 Chestnut Street</u>

Bastrop, Texas 78602

Mail:

P.O. Box 427

Bastrop, Texas 78602

Contractor:

Attention:

_____, Title

Mail:

Personal delivery:

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:

City of Bastrop

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Mr. Trey Job

(typed or printed)

Title: Interim City Manager

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

1311 Chestnut St. (PO Box 427)

Bastrop, Texas 78602

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:

CONSTRUCTION PERFORMANCE BOND

PERFORMANCE BOND

Contractor Name: _____ Address (principal place of business): _____ 	Surety Name: _____ Address (principal place of business): _____
Owner Name: City of Bastrop Mailing address (principal place of business): 1311 Chestnut St. (PO Box 427) Bastrop, TX 78602	Contract Description (name and location): Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX) Contract Price: _____ Effective Date of Contract: _____
Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> 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
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>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.</i>	

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 herein 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. The 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 five (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 ten (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. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The 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 the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 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 seven 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 two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum 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 herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1. *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.

14.2. *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.

14.3. *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.

14.4. *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.

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

15. 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.

16. Modifications to this Bond are as follows: **[Describe modification or enter "None"]**

CONSTRUCTION PAYMENT BOND

PAYMENT BOND

Contractor Name: _____ Address (principal place of business): _____ 	Surety Name: _____ Address (principal place of business): _____
Owner Name: City of Bastrop Mailing address (principal place of business): 1311 Chestnut Street (PO Box 427) Bastrop, TX 78602	Contract Description (name and location): Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX) Contract Price: _____ Effective Date of Contract: _____
Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> 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
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>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.</i>	

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: **[Describe modification or enter "None"]**

MAINTENANCE BOND

Maintenance Bond

THE STATE OF TEXAS

COUNTY OF _____

§

§

§

KNOW ALL MEN BY
THESE PRESENTS:

THAT _____, as Principal, hereinafter called "Contractor," and _____, hereinafter called "Surety," are held and firmly bound unto the City of Bastrop, Texas, a Municipal Corporation, in Bastrop County, Texas, hereinafter called "City," in the penal sum of \$ _____, the said sum being ____ percent of the total amount of the hereinafter mentioned contract, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally.

THE CONDITION OF THIS OBLIGATION is such, that WHEREAS, the said Principal has entered into a contract with the City for Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX) and WHEREAS, the City has requested that said work be guaranteed against failure because of defective workmanship or material, performed, or furnished by said Principal for a full period of two (2) years from the date of final acceptance of the entire project, normal wear and tear excepted.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the Principal shall indemnify the City for all loss that the City may sustain by reason of any defective materials or workmanship which become apparent during the said maintenance period, then this obligation to be void, otherwise to remain in full force and effect. PROVIDED, further, that if any legal action be filed on this bond, venue shall lie in Bastrop County, Texas.

IN WITNESS WHEREOF, this instrument is executed in triplicate, each one of which shall be deemed an original.

SIGNED, SEALED, AND DATED this the ____ day of _____, 20__.

PRINCIPAL

SURETY

By: _____

By: _____
ATTORNEY-IN-FACT

ATTEST:

SECRETARY

NOTE: POWER OF ATTORNEY OF SURETY MUST BE ATTACHED. DATE OF BOND
MUST NOT BE PRIOR TO DATE OF CONTRACT.

NOTICE TO PROCEED

NOTICE TO PROCEED

Owner: City of Bastrop Owner's Project No.: _____
Engineer: BEFCO Engineering, Inc. Engineer's Project No.: 16-6780
Contractor: _____ Contractor's Project No.: _____
Project: Public Works Detention Pond
Contract Name: Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX)
Effective Date of Contract: _____

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on _____ pursuant to Paragraph 4.01 of 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 **one hundred fifty (150) consecutive calendar days** from the date stated above for the commencement of the Contract Times, resulting in a date for Substantial Completion of _____; and the number of days to achieve readiness for final payment is **one hundred fifty (150) consecutive calendar days** from the commencement date of the Contract Times, resulting in a date for readiness for final payment of _____.

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

Owner: City of Bastrop
By (signature): _____
Name (printed): Mr. Trey Job
Title: Interim City Manager
Date Issued: _____
Copy: Engineer

STANDARD GENERAL CONDITIONS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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 and Special Conditions*—The part of the Contract that amends or supplements these General Conditions. Any reference to Supplementary Conditions shall also mean the Special Conditions document attached hereto.
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*
- 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.
 - 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.
 - 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 – but only if Contractor is prevented from completing a critical part of the work within the Contract time due to such weather condition. Contractor shall have the duty to demonstrate actual delay in completing the portion of the Work caused by the weather condition;
 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.~~ Note: lands owned by the Owner (City) are not subject to mechanics or construction liens, Payment Bonds are required on public projects instead.
- 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 or the Agreement, 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 ~~Contractor either party~~ does not purchase or maintain the insurance required ~~of such party~~ by the Contract, ~~Contractorsuch party~~ shall notify the ~~Ownerother 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 ~~Contractora party~~ has failed to obtain required insurance, the ~~Ownerother party~~ may elect (but is in no way obligated) to obtain equivalent insurance to protect ~~such other partyit's~~ interests at the expense of the ~~Contractorparty 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 waives all rights against ~~Ownereach other~~ and the respective officers, directors, ~~council~~-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. Any such amendment must be in writing and signed by duly authorized representatives of Owner and Contractor.

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 Owner and 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 Owner and 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 Owner will consider any comments or response from Owner-Engineer 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 and Owner will conduct a full review of each Change Proposal. ~~and, within All Change Proposals regarding Contract Price must be approved by Owner, and any Change Proposals involving a change in Contract Price above or below \$50,000 must be submitted to the City Council for approval; however, the original Contract Price shall not be increased by more than 25 percent. Within~~ 30 days after such receipt of the Contractor's supporting data, the Owner shall 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 Engineer Owner and Contractor. If Engineer-Owner

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 Owner~~ indicating that as a result of ~~Engineer's—Owner'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—Owner'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. Any proposed changes in Contract Price above or below \$50,000, whether proposed through a Claim, direct negotiations, mediations, or otherwise, must be submitted to the City Council for approval. The original contract price shall not be increased by more than 25 percent.
- 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, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 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 to the notice address provided by each party in the Agreement:
1. in person, by a commercial courier service or otherwise, ~~to the recipient's place of business; or~~
 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 of Texas, in which the Project is located. Venue for any cause of action under or arising out of this Contract shall be in Bastrop County, Texas.

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.

SPECIAL CONDITIONS

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SPECIAL CONDITIONS

1. CONTRACT GOVERNANCE

In case of conflicts, the order of governance for this contract shall be the Agreement, Bond Documents, these Special Conditions, General Contract Conditions, and Technical Specifications.

2. DESCRIPTION OF WORK

The project will consist of the City of Bastrop Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX). Improvements will include but not to be limited to:

- Demolition
- Excavation
- Concrete Pavement
- Fencing
- Erosion Control
- Hydromulch Seeding

The CONTRACTOR shall furnish all labor, materials, equipment, tools, services and supervision necessary to perform all the work shown on the Drawings and described in the Specifications and shall deliver the work complete in all respects and in full accordance with the Contract Documents. All incidental services and materials which may be reasonably inferred as necessary to accomplish the intended end result shall be provided by the CONTRACTOR whether or not specifically shown on the Drawings or itemized in the Specifications. The OWNER may require the CONTRACTOR to dismiss from the Project such employees as the OWNER or the ENGINEER shall deem incompetent, careless or insubordinate.

CONTRACTOR shall be responsible for all work executed by him under this Contract, including proper fitting of the work and coordination of the operation of all trades, subcontractors, and material suppliers.

3. ACCIDENT PREVENTION

No workers employed in the performance of the Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to the health or safety as determined under construction safety and health standard promulgated by the Secretary of Labor. The CONTRACTOR shall exercise proper precaution at all times for the protection of workers and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his performances of the Contract.

The CONTRACTOR shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out

of and in the course of employment on work under the Contract. The CONTRACTOR shall promptly furnish the OWNER with reports concerning these matters.

The CONTRACTOR shall indemnify and hold harmless the OWNER from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this Contract.

The CONTRACTOR shall at all times conduct his work in such a manner as to insure the least possible inconvenience to vehicular & pedestrian traffic, and additionally to all landowners. At the close of the work each day, all streets & driveways where possible in the opinion of the OWNER, shall be opened to the public & landowners in order to give the persons their needed access. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the OWNER and ENGINEER at the expense of the CONTRACTOR.

The CONTRACTOR shall be required to have an OSHA-approved Fall & Trench Protection Programs and all other required current OSHA-approved programs.

4. SUPERVISION BY CONTRACTOR

Except where the CONTRACTOR is an individual and gives his personal supervision to the work, the CONTRACTOR shall provide a competent superintendent, satisfactory to the OWNER and ENGINEER, on the job site at all times during working hours with full authority to act for the CONTRACTOR. The CONTRACTOR shall also provide adequate staff and equipment for the proper coordination and expediting of this work. The CONTRACTOR shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

5. CARE OF WORK

The CONTRACTOR shall be responsible for all damages to person(s) or property(ies) that occur as a result of his fault or negligence in connection with the execution of the work and shall be responsible for the proper care & protection of all materials delivered and work performed until completion & final acceptance.

The CONTRACTOR shall provide competent personnel to oversee job site(s), both day and night, including weekends & holidays, from the time the work starts until final acceptance.

For emergencies that affect the safety of life(lives), limb(s) or property(ies), including adjoining property(ies), the CONTRACTOR, without instruction or authorization from the OWNER or ENGINEER is authorized to act at his discretion to prevent such threatened loss or injury, and they shall so act. He shall likewise act if instructed to do so by the OWNER during said emergencies.

The CONTRACTOR shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities, properties and all associated

appurtenances, and he shall at his sole expense completely repair any damage to a condition as good or better than before damage occurred or to replace any items damaged by his operations.

The CONTRACTOR shall shore up, brace, underpin, secure, and protect as maybe necessary, all existing structures & entities adjacent to, adjoining, and in the vicinity of the site(s), which may in any way be affected by the operations connected with the Project included in this Contract. The CONTRACTOR shall be responsible for giving of any & all required notices to any adjoining or adjacent property owners or other parties before the commencement of any work. The CONTRACTOR shall indemnify and save harmless the OWNER and ENGINEER from any damages on account of settlements or the loss of lateral support of adjoining property(ies) and from all loss or expense and all damages for which the OWNER and ENGINEER may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

6. TIME OF COMPLETION

Construction time is to start ten (10) days after receipt of a written "Notice to Proceed". All items of work contemplated in these Specifications and the accompanying drawings are to be substantially complete within one hundred fifty (150) calendar days. After the notification of substantial completion and final inspection, CONTRACTOR shall have thirty (30) days to remedy any incomplete or defective work. Failure to complete all items stated above within the required timeframe will result in a penalty for liquidated damages in an amount of \$210 per calendar day.

7. LIQUIDATED DAMAGES FOR DELAY

The CONTRACTOR agrees that a delay in substantial completion of the project beyond the total number of days anticipated for substantial completion plus such extensions to the allotted time as may be provided for in the General Conditions shall cause a damage to the OWNER and that the OWNER may withhold, permanently, from the CONTRACTOR'S total compensation, which is dependent upon the Contract Price, the following sum in the Table below:

FOR AMOUNT OF CONTRACT		AMOUNT LIQUIDATED DAMAGES PER CALENDAR DAY
from more than	to and including	
0	25,000	63
25,000	50,000	105
50,000	100,000	154
100,000	500,000	210
500,000	1,000,000	315
1,000,000	2,000,000	420
2,000,000	5,000,000	630
5,000,000	10,000,000	840
10,000,000	20,000,000	1,050
15,000,000	over 20,000,000	1,260
20,000,000	20,000,000	1,500

The CONTRACTOR shall not be charged with liquidated damages for any delays in the completion of the work due to:

- *Any acts of any branch of Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;*
- *Causes not reasonably foreseeable by the parties to this Contract at the time of Contract execution, including, but not limited to, acts of God or the public enemy, acts of another Contractor in the performance of some other contract with the OWNER, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions;*
- *Provided, however, that the CONTRACTOR promptly notifies the OWNER within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the OWNER shall ascertain the facts and the cause & extent of delay. If, upon the basis of the facts and the contract terms, the delay is properly excusable, the OWNER shall extend the time for work completion for a time period commensurate with the period of excusable delay.*

8. ADDENDA

Bidders desiring further information or interpretation of the plans or specifications must make such request for such information to the ENGINEER, at least forty-eight (48) hours before the bid opening. Answers to all such requests will be given in writing to all bidders, in addendum form, and all addenda will be bound with, and made a part of, the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a bidder find discrepancies in, or omissions from, the plans, specifications, or other Contract Documents, or should he be in doubt as to their meaning, he should at once notify the ENGINEER in order that a written addendum may be sent to all bidders. Any addenda issued at least twenty-four (24) hours prior to the opening of bids will be e-mailed, faxed or otherwise delivered to each CONTRACTOR contemplating the submission of a proposal on this work. The proposal as submitted by the CONTRACTOR will be so constructed as to include any addenda, if such are issued by the ENGINEER at least twenty-four (24) hours of the opening of bids.

9. WARRANTY PERIOD

The successful bidder shall provide the City of Bastrop with a guarantee against defective materials and workmanship for a period of two (2) years from the date of issuance of certificate of construction completion. Neither final acceptance nor final payment or any provision in the contract documents will relieve CONTRACTOR of above guarantee. Failure to repair or replace defect upon notice entitles OWNER to repair or replace same and recover reasonable cost thereof from the CONTRACTOR and/or his surety.

10. PERMITS AND RIGHT-OF-WAY

The OWNER will provide right-of-way for the purpose of construction without cost to the CONTRACTOR by securing permits in areas of public dedication or by obtaining easements across privately owned property. It shall be the responsibility of the CONTRACTOR prior to the initiation of construction on easements through private property, or upon areas of public dedication, to familiarize himself with the requirements of the pertinent easement or permit and to abide by all the stated terms of such easements or permits. The CONTRACTOR shall give notice of intent to begin construction on privately owned property or permitted areas as required by the relevant easement or permit but in no case less than forty-eight (48) hours before commencing work.

11. PROPERTY LINES AND MONUMENTS

The CONTRACTOR shall protect all property corner markers, and when any markers or monuments are in danger of being disturbed, they shall be properly referenced and if disturbed shall be reset at the expense of the CONTRACTOR.

12. REFERENCE SPECIFICATIONS

Where reference is made in these specifications to specifications compiled by other agencies, organizations or departments, such reference is made for expediency and

standardization from the material supplier's point of view, and such specifications referred to are hereby made a part of these specifications.

Whenever reference is made to the furnishing of materials or testing thereof to conform to the standards of any technical society, organization, or body, it shall be construed to mean the latest standard, code, specification or tentative specification adopted and published at the time of advertisement for bids, even though reference has been made to an earlier standard, and such standards are made a part hereof to the extent which is indicated or intended.

STANDARD ABBREVIATIONS

ASTM.	American Society for Testing Materials.
AASHO.	American Association of State Highway Officials.
ASA.	American Standards Association.
API.	American Petroleum Institute.
AWS.	American Welding Society.
NEMA.	National Electrical Manufacturers Association.
EEL.	Edison Electrical Institute.
IES.	Illuminating Engineering Society.
UL.	Underwriters Laboratory, Inc.
AAN.	American Association of Nurserymen.
AWG.	American Wire Gauge.
BPR.	The United States Bureau of Public Roads.
IMSA.	International Municipal Signal Association.
ITE.	Institute of Traffic Engineers.
NBFU.	National Board of Fire Underwriters.
NEC.	National Electrical Code (Published by NBFU).
AWWA.	American Water Works Association.
AISC.	American Institute of Steel Construction.
ASCE.	American Society of Civil Engineers.
SSPC.	Steel Structures Painting Council.

13. SHOP DRAWINGS

The CONTRACTOR shall supply to the ENGINEER copies of shop and erection drawings, schedules and data sheets covering items of construction and equipment listed below:

- (a) Structural and miscellaneous steel, and fabricated piping.
- (b) Paint.
- (c) Reinforcing steel.
- (d) Electrical equipment, including instruments, controls and complete wiring diagrams.
- (e) Any item that may deviate from stated design.
- (f) Special items, as directed.

Submittals called for in the Contract Documents shall be submitted promptly after contract award and acceptance of the CONTRACTOR'S bonds.

CONTRACTOR will check and approve shop drawings for compliance with requirements of Contract and will so certify by stamp on each drawing prior to submittal to ENGINEER. Any drawings submitted without CONTRACTOR'S stamp of approval will not be considered and will be returned to him for proper submission.

ENGINEER will promptly pass upon drawings submitted, noting necessary corrections or revisions. If ENGINEER rejects drawings, the CONTRACTOR shall resubmit corrected drawings until drawings are acceptable to ENGINEER as being in conformance with design concept of project and in compliance with information given in the Contract Documents. Acceptance of drawings by ENGINEER does not relieve CONTRACTOR of any requirements of terms in Contract. Two (2) copies of approved submittals will be returned to CONTRACTOR.

No such materials or equipment shall be manufactured or delivered to the site, except at the CONTRACTOR'S own risk, until the required samples or certificates have been approved in writing by the ENGINEER. Any delay in the work caused by late, erroneous, or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

Approval of any materials or equipment shall be general only and shall not constitute a waiver of the OWNER'S right to demand full compliance with the Contract Documents. After actual deliveries, the ENGINEER may employ check test made as they deem necessary in each instance and may reject materials, equipment & accessories for cause, even though such materials and articles have been given general approval. If materials, equipment & accessories which fail to meet the check test have been incorporated in the work, the ENGINEER will have the right to cause their removal & replacement by proper materials or to demand & secure such reparation by the CONTRACTOR as is equitable.

The costs for sampling & testing will be as follows:

- *The CONTRACTOR shall furnish without cost, including packing & delivery charges, all samples required for testing purposes, except those samples taken on the project by the ENGINEER;*
- *The CONTRACTOR shall assume all costs of re-testing materials and re-inspection of workmanship which fail to meet contract requirements;*
- *The CONTRACTOR shall assume all costs of testing materials offered in substitution for those found deficient;*
- *The OWNER will pay all other expenses.*

14. MATERIALS AND EQUIPMENT

Incorporate into work only new materials unless otherwise designated and the best grade of the respective kinds for the purpose. All equipment shall be in working condition and shall be operated by competent personnel. All materials and equipment shall be stored in such a manner so as to protect them from damage.

No materials, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The CONTRACTOR shall warrant good title to all materials, supplies & equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed by him to the OWNER free from any claims, liens, or charges. Neither the CONTRACTOR nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the CONTRACTOR in the hands of the OWNER. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

15. SUBSTITUTION OF MATERIALS

Where a product is specified, followed by the phrase "or equal", the product mentioned is intended to set standards of quality, function and appearance. If the CONTRACTOR desires to substitute a material or method as an equal to a specified item, he shall within ten days after award of contract, request permission from the ENGINEER, in writing, and shall submit such literature, samples, etc., as may be necessary to establish the equal quality of his proposal. If the ENGINEER deems it necessary in order to establish the equality between two or more products, he may require laboratory testing at the CONTRACTOR'S expense in order to obtain information upon which to base a decision. After consideration of the material submitted, the ENGINEER will advise the CONTRACTOR in writing of his acceptance or rejection. No substitutions will be permitted without ENGINEER'S prior written approval. Machinery, mechanical or other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.

16. MATERIALS TESTING

Testing may be required on this Project. If required, CONTRACTOR shall be responsible for supplying materials required for testing and City shall be responsible for all costs associated with testing. Any costs associated with re-tests due to failure will be the sole responsibility of the CONTRACTOR.

17. WATER FOR CONSTRUCTION

Water used for the mixing of concrete, jetting or flooding trenches, or testing, or any other purposes incidental to this project, will be furnished by the OWNER to the CONTRACTOR.

If water is obtained from the OWNER'S water supply, the CONTRACTOR shall make the necessary arrangements for securing and transporting such water and shall take such water in a manner and at such times that will not produce a harmful drain or decrease pressure in the owner's water system. There will be no charge to CONTRACTOR for water used in the construction of this Project that is obtained from the OWNER; however,

CONTRACTOR shall make communication with the OWNER about where, when and how to connect to the OWNER'S water system. CONTRACTOR will also be required to provide the OWNER with an accounting of water used for their record keeping purposes.

18. LINES AND GRADES

All construction staking and layout shall be the responsibility of the CONTRACTOR. CONTRACTOR shall verify all figures and elevations before proceeding with the work and will be responsible for any error resulting from his failure to do so.

19. LOCATION OF AND DAMAGE TO EXISTING UTILITIES

The CONTRACTOR shall notify Texas One Call and all private and public utilities at least 48 hours prior to performing any work in the vicinity of said utilities. Such 48-hour notice shall not include Saturdays, Sundays and Holidays.

The CONTRACTOR shall be solely responsible for all utilities, structures, and appurtenances in regard to protection and replacement or repair of same. The cost of protecting, replacing, or repairing the utilities, structures, and appurtenances covered by this paragraph shall be borne solely by the CONTRACTOR and shall be included in the prices bid for the various affected items in the Contract.

20. SITE MAINTENANCE AND CLEANUP

Maintain the project sites and public rights-of-way during construction neat and free of trash, rubbish or other debris. In cleanup operations, remove from site temporary structures, rubbish and waste materials, and leave site in a neat and presentable condition throughout. CONTRACTOR shall legally dispose of excavated material beyond that which is needed to bring site to required final elevations. Upon completion of the work, the CONTRACTOR shall removal all temporary construction facilities, debris, and unused materials provide for the work, and put the whole site of the work and public rights of way in a neat and clean condition, the same or better than prior to construction.

CONTRACTOR shall provide written manifests to the OWNER regarding proper disposal of said materials.

21. MEASUREMENT AND PAYMENT

Estimated quantities shown in the Contract Documents are provided solely for the purpose of allowing a uniform comparison of submitted bids. Payment will be made on either the basis of actual measured quantities or a lump sum as may be relevant to the particular item. For those items for which payment is based on actual measured quantities, the CONTRACTOR shall verify all measurements at the site and shall be responsible for the correctness of same. Unit prices shall then be used to calculate payment. Methods of measurement shall be given in the Technical Specifications for each measured item.

For those items for which payment is based on "lump sum", the amount of the bid shall be the full compensation for the performance of the particular item of work. It shall be the

CONTRACTOR'S full responsibility to satisfy himself of the requirements of the Contract Documents, in regard to the item of work for which a lump sum bid is requested, prior to submitting his bid. No allowances will be made to the CONTRACTOR, by reason of any error on his part due to his neglect to comply with the requirements of this clause.

Changes made in the design, and/or requirements of the contract documents, in regard to an item of work which a lump sum bid is requested after bids have been submitted, shall be paid for in accordance with Article 11 of the General Conditions of the Agreement.

22. PAYMENTS TO CONTRACTOR

The CONTRACTOR shall prepare five (5) copies of pay requests on or about the 28th of the month and submit to the ENGINEER for approval. ELECTRONIC SUBMITTALS WITH COLORED SIGNATURES ARE AN ACCEPTABLE ALTERNATIVE. The amount of payment to the CONTRACTOR shall be determined by the sum of the total value of work completed to date, value of materials purchased & properly stored on the project site(s), and deducting the applicable retainage & amount of previous payments. The total value of work completed to date shall be based upon the actual quantities of work completed and on unit prices contained in the Contract.

Monthly or partial payments made by the OWNER to the CONTRACTOR are moneys advanced for the purpose of assisting the CONTRACTOR to expedite the work of construction. 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.

Each payment to the CONTRACTOR shall be made subject to the submission by the CONTRACTOR of all written certifications required of him and his subcontractors.

The OWNER may withhold any payment, including final payment, due the CONTRACTOR, whatever is deemed necessary to protect the OWNER, and if it so elects, may also withhold any amounts due from the CONTRACTOR to any subcontractors or material suppliers, for work performed or material furnished by them. The foregoing provision 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 his subcontractors or material providers, or to withhold any moneys for the 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.

23. PAYMENT FOR MATERIALS ON SITE

CONTRACTOR shall present to the OWNER with his monthly estimate of production and request for payment a list of all material delivered to the project site, but not installed, with the total invoice cost of that material and the OWNER shall pay to the CONTRACTOR the

invoice cost of such material as has been verified by the ENGINEER to be "on site", less retainage. "On site" shall mean on or immediately adjacent to the work area or point of material installation, or a central storage yard or office area that has been set up for the project in the immediate project area. This does not include material in transit to the job site, material stored in yards or areas located in other towns, or materials stored in a manufacturer's warehouse, even though CONTRACTOR may have been invoiced for such material. CONTRACTOR shall be required to provide ENGINEER with copies of all invoices for materials they are requesting to be paid for.

24. STATE SALES TAX

City of Bastrop does qualify as an exempt organization under the Limited Sales Excise Tax Rules and Regulations of the State of Texas. Since the OWNER and the CONTRACTOR shall be exempt from the state sales tax, the state sales tax shall not be included in the Bid. Prior to the execution of the Contract, the CONTRACTOR shall obtain a Limited Sales Tax Permit and shall show evidence of this permit when signing the Contract. The CONTRACTOR shall then issue Resale Certificates in lieu of payment of the sales tax, on material purchased for incorporation into the project. These instructions are in strict compliance with the State Sales Tax Act, Section I, Chapter 20, Title 112A, Taxation General, Revised Civil Statutes of Texas, 1925, and the Comptroller's Rulings interpreting said Act. The CONTRACTOR is assumed to be fully aware of the sales tax regulations and agrees to cooperate fully with the OWNER in claiming its lawful exemption from the state sales tax.

25. RETAINAGE

The OWNER will retain from the CONTRACTOR'S monthly estimate the request for payment an amount equal to 10% of the invoiced amount. This 10% shall be retained by the OWNER until final acceptance of the total project and then paid to the CONTRACTOR.

26. FINAL PAYMENT

After final inspection and acceptance by the OWNER of all work under the Contract, the CONTRACTOR shall prepare the final payment which shall be based upon the careful inspection of each work item at the applicable unit prices stipulated in the Contract. The total amount of the final payment due to the CONTRACTOR under this Contract shall be the amount computed as described above in the Payments to Contractor less all previous payments.

The OWNER shall require the CONTRACTOR to furnish notarized releases or receipts from all subcontractors having performed any work and material providers which have provided materials, equipment and services to the CONTRACTOR. Final payment will not be made until the CONTRACTOR has provided the OWNER with a copy of record drawings, Notarized Affidavit of All Bills Paid & Release of Lien, and the Certificate of Construction Completion has been executed by all applicable parties.

Any Liquidated Damages and Claims due to the OWNER shall be deducted from the final payment due the CONTRACTOR.

27. COMPENSATION, PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Each and every CONTRACTOR performing work at the site of the project shall not commence work until he has obtained all the insurance required under this paragraph nor shall the CONTRACTOR allow any subcontractor to commence work until he has obtained all similar insurance required of the subcontractor. Each and every CONTRACTOR and subcontractor shall take out and maintain during the course of this project adequate Workmen's Compensation Insurance as shall protect him from any subcontractor's personal injury, including wrongful death, as well as from claims for property damages which may arise from operations under this contract, or in any way connected therewith. The minimum amounts of such insurance shall be as follows:

Workmen's Compensation and Employer's Liability:	Comply in amount with all applicable State of Texas Statutes, but in compliance with amounts listed on Sample Insurance Certificate.
General Liability:	\$1,000,000 for injuries to 1 person. \$1,000,000 for each occurrence. \$2,000,000 for general aggregate.
Property Damage:	\$1,000,000.
Automobile Property Damage:	\$1,000,000.
Automobile Public Liability:	\$1,000,000 for combined single limit.
Umbrella Liability:	\$2,000,000 for each occurrence.
Excess Liability:	\$2,000,000 for aggregate.
Property Insurance/ Builder's Risk All-Risk/ Installation Floater	Per Section 6.04 of the General Conditions, EJCDC C-700. For this project shall be full value of materials for the entire contract.

NOTE: General aggregate limit applies per project, not per policy. Automobile insurance shall cover all automobiles and trucks owned by the CONTRACTOR. See attached sample for required information.

For the terms covered under this contract, the City of Bastrop and BEFCO Engineering Inc. shall be named as additional insured with respect to general liability. City of Bastrop shall be listed as the Certificate Holder.

The CONTRACTOR shall furnish the OWNER with certificates showing the type, amount, class of operations covered, effective date and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance

covered by this certificate will not be canceled or materially altered, except after thirty (30) days written notice has been received by the Locality."

28. TRENCH SAFETY REQUIREMENTS

CONTRACTOR shall perform all trench excavation in compliance with OSHA regulations 29 CFR 1926 Subpart P - Excavation, Trenching, and Shoring. In accordance with HG 1569, a separate pay item for trench safety has been included in the Bid Proposal for all force main as well as gravity main or other construction trench excavations. All other applicable requirements of H.B. 1569 shall also be adhered to.

29. TRAFFIC CONTROL

It will be the CONTRACTOR'S responsibility to adequately provide for the safety of the public during the course of the construction of the project. Flagmen, if required, will be provided at the CONTRACTOR'S cost. No separate compensation will be paid to the CONTRACTOR for traffic control.

30. PROJECT MEETINGS

Prior to starting work, the CONTRACTOR shall attend a pre-construction conference to review schedules, to establish procedures for processing applications for payment, and to establish a working understanding between OWNER, ENGINEER and CONTRACTOR. Representatives of all parties shall be in attendance. Other meetings will be scheduled during construction as the need dictates.

31. STORMWATER POLLUTION AND PREVENTION PLAN (SWPPP)

CONTRACTOR shall be responsible for furnishing and implementing a SWPPP. This work is considered subsidiary to the project. As such, cost of SWPPP shall be included in the various bid items. No separate payment will be made.

32. SUBCONTRACTS

The CONTRACTOR shall be responsible for a majority of the work and shall not subcontract more than 50% of the work without written approval of the OWNER. The 50% shall exclude specialty work such as boring, hot taps, and pavement repair. The CONTRACTOR shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in the contract until that subcontractor has been approved by the OWNER and ENGINEER. The CONTRACTOR shall be fully responsible for all acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the contract. Nothing contained in the Contract shall create any contractual relation between any subcontractor and the OWNER.

33. CHANGES IN THE WORK

The OWNER may make changes in the work scope required to be performed by the CONTRACTOR under the Contract without relieving or releasing the CONTRACTOR from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of any bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders must be approved by the OWNER, ENGINEER, CONTRACTOR and FUNDING AGENCY (if applicable). A request for a change order shall include a detailed description of the work change, written pricing from CONTRACTOR for additional bid items not included in the original Contract Documents, changes in contract completion times or dates, statement regarding justification for change, statement that all work in the change shall be performed in accordance with the Contract Documents, and written acknowledgement by all parties.

Except for the purpose of affording protection against any emergency endangering health, lift, limb or property, the CONTRACTOR shall make no changes in the materials used or in the specified construction manner and/or installing the improvements or supply additional labor, service, or materials beyond that actually required for contract execution, unless in pursuance of a written order from the OWNER authorizing the CONTRACTOR to proceed with the change. No claim for Contract Price adjustment will be valid unless so ordered.

For applicable unit prices in the Contract Documents, the OWNER may order the CONTRACTOR to proceed with desired unit prices specified, provided that in the case of a unit price contract the net value of all changes does not increase or decrease the total amount of the Contract by twenty-five percent (25%).

34. ASSIGNMENT OR NOVATION

The CONTRACTOR shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or Contract responsibilities without the written consent of the OWNER; provided, however, that assignments to banks or other financial institutions may be made without OWNER consent. No assignment or novation expressly of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the CONTRACTOR'S rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and material, tools and equipment supplied for the work performance under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supply such materials, tools, or equipment.

35. REQUESTS FOR SUPPLEMENTARY INFORMATION

It is the CONTRACTOR'S responsibility to make timely requests to the OWNER for any additional information not already in his possession which should be furnished by the OWNER under the Contract terms, and which he will require in the planning & work execution. Such requests may be submitted from time to time as the need dictates, but each shall be submitted in writing in ample time to permit appropriate action to be taken by

all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the CONTRACTOR. The first list shall be submitted within two (2) weeks after Contract award and shall be as complete as possible at that time. The CONTRACTOR shall, if requested, furnish promptly any assistance and information the ENGINEER or OWNER may require in responding to these requires of the CONTRACTOR. The CONTRACTOR shall be fully responsible for any work delays or to other arising from his failure to fully comply with the provisions of this section.

36. PERMITS AND CODES

The CONTRACTOR shall give all notices required by and comply with all current applicable laws, ordinances, and codes of the applicable Local, State & Federal Governments. Before installing any work, the CONTRACTOR shall examine the drawings and technical specifications for compliance with these applicable ordinances & codes and shall immediately report any discrepancy to the OWNER. The CONTRACTOR shall at his own expense, secure & pay for all required permits required or any of associated agencies. If the local regulatory body or agency agrees to waive any fees, CONTRACTOR shall be responsible for obtaining written documentation of this waiver and shall still be responsible for implementing all associated work with the Contract Documents in accordance with the applicable laws, ordinances & codes.

The CONTRACTOR shall comply with all current applicable laws, ordinances & codes governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Contract Improvements. CONTRACTOR shall provide written manifests to the OWNER regarding proper disposal of said materials.

The CONTRACTOR shall make arrangements for and pay the water, electrical power, sewer, or other utilities required during construction unless they have received written documentation that the OWNER or applicable utility provider has waived such fees.

37. DUST CONTROL

During project construction, the CONTRACTOR shall use every means possible to control the amount of dust created by construction. Prior to the close of each day's work, the CONTRACTOR, if directed by the OWNER, shall moisten the bank and surrounding areas to prevent a dusty condition.

38. SANITARY FACILITIES

The CONTRACTOR shall furnish, install & maintain ample sanitary facilities for the workmen. Based upon the number of workers, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved regulated source, so piped or transported as to keep it safe & fresh and serviced from single service containers, satisfactory types of sanitary drinking stands, or fountains. All such facilities and services shall be furnished in strict accordance with current existing & governing health regulations.

39. USE OF PREMISES

The CONTRACTOR shall confine his construction equipment, materials, and operations to the contract limits as shown on the drawings and as prescribed by the pertaining ordinances or permits, or as may be desired by the OWNER, and shall not unreasonably encumber the site or public rights of way with his materials and construction equipment.

40. INSPECTION

All materials and workmanship shall be subject to inspection, examination and/or testing by the OWNER and ENGINEER at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs. The OWNER shall have the right to reject defective material & workmanship or require its correction. All unacceptable workmanship shall be satisfactorily corrected. Rejected materials shall be promptly removed from the project area(s) and replaced with materials of specified quality without charge. If the CONTRACTOR fails to proceed at once with the correction of rejected workmanship or defective materials, the OWNER may contract or otherwise have the defects remedied or rejected materials removed from the project area(s) and charge the cost of the same against any monies which may be due the CONTRACTOR, without prejudice to any other rights or remedies of the OWNER.

The CONTRACTOR shall promptly furnish all materials reasonably necessary for any tests which may be required. All OWNER testing shall be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.

The CONTRACTOR shall notify the OWNER and ENGINEER sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the OWNER, the CONTRACTOR shall uncover said work for inspection and recover such facilities at his own expense, when so requested by the OWNER. Should it be considered necessary by the OWNER at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the CONTRACTOR shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to the fault of the CONTRACTOR or his subcontractors, the CONTRACTOR shall defray all the expenses of such examination and satisfactory reconstruction. If, however, the work is found to meet the Contract specifications, the actual cost of labor and material involved in the examination and replacement, shall be allowed the CONTRACTOR and he shall, in addition, if work completion of the entire Contract has been delayed thereby, be granted a suitable time extension on account of the additional work involved.

Neither inspection, testing, approval, nor acceptance of the work in whole or in part, by the OWNER or its agents shall relieve the CONTRACTOR or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract Documents.

When the Contract improvements are substantially completed, the CONTRACTOR shall notify the OWNER in writing that the work will be ready for final inspection on a definitive date which shall be stated in the notice. The OWNER will make the arrangements necessary to have the final inspection commence on the date stated in the notice, or as soon thereafter as is practicable. Final approval for the Project shall be completed until acceptance by the OWNER, ENGINEER, CONTRACTOR, and FUNDING AGENCY (if applicable). Final approval will not be given until the CONTRACTOR has provided the OWNER with a Notarized Affidavit of All Bills Paid/Release of Lien and the Certificate of Construction Completion signed by the OWNER, ENGINEER, CONTRACTOR, and FUNDING AGENCY (if applicable).

41. REVIEW BY OWNER

The OWNER and its authorized representation and agents shall 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 & records pertaining to this Contract. However, all instructions and approval with respect to the work will be given to the CONTRACTOR only by the OWNER through its authorized representatives or agents.

42. DEDUCTION FOR UNCORRECTED WORK

If the OWNER deems it not expedient to require the CONTRACTOR to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the CONTRACTOR and the OWNER and subject to settlement.

43. COMPLIANCE WITH AIR AND WATER ACTS

In compliance with the Clean Air Act, as amended, 41 USC Sec. 7401 et. Eq., and the regulations of the EPA with respect thereto, the CONTRACTOR agrees that:

Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.

He will comply with all requirements of Section 114 of the Clean Air Act, as amended.

Materials utilized in the Project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the CONTRACTOR encounters existing 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 shall immediately notify the ENGINEER and OWNER. The OWNER will be responsible for testing for and removal or disposition of hazardous materials on sites owned or controlled by the OWNER. The OWNER may suspend the work, wholly or in part during the testing, removal or disposition of hazardous materials on sites owned or controlled by the OWNER.

The CONTRACTOR shall furnish all materials and equipment that is free of asbestos materials. In addition, the CONTRACTOR will submit with final pay request a notarized affidavit that no asbestos has been used on the site or project.

44. JOB OFFICES

The CONTRACTOR and his subcontractors may maintain such office and storage facilities on the site as are necessary for proper execution of the work. These shall be located so as to cause no interference to any work to be performed on the site. The OWNER shall be consulted with regard to locations. Upon Project completion or as such times directed by the OWNER, the CONTRACTORS shall remove all such temporary structures and facilities from the site, and leave the site of the work in the condition required by the Contract.

45. PARTIAL USE OF SITE IMPROVEMENTS

The OWNER may give notice to the CONTRACTOR and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with technical specifications and if in its opinion, each such section is reasonably safe, fit and convenient for the use & accommodation for which it was intended, provided:

- *The use of such sections of the improvements shall in no way impede project completion;*
- *The CONTRACTOR shall not be responsible for any damages or maintenance costs due directly to the use of such sections;*
- *The period of guarantee shall not begin to run until the date of final acceptance of all work which the CONTRACTOR is required to construct under this Contract.*

01/2020

SAMPLE INSURANCE CERTIFICATE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Agency Name 123 Sample Street Anywhere, TX 78700 Phone Number	CONTACT NAME: Agent Name	
	PHONE (A/C, No, Ext): Agent Phone	FAX (A/C, No):
INSURED Sub-Contractor Address City, State, Zip	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: TBD	
	INSURER B: TBD	
	INSURER C: TBD	
	INSURER D: TBD	
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC			TBD	TBD	TBD	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/PROP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS			TBD	TBD	TBD	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$10000			TBD	TBD	TBD	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	TBD	TBD	TBD	☒ WC STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT \$100,000 E.L. DISEASE - EA EMPLOYEE \$100,000 E.L. DISEASE - POLICY LIMIT \$500,000
D	Installation Fltr			TBD	TBD	TBD	Per Contract Limits

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

As per policy provision, Certificate Holder and Owner are listed as additional insured in regard to the auto and general liability policies as provided by additional insured endorsement. A waiver of subrogation endorsement is provided to the Certificate Holder and Owner in regard to the auto, general liability and workers compensation policies as per policy provision. General liability, auto and workers compensation policies include(s) a 30 Days Notice of Cancellation endorsement providing 30 days advance notice if policy (See Attached Descriptions)

CERTIFICATE HOLDER

CANCELLATION

Sample Certificate for
Sub-Contractor

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

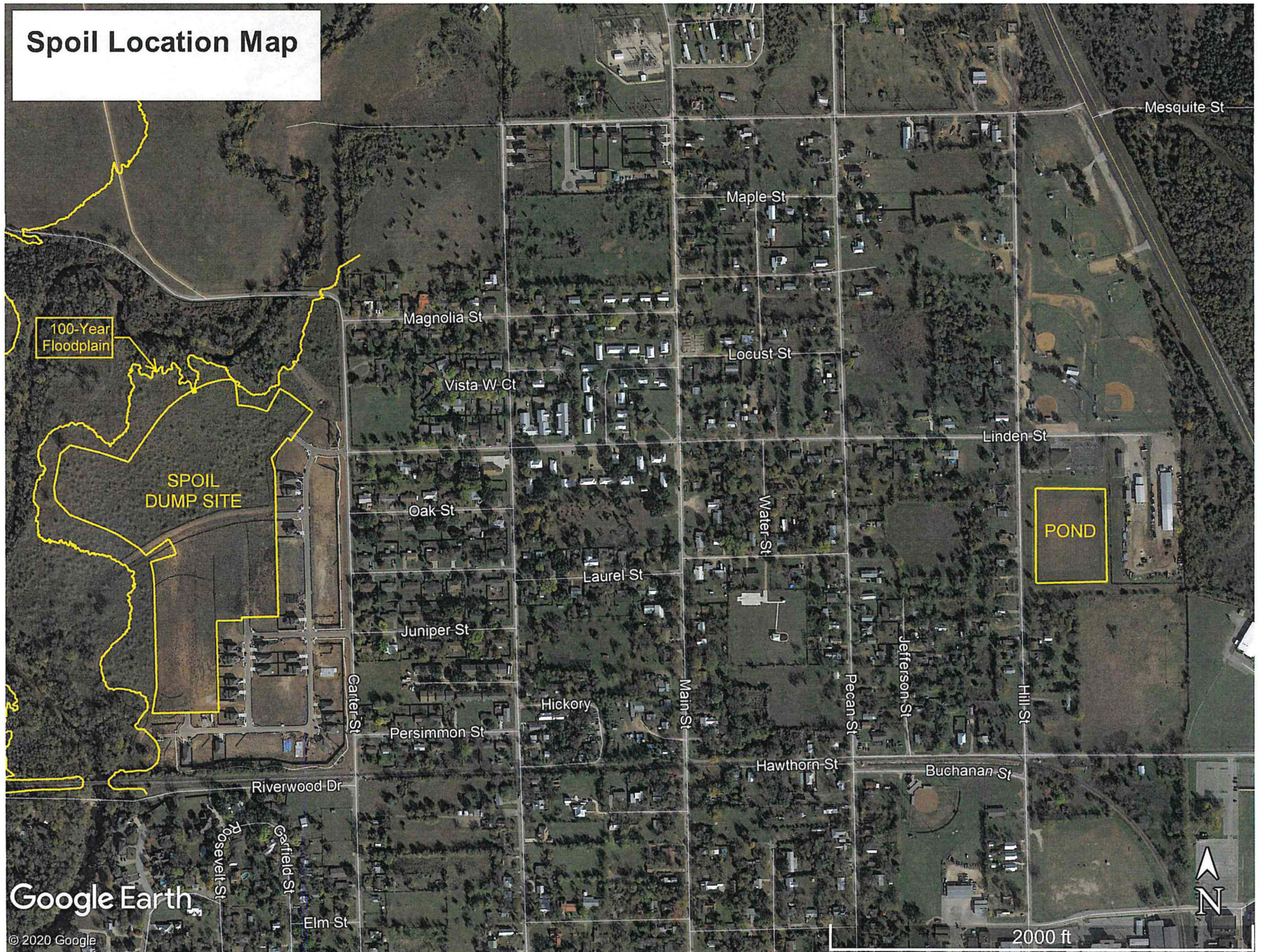
AUTHORIZED REPRESENTATIVE

DESCRIPTIONS (Continued from Page 1)

is canceled by the company other than for nonpayment of premium, or direct cancellation by named insured as per policy provision.

LOCATION MAP

Spoil Location Map



Google Earth

© 2020 Google

2000 ft

TECHNICAL SPECIFICATIONS

Technical Specification No. 7

Concrete

GENERAL

All concrete to be used will be 4,000-psi strength in twenty-eight (28) days.

MATERIALS

Materials shall conform to the following specifications or standards:

- A. **Cement:** ASTM C-150; Portland Cement, Type I, as indicated on the plans.
- B. **Aggregates:** Coarse Aggregate - AASHTO M 80-70
Fine Aggregate - AASHTO M 6-65

- 1. **Coarse Aggregate:** Coarse aggregate shall consist of crushed stone, gravel, crushed gravel or a combination of these. Gravel and crushed gravel shall consist of clean, hard, durable particles, free from adherent coating, thin or elongated pieces, soft or disintegrated particles, dirt, organic or injurious matter. Crushed stone shall consist of the clean, dustless product resulting from crushing stone. There shall be no adherent coatings, clay, loam, organic or injurious matter.

Coarse aggregate shall have a wear of not more than forty-five (45) percent when tested according to AASHTO designation T-96 and when tested by standard laboratory methods shall meet the following grading requirements:

<u>Sieve Designation</u>	<u>Percent Retained on Sieve</u>
1 3/4" sieve	0%
1 1/2" sieve	0% - 5%
3/4" sieve	30% - 60%
3/8" sieve	70% - 90%
No. 4 sieve	95% - 100%

Nominal maximum size of coarse aggregate shall not be larger than:

- *1/5 the narrowest dimension between side of forms, nor*
- *1/3 the depth of slabs, not*
- *3/4 the minimum clear spacing between individual reinforcing bars.*

2. **Fine Aggregate:** Fine aggregate shall consist of sand or mixture of sands with or without a mineral filler. The sand mixture or mixture of sands in fine aggregate shall consist of clean, hard, durable, uncoated grains and shall be free from injurious material and shall not contain more than 0.5 percent by weight of clay lumps.

The fine aggregate, including mineral filler, if used shall meet the following grading requirements:

<u>Sieve Designation</u>	<u>Percent Retained on Sieve</u>
3/8" sieve	0%
No. 4 sieve	0% - 5%
No. 16 sieve	15% - 30%
No. 30 sieve	35% - 75%
No. 50 sieve	70% - 90%
No. 100 sieve	90% - 100%
No. 200 sieve	97% - 100%

- C. **Water:** Questionable water shall be tested in accordance with AASHTO Method T-26.
- D. **Admixtures:** Admixtures as recommended by manufacturer shall not be used without written permission of the ENGINEER.
- E. **Steel Reinforcement:** All bars shall be new, Grade 60 billet-steel bars which conform the ASTM A-615, latest edition, except that all bars shall be surface deformed bars of intermediate grade steel, as manufactured by the open hearth process. Surface deformation of bars shall conform to ASTM A-305, latest edition.

Wire mesh reinforcement shall be welded steel wire fabric, conforming to ASTM A-185, latest edition. (See Section on Steel Reinforcement)

- F. **Expansion Joint Material:** Expansion joint material shall be preformed expansion joint filler of the bituminous type that conforms to the requirements of ASTM D-994, latest edition. Dimensions shall be as shown on the drawings (if thickness is not indicated, furnish ½ inch material).
- G. **Joint Sealing Compound:** Joint sealing compound shall be the hot-poured elastic type, which conforms to the requirements of ASTM D-1190, latest edition.
- H. **Waterstops:** Waterstops shall be Greenstreak Dumbell Type 748 Waterstop, polyvinylchloride material sealtight Type No. 6 DS, as manufactured by W. R. Meadows, Inc., Type No. 6 wide flange (PVC), as manufactured by Dur-O-Wal; or Type CB 1/8, as manufactured by Williams Products, Inc., or approved equal.

STRENGTH

- A. **Mix Design:** The concrete mix shall be a uniform and workable mix, designed with the intention of producing a compressive strength of 4,000 psi at twenty-eight (28) days and 3,000 psi seven (7) days unless noted on plans. The concrete mix shall contain not more than six (6)-U. S. gallons of water per sack of cement and shall have not less than five (5.0) sacks per cubic yard. Methods and equipment shall be approved by the ENGINEER.
- B. **Tests:**
 - 1. **Initial Mix Design:** Before any concrete is used on the project, the CONTRACTOR must prove by tests or other established methods, that the mixes he proposes to furnish will meet the strength and other requirements of the specifications. He shall also establish the relationship between the seven (7) and twenty-eight (28) day strengths of the concrete for the guidance of the CONTRACTOR and ENGINEER and control of the quality of the concrete during the construction period.
 - 2. **Field Test Cylinders:** The CONTRACTOR shall prepare a minimum of four (4) cylinders for each one-hundred (100) cubic yards of concrete or for each days pour in the main structures, if the quantity poured in a day is less than one-hundred (100) cubic yards. These cylinders shall be made and cured in accordance with ASTM C-31. The CONTRACTOR shall have each set of four (4) test cylinders tested for strength by a commercial testing laboratory; two (2) at the age of seven (7)

days and two (2) at the age of twenty-eight (28) days. If any cylinder tests below the specified strength requirements, the ENGINEER shall have the right to require changes in proportions, require additional curing time, and take other measures outlined by the Joint Committee Report on Standard Specifications for Concrete and Reinforced Concrete entitled "Recommended Practice and Standard Specifications for Concrete and Reinforced Concrete". Tests to be paid for by CONTRACTOR. Any other requirements by OWNER/ENGINEER for failed cylinders shall be performed by CONTRACTOR for NO charge.

3. **Slump Test:** The CONTRACTOR shall perform slump tests on each batch of concrete delivered to the job site. Maximum permissible slump shall be as follows:

<u>Types of Construction</u>	<u>Maximum</u>
Reinforced foundation walls & footing	4"
Plain footings, caissons & substructure walls	3"
Slabs, beams, and reinforced walls	4"
Building columns	4"

4. **Contractor's Responsibility:** It shall be the responsibility of the CONTRACTOR to produce concrete of the strength, durability, workability and finish specified; furnish representative materials for specimens in quantities required by the Testing Laboratory; take samples of materials for testing; check proportions of mix and immediately notify the ENGINEER if the proportions appear improper in any respect. CONTRACTOR shall comply with testing laboratory findings and the ENGINEER'S decisions. CONTRACTOR shall pay for redesign of mix due to change in source of material.

FORMS

- A. **General:** Forms shall conform to the shape, lines and dimensions of the members as indicated on the drawings, and shall be substantial and sufficiently tight to prevent leakage of mortar. They shall be properly braced or tied together so as to maintain position and shape. Forms shall be cleaned of dirt, chips, etc., and thoroughly wetted with water or coated with nonstaining mineral oil immediately before placing of concrete. Temporary openings shall be provided at the base of forms when necessary to facilitate cleaning and inspection of forms immediately before placing concrete. All exposed corners shall

be chamfered $\frac{3}{4}$ inch, using strips dressed on all faces, except where radii are shown on exposed corners.

- B. **Form Lumber:** Form lumber used for exposed surfaces shall be sound, well-seasoned lumber, dressed four (4) sides to a uniform thickness and width, free from warps, twists, loose knots, splits, or other defects. Undressed lumber may be used for unexposed surfaces. Moisture resistant form plywood (Not less than five (5) ply and at least 9/16" in thickness) may be used. Joints in forms shall be horizontal or vertical.
- C. **Metal Forms:** Metal or other type forms shall be of an approved type that will produce surfaces equal to those produced by the specified wood forms.
- D. **Ties:** Form ties for exposed work shall be threaded rod type, using a threaded rod at least 1½" shorter than the wall thickness, so as to provide a minimum break-back of $\frac{3}{4}$ inch from the wall face, leaving a small clean hole to be grouted. The use of wire ties without providing break-back will not be permitted where the concrete surface will be exposed to weathering, or at any point where discoloration will be objectionable.
- E. **Form Removal:** The removal of supporting forms or shores shall not be started until the concrete members have acquired sufficient strength to support safely their weight and any construction live loads, and in any case, such forms shall not be removed for at least three (3) curing days. Forms for walls, side of beams, etc., may be removed after three (3) curing days. Removal of all forms shall be subject to the approval of the ENGINEER.

PLACING CONCRETE

Concrete shall be placed only upon a subgrade or surface approved by the ENGINEER and before placing concrete, all forms shall be cleaned of dirt and construction debris, and water drained. Concrete shall be handled from mixer to transport vehicle to place of final deposit in a continuous manner, as rapidly as practicable, and without segregation or loss of ingredient until the approved unit of operation is completed. Concrete that has attained its initial set or has contained its mixing water for more than forty-five (45) minutes shall not be placed in the work. Placing will not be permitted when, in the opinion of the ENGINEER, the sun, heat, wind, or limitations of facilities furnished by the CONTRACTOR prevent proper finishing and curing of the concrete. Forms or reinforcement shall not be splashed with concrete in advance of pouring. Concrete shall be placed in the forms in uniform layers as nearly as practicable in final position. Immediately after placing, concrete shall be compacted by thoroughly agitating in an approved manner.

Special care shall be taken in placing and spading concrete against the forms and all the joints to prevent the forming of voids and honeycombs. Tapping or other external vibration of forms will not be permitted. Concrete shall not be placed on concrete sufficiently hard to cause formations of seams and planes of weakness within the section. Concrete shall not be allowed to drop freely more than five (5) feet in unexposed work; no more than three (3) feet in exposed work; where greater drops are required, a tremie or other approved means shall be employed. The discharge of the tremies shall be controlled so that the concrete may be effectively compacted into horizontal layers not more than twelve (12) inches thick, and the spacing of the tremies shall be such that cavities do not occur. Concrete to receive other construction shall be screeded to proper level to avoid excessive shimming or grouting.

COMPACTION

Concrete shall be placed in layers not more than twelve (12) inches deep. Special care shall be taken to thoroughly puddle the concrete in forms and to work it around the steel. The CONTRACTOR shall furnish and maintain mechanical vibrators (of approved type) that shall be used to compact and consolidate concrete in the forms. Vibrators shall not be used to transport concrete inside forms. Use of form vibrators will not be permitted. Internal vibrators shall maintain a speed of not less than 5,000 impulses per minute when submerged in the concrete.

At least one spare vibrator or sufficient parts for repairing vibrators shall be maintained at the site at all times. The vibrator shall not be inserted into lower courses that have begun to set.

FINISH

- A. Finish of Formed Surfaces:** All work that is defective shall be remedied upon the request of the OWNER, or its representative, whose instructions in such matters shall be strictly complied with. Any surfaces or tie-rod holes shall be patched with mortar of the same consistency as the mortar from which the concrete is made. For example, if a 1:3:6 concrete is used, the mortar shall be 1:3. Such mortar shall be well troweled and then floated to remove trowel marks. All such repairs shall be dense, well bonded and properly cured, and when made on surfaces that remain exposed, shall be finished to blend with surrounding concrete. After all forms are removed and all honeycomb and other defective places properly patched and repaired, all exposed surfaces shall be finished by removing protruding fins, or other such projections. Form marks and chamfered edges on all exposed surfaces shall be smoothed by grinding and surface rubbing.

- B. Slab Finish:** Floor slabs at structures and bottom slabs shall receive monolithic steel trowel finish unless otherwise specified. Slabs to receive trowel finish shall first be screeded and wood-floated to a true even plane with no coarse aggregate visible. Sufficient pressure shall be used on the wood floats to bring moisture to the surface. The concrete shall then be hand-troweled to produce smooth impervious surface free from trowel marks. Replaced concrete slabs and sidewalks shall be finished by tamping the concrete with special tools to force the coarse aggregate away from the surface, screeding and floating to bring the surface to the required finish level, steel-troweling to an even smooth surface, and brooming with a soft fiber-bristle brush in a direction transverse to that of the main traffic.

CURING

All concrete placed under this Specification shall be cured by protecting it against loss of moisture, rapid temperature change and from rain, flowing water and mechanical injury for a period of not less than seven (7) days from the beginning of the curing operation except as hereinafter noted:

- Formed surfaces shall be cured by leaving the forms on for not less than seventy-two (72) hours after placing concrete.
- Concrete pavements shall be moist cured for a period not less than seventy-two (72) hours after curing operation begins. Waterproofed paper or membrane curing film shall be kept intact for five (5) days in lieu of seventy-two (72) hours wet curing.

The curing operations shall begin immediately after the finishing operations have been completed and the concrete has hardened sufficiently to prevent marring of surfaces. Curing by proper application of cotton mats or clean granular sand kept wet continuously or by proper application of waterproofed paper or membrane curing compound will be acceptable. The membrane-curing compound shall be any commercial curing compound that will provide no less than eighty-five (85) percent water retention when tested in accordance with ASTM C-156 and which will not permanently discolor the concrete.

The CONTRACTOR shall inform the ENGINEER fully of the methods and procedures proposed for curing the concrete prior to placing the concrete.

STEEL REINFORCEMENT

All steel reinforcement shall be open-hearth new billet steel of structural or intermediate grade (Grade 60) and conform to ASTM Designation A-615. Bars shall be deformed and shall have a nominal area and weight per foot as follows:

<u>SIZE</u>	<u>NOMINAL AREA SQUARE INCH</u>	<u>WEIGHT PER FOOT POUND</u>
# 2	0.05	0.167
# 3	0.11	0.376
# 4	0.20	0.668
# 5	0.31	1.043
# 6	0.44	1.502
# 7	0.60	2.044
# 8	0.79	2.670
# 9	1.00	3.400
#10	1.27	4.303
#11	1.56	5.313

Wire for fabric reinforcement shall be cold drawn from rods hot rolled from open hearth billets and shall conform to ASTM Designation A-82. Wire for fabric reinforcement shall be #4 gauge or have a nominal diameter of .2253 inch.

Steel reinforcement shall be stored above ground upon platforms or other supports and shall be protected as far as practicable from mechanical injury and rust. When placed in the work, it shall be free of dirt, scale, dust, paint, oil or other foreign material. Reinforcement shall be bent cold to the shapes indicated on the plans with a minimum internal bend radius of six (6) bar diameters. Stirrups and ties shall be cold bent with a minimum internal bend radius of four (4) bar diameters. Bends shall be true to the shapes indicated and irregularities in bending shall be cause for rejection. Unless otherwise shown on the plans, bends for stirrups or ties shall be made around a pin having a diameter of not less than two (2) times the bar size. Hooks shall be a complete semicircular turn of diameter equal to six (6) times the bar diameter, plus an extension at least four (4) bar diameters at the free end of the bar. **Bending shall not be done in the field.**

Splicing of bars will not be permitted without the written approval of the ENGINEER. Where splicing is unavoidable, the number of splices shall be kept to a minimum and the length of splice shall not be less than thirty (30) bar diameters. (Use 4,000-psi concrete and steel as specified above or strength as noted on plans). When practicable, splices in adjacent bars shall be staggered. Welded splices are not allowed.

Steel reinforcing shall be placed in the position shown on the plans and held securely in place during the pouring of concrete. All slab reinforcement shall be supported with chairs or masonry briquettes at not more than six (6) feet on center. Vertical stirrups shall always pass around the main tension members and be securely attached thereto.

The following minimum concrete cover shall be provided for reinforcement for cast-in-place concrete construction:

<i>Concrete cast against and permanently exposed to earth</i>		<i>3 inches</i>
<i>Concrete exposed to Earth or weather</i>		
<i>No. 6 thru No. 18 Bars</i>		<i>2 inches</i>
<i>No. 5 Bars and Smaller</i>		<i>1.5 inches</i>
<i>Concrete not exposed to weather or in contact with ground</i>		
<i>Slabs, Walls & Joists</i>		
<i>No. 14 & No. 18 Bars</i>		<i>1.5 inches</i>
<i>No. 11 Bars and Smaller</i>		<i>0.75 inches</i>
<i>Beams & Columns</i>		
<i>Primary Reinforcement, Ties, Stirrups & Spirals</i>		<i>1.5 inches</i>

The minimum clear spacing between parallel bars in a layer shall be the diameter of the bar, but not less than one (1) inch.

The reinforcing steel in all concrete walls shall be spaced its proper distance from the face of the forms by means of approved galvanized metal spacers or approved pre-cast mortar or concrete block. Pre-cast mortar or concrete blocks shall be cast in individual molds, in the form of a frustum of a cone or pyramid, with a suitable tie wire to be used for anchoring the block to the steel. The pre-cast blocks shall be properly cured and aged before use in spacing the steel.

All reinforcing steel shall be securely wired together at all intersections. Before any concrete is poured, the steel shall be cleaned of all mortar and scale.

Where wire mesh is used, the mesh shall overlap each other sufficiently to maintain a uniform strength and shall be securely fastened at the ends and edges.

The ENGINEER shall inspect all reinforcing and the placement before any concrete may be deposited in the forms.

FINAL CLEANUP

After all concrete work has been completed; the CONTRACTOR will remove all debris, trash, surplus material, forms, and equipment from the job site. All surplus excavated material shall be spread as directed by the ENGINEER.

When completed, the entire area shall be left in a smooth condition, suitable for mowing with standard mowing equipment.

03/17

**SPECIAL SPECIFICATION
ITEM 10
HYDRAULIC SEEDING**

The work of Hydraulic Seeding shall be governed by the provisions of Texas Department of Transportation Item 164 Seeding For Erosion Control, Item 166 Fertilizer and Item 168 Vegetative Watering) except as noted below.

From March 2 to September 14, seeding shall be with hulled Bermuda at a rate of 3 pounds per 1000 square feet. From September 15 to March 1, seeding shall be a combination of 1 pound per 1000 square feet of unhulled Bermuda and 7 pounds per 1000 square feet of Winter Rye. Seed shall have a purity of 95% with 85% germination.

Fertilizer shall be a pelleted or granular slow release with an analysis of 15-15-15 to be applied once at planting and once during the period of establishment at a rate of 1.5 pounds per 1000 square feet.

Mulch type shall be hay, straw or mulch applied at a rate of 45 pounds per 1000 square feet, with self-tackifier at a rate of 1.4 pounds per 1000 square feet.

The seeded area shall be irrigated or sprinkled in a manner that will not erode the soil, but will sufficiently soak the soil to a depth of six inches. The irrigation or sprinkling shall occur at a minimum ten-day interval during the first two months. Rainfall occurrences of 1/2 inch or more shall postpone the watering schedule for one week. The City of Bastrop will provide reuse water at WWTP site.

Restoration shall be acceptable when the grass has grown at least 1-1/2 inches high with 95% coverage, provided no bare spots larger than 15 square feet exist.

Measurement for Hydraulic Seeding will be by the acre complete in place.

Payment for the work performed and materials furnished in accordance with this Item and measured as provide under "Measurement" will be paid for at the unit price for "Hydraulic Seeding". This price will be full compensation for furnishing all materials, including water for seed-fertilizer slurry and hydraulic mulching, tacking agents and for performing all operations necessary to complete the work.

CERTIFICATE OF OWNER'S ATTORNEY

BOJORQUEZ
LAW FIRM, PC
TexasMunicipalLawyers.com

12325 Hymeadow Drive
Suite 2-100
Austin, Texas 78750

Phone: (512) 250-0411
Fax: (512) 250-0749
TexasMunicipalLawyers.com

, 2020

Mr. Trey Job
Director of Public Works
City of Bastrop
P.O. Box 384
Bastrop, Texas

Regarding: Public Works Detention Pond (FEMA HMGP DR-4272-0024-TX)

Dear Mr. Job:

As the duly authorized and acting legal advisor to the City of Bastrop, Texas ("City"), I have been asked by City officials to evaluate the bid package created by BEFCO Engineering, Inc., the bid from , and the accompanying surety bonds and insurance forms for the City.

Accordingly, I, the undersigned, do hereby certify to the City as follows:

1. I have reviewed the following Bid Documents (which were in the form provided to me by the City through the engineer ) related to this endeavor:
 - a. Invitation to Bid.
 - b. Instructions to Bidders.
 - c. Bid Bond Form.
 - d. Payment Bond Form.
 - e. Performance Bond Form.
 - f. Maintenance Bond Form.
 - g. Agreement Between Owner and Contractor for Construction Contract.
 - h. General Conditions
 - i. Special Conditions.
 - j. Payment Bond from _____.
 - k. Performance Bond from _____.
 - l. Maintenance Bond from _____.
 - m. Insurance Certificate.
 - n. Bid from .
2. The Bid Documents are in the proper form to create a construction contract that is a valid and legally binding obligation upon the Parties executing the Agreement.
3. The City is a home rule municipality, located in Bastrop County, Texas, duly created and existing under the Constitution and laws of the State of Texas.

4. The City is lawfully capable of entering into the Agreement under Section 2.01 of the Charter of the City of Bastrop, and the City has complied with the legal mandates of the Texas Open Meetings Act, Texas Government Code Chapter 551. Based on the assurances I've received from you and BEFCO, the City has complied with the procurement provisions of Texas Local Government Code Chapter 252.
5. The City has the full power and authority to execute the Agreement in accordance with the powers conveyed by Texas Local Government Code Chapter 51, and the authority to perform its obligations under the Agreement.
6. The performance bond, payment bond, maintenance bond, and insurance documents are in a form that is acceptable for the purposes of this project, based on the assurance I've received from you and BEFCO.

This certification is provided to the City in reliance on the materials given to the undersigned by the City through BEFCO. The undersigned relies on the assurances and statements provided by the City and BEFCO. This certification is limited to information as it exists today and shall not be construed to apply to after-occurring events, subsequent changes in the applicable statutory provisions, administrative agency rulings, or case law. Interested persons other than the City are encouraged to consult their own legal advisors for independent assessment of the Bid Documents, related documents, and the process the City utilized to arrive at the terms and conditions of the Bid Documents and Agreement.

Sincerely,

Alan Bojorquez
City Attorney
for the City of Bastrop

AB

cc: Trey Job, Interim City Manager
Tim Sanders

CITY OF BASTROP
PUBLIC WORKS DETENTION POND PROJECT

BEFCO JOB NO. 16-6780

ADDENDUM NO. 1

1. The following will be the required route for all trucks to use between the detention pond and the spoil site:

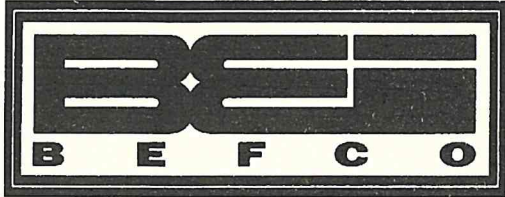
From the detention pond, go north on Hill Street and turn west onto Linden Street. Go west on Linden Street until you reach spoil site.

All loaded and empty trucks shall utilize this route. Contractor will not be responsible for pavement damage to the existing streets along this route. However, all haul trucks / equipment shall meet all applicable DOT requirements for travel along public thoroughfares and observe all local traffic laws including the existing speed limit.

2. Contractor will be responsible for cleaning / removing any spoils lost between pond and dump site.
3. Contractor shall apply six (6) inches of topsoil prior to hydromulch seeding. Contractor may re-use existing onsite topsoil.
4. Bids will be received at Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas 78602 until 10:00 AM on Tuesday, March 24, 2020.


3-20-20
Tim Sanders, P.E.
BEFCO ENGINEERING, INC.
March 20, 2020





BEFCO ENGINEERING, INC.
Consulting Engineering/Land Surveying
P.O. BOX 615 485 NORTH JEFFERSON
LA GRANGE, TEXAS 78945-0615
979 / 968-6474 FAX 979 / 968-3056
www.befcoengineering.com E-mail: office@befcoengineering.com
Texas Registered Engineering Firm F-2011 Texas Licensed Surveying Firm #10001700

March 30, 2020

**Mr. Trey Job
Interim City Manager
City of Bastrop
P.O. Box 427
Bastrop, Texas 78602**

**RE: Bid Award Recommendation
Public Works Detention Pond Project
BEFCO Job No. 16-6780**

Dear Mr. Job:

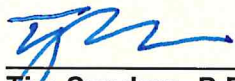
The bid opening for the Public Works Detention Pond project was held on Tuesday, March 24, 2020. The City received thirteen (13) bids for the project (see attached bid tally) ranging from \$310,777.36 to \$12,536,876,260.00. The lowest submitted bid price was from AIC Construction LLC; however, their bid submittal package was declared incomplete as they submitted only four (4) references instead of five (5) as required in the bid package. Thus, their bid submittal has been disqualified in accordance with City of Bastrop standards.

The second lowest bidder for the project is Frontier Development, Inc. of Hallettsville with a bid of \$351,664.00. Based on our review of their bid submittal, they did submit a complete bid package; and therefore are the lowest, most responsive bidder. As such, BEFCO Engineering recommends the City award the contract for the Public Works Detention Pond project to Frontier Development in the amount of \$351,664.00.

Should you have any questions or require more information, please advise. Thank you for the opportunity to provide engineering services for this project.

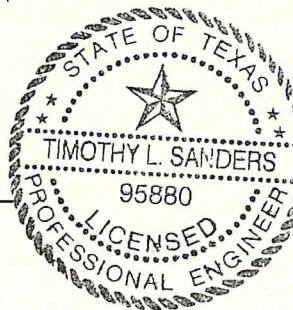
Sincerely,

BEFCO Engineering, Inc.



Tim Sanders, P.E.

3-30-20



Attachments: Bid Tab Summary

TLS:bms

"Proficient, practical engineering and land surveying services with a sense of small-town values and care"

CITY OF BASTROP
FEMA HMGP DR-4272-0024-TX
PUBLIC WORKS DETENTION POND
BEFCO JOB NO. 16-6780
MARCH 24, 2020

				AIC Construction, LLC		Frontier Development, Inc.		M&C Fonseca Const. Co., Inc.	
				PO Box 308		4896 FM 2314		1901 Prairie Creek Rd.	
				Giddings, TX 78942		Hallettsville, TX 77964		Granite Shoals, TX 78654	
<u>Item No.</u>	<u>Est. Qty.</u>	<u>Units</u>	<u>Description in Words</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>
1	1	LS	Sawcut, demolish and remove 16 linear feet of reinforced concrete pipe and concrete outlet structure at northeast corner of pond		\$512.00		\$2,000.00		\$1,500.00
2	1	LS	Sawcut, demolish and remove 8 linear feet of reinforced concrete pipe and concrete outlet structure at northwest corner of pond		\$512.00		\$1,500.00		\$1,000.00
3	1	LS	Sawcut, demolish and remove 29 linear feet of reinforced concrete pipe and concrete grate inlet at southwest corner of pond		\$512.00		\$2,500.00		\$4,500.00
4	43,400	CY	Excavate material for expanded detention pond and 5-foot channel at southeast corner of pond	\$5.47	\$237,398.00	\$5.52	\$239,568.00	\$7.00	\$303,800.00
5	340	SY	Excavate, furnish, and install 5-inch (5") thick reinforced concrete slope pavement and apron	\$102.50	\$34,850.00	\$100.00	\$34,000.00	\$48.25	\$16,405.00
6	4	AC	Topsoil, hydromulch seed, fertilize, and provide temporary irrigation	\$2,250.00	\$9,000.00	\$7,500.00	\$30,000.00	\$2,750.00	\$11,000.00
7	1,368	LF	Furnish and install 6-foot chainlink security fencing and gate	\$18.27	\$24,993.36	\$22.00	\$30,096.00	\$58.00	\$79,344.00
8	2	EA	Furnish and install rock berm for erosion control	\$1,500.00	\$3,000.00	\$6,000.00	\$12,000.00	\$1,500.00	\$3,000.00
TOTAL BASE BID (Item Nos. 1-8)					<u>\$310,777.36</u>		<u>\$351,664.00</u>		<u>\$420,549.00</u>

Item No.	Est. Qty.	Units	Description in Words	South Central TX Exca., LLC 1669 Smith-Rau Rd. Columbus, TX 78934		WJC Constructors Services PO Box 104 Smithville, TX 78957		ProDirt Services, LLC 3111 CR 100 Hutto, TX 78634		C3 Environmental Specialties 132 Nell Deane Blvd Schertz, TX 78154	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	1	LS	Sawcut, demolish and remove 16 linear feet of reinforced concrete pipe and concrete outlet structure at northeast corner of pond		\$2,500.00		\$5,000.00		\$1,500.00		\$1,200.00
2	1	LS	Sawcut, demolish and remove 8 linear feet of reinforced concrete pipe and concrete outlet structure at northwest corner of pond		\$1,200.00		\$4,000.00		\$500.00		\$700.00
3	1	LS	Sawcut, demolish and remove 29 linear feet of reinforced concrete pipe and concrete grate inlet at southwest corner of pond		\$4,500.00		\$6,000.00		\$1,500.00		\$1,800.00
4	43,400	CY	Excavate material for expanded detention pond and 5-foot channel at southeast corner of pond	\$8.09	\$351,106.00	\$7.50	\$325,500.00	\$8.30	\$360,220.00	\$7.30	\$316,820.00
5	340	SY	Excavate, furnish, and install 5-inch (5") thick reinforced concrete slope pavement and apron	\$89.00	\$30,260.00	\$85.00	\$28,900.00	\$60.00	\$20,400.00	\$88.00	\$29,920.00
6	4	AC	Topsoil, hydromulch seed, fertilize, and provide temporary irrigation	\$3,000.00	\$12,000.00	\$4,500.00	\$18,000.00	\$5,500.00	\$22,000.00	\$17,200.00	\$68,800.00
7	1,368	LF	Furnish and install 6-foot chainlink security fencing and gate	\$16.99	\$23,242.32	\$28.00	\$38,304.00	\$22.00	\$30,096.00	\$29.50	\$40,356.00
8	2	EA	Furnish and install rock berm for erosion control	\$1,000.00	\$2,000.00	\$1,000.00	\$2,000.00	\$1,000.00	\$2,000.00	\$8.00	\$16.00
TOTAL BASE BID (Item Nos. 1-8)					<u>\$426,808.32</u>		<u>\$427,704.00</u>		<u>\$438,216.00</u>		<u>\$459,612.00</u>

<u>Item No.</u>	<u>Est. Qty.</u>	<u>Units</u>	<u>Description in Words</u>	JKB Construction Co. LLC PO Box 1001 Liberty Hill, TX 78642		Chasco Constructors PO Box 1057 Round Rock, TX 78680		Austin Engineering Co., Inc. PO Box 342349 Austin, TX 78734		Ranger Excavating, L.P. 5222 Thunder Creek Rd., B-1 Austin, TX 78759	
				<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>
1	1	LS	Sawcut, demolish and remove 16 linear feet of reinforced concrete pipe and concrete outlet structure at northeast corner of pond		\$3,377.00		\$3,140.00		\$2,000.00		\$6,500.00
2	1	LS	Sawcut, demolish and remove 8 linear feet of reinforced concrete pipe and concrete outlet structure at northwest corner of pond		\$3,377.00		\$2,600.00		\$2,000.00		\$6,500.00
3	1	LS	Sawcut, demolish and remove 29 linear feet of reinforced concrete pipe and concrete grate inlet at southwest corner of pond		\$4,238.00		\$4,329.00		\$2,000.00		\$6,500.00
4	43,400	CY	Excavate material for expanded detention pond and 5-foot channel at southeast corner of pond	\$9.20	\$399,280.00	\$9.20	\$399,280.00	\$9.35	\$405,790.00	\$11.85	\$514,290.00
5	340	SY	Excavate, furnish, and install 5-inch (5") thick reinforced concrete slope pavement and apron	\$80.50	\$27,370.00	\$100.00	\$34,000.00	\$160.00	\$54,400.00	\$140.00	\$47,600.00
6	4	AC	Topsoil, hydromulch seed, fertilize, and provide temporary irrigation	\$6,969.00	\$27,876.00	\$9,800.00	\$39,200.00	\$5,400.00	\$21,600.00	\$4,500.00	\$18,000.00
7	1,368	LF	Furnish and install 6-foot chainlink security fencing and gate	\$22.75	\$31,122.00	\$22.00	\$30,096.00	\$22.00	\$30,096.00	\$21.00	\$28,728.00
8	2	EA	Furnish and install rock berm for erosion control	\$1,437.00	\$2,874.00	\$900.00	\$1,800.00	\$1,000.00	\$2,000.00	\$715.00	\$1,430.00
TOTAL BASE BID (Item Nos. 1-8)					<u>\$499,514.00</u>		<u>\$514,445.00</u>		<u>\$519,886.00</u>		<u>\$629,548.00</u>

Item No.	Est. Qty.	Units	Description in Words	Dalrymple Gravel & Contracting 3490 FM 78 McQueeney, TX 78123		Heavy Rdwy Constr. Services LLC 1305 Terrace View Dr. Cedar Park, TX 78613	
				Unit Price	Total Price	Unit Price	Total Price
1	1	LS	Sawcut, demolish and remove 16 linear feet of reinforced concrete pipe and concrete outlet structure at northeast corner of pond		\$5,000.00		\$1,900.00
2	1	LS	Sawcut, demolish and remove 8 linear feet of reinforced concrete pipe and concrete outlet structure at northwest corner of pond		\$5,000.00		\$1,900.00
3	1	LS	Sawcut, demolish and remove 29 linear feet of reinforced concrete pipe and concrete grate inlet at southwest corner of pond		\$5,000.00		\$3,100.00
4	43,400	CY	Excavate material for expanded detention pond and 5-foot channel at southeast corner of pond	\$11.00	\$477,400.00	\$286,874.00	\$12,450,331,600.00
5	340	SY	Excavate, furnish, and install 5-inch (5") thick reinforced concrete slope pavement and apron	\$250.00	\$85,000.00	\$34,000.00	\$11,560,000.00
6	4	AC	Topsoil, hydromulch seed, fertilize, and provide temporary irrigation	\$10,000.00	\$40,000.00	\$28,000.00	\$112,000.00
7	1,368	LF	Furnish and install 6-foot chainlink security fencing and gate	\$30.00	\$41,040.00	\$54,720.00	\$74,856,960.00
8	2	EA	Furnish and install rock berm for erosion control	\$3,000.00	\$6,000.00	\$4,400.00	\$8,800.00
TOTAL BASE BID (Item Nos. 1-8)					<u>\$664,440.00</u>		<u>\$12,536,876,260.00</u>

I certify that this is correct and true to the best of my knowledge and belief

BEFCO Engineering, Inc. (F-2011)


Tim Sanders, P.E.
Registration No. 95880
March 24, 2020

3-24-20



NOTES:

1. For AIC Construction, the product of the quantity and unit rate for Base Bid Line Item No.'s 4 and 7 is \$237,398.00 and \$24,993.36, respectively, in lieu of \$237,500.00 and \$25,000.00 as written in the bid form. Totals were adjusted accordingly. Additionally, AIC Construction submitted list of references but only provided four (4) references instead of five (5) as required in the bid package.
2. For Frontier Development, the product of the quantity and unit rate for Base Bid Line Item No. 4 is \$239,568.00 in lieu of \$240,000.00 as written in the bid form. Totals were adjusted accordingly.
3. For C3 Environmental Services, the unit price quoted by written words did not match the unit price quoted by numerical value for Line Item No. 8. In the event of discrepancies in unit prices quoted by written words or by numerical value, the written words will prevail and the total bid amount will be adjusted based on written words. Totals were adjusted accordingly.
4. Austin Engineering did not submit Conflict of Interest Questionnaire.
5. Dalrymple Gravel and Contracting did not submit list of subcontractors and suppliers.
6. For Heavy Roadway Construction Services, the unit price quoted by written words did not match the unit price quoted by numerical value for Line Item No.'s 4-8. In the event of discrepancies in unit prices quoted by written words or by numerical value, the written words will prevail and the total bid amount will be adjusted based on written words. Totals were adjusted accordingly.

Heavy Roadway Construction Services did not submit Statement of Bidder's Qualifications, Conflict of Interest Questionnaire, Safety Record Questionnaire, State Reciprocal Agreement, Chapter 2271 Verification, Chapter 2252 Certification, list of suppliers and sub-contractors, and list of references.



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 9E

TITLE:

Consider action to approve Resolution No. R-2020-37 of the City Council of the City of Bastrop, Texas adopting amended Budget Planning Calendar for Fiscal Year 2021, as shown in Exhibit A and directing the Chief Financial Officer to calculate the voter-approval tax rate in the manner provided for a special taxing unit (an 8 percent rate increase, instead of a 3.5 percent rate increase); repealing all resolutions in conflict; and establishing an effective date.

STAFF REPRESENTATIVE:

Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

Annually, staff provides Council with a calendar outlining the important dates for the upcoming fiscal year's budget process. Due to the significant changes made by the passing of Senate Bill 2, City Council approved two calendars for the FY2021 budget process at the December 10, 2019 Council Meeting. The Senate Bill 2 has a provision that if any part of the city is located in an area declared a disaster area during the current year by the governor or by the president of the United States, the City Council may direct its designated officer to calculate the voter-approval rate in the manner provided for a special taxing unit (using 8 percent rate, instead of a 3.5 percent rate). Also, a tax rate equal to or less than 8 percent over the voter-approval tax rate may be adopted before the later of September 30th or the 60th day after the certified appraisal roll is received by the city.

POLICY EXPLANATION:

Texas Tax Code

- Chapter 26 Sec. 26.04 (c-1) Notwithstanding any other provision of this section, the governing body of a taxing unit other than a special taxing unit may direct the designated officer or employee to calculate the voter-approval rate of the taxing unit in the manner provided for a special taxing unit if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or the president of the United States. The designated officer or employee shall continue calculating the voter-approval tax rate in the manner provided by the subsection until the earlier of:
 - 1) the second tax year in which the total taxable value of property taxable by the taxing unit as shown on the appraisal roll for the taxing unit submitted by the assessor for the taxing unit to the governing body exceeds the total taxable value of property taxable by the taxing unit on January 1 of the tax year in which the disaster occurred; or
 - 2) the third tax year after the tax year in which the disaster occurred.
- Chapter 26 Sec. 26.05 (a) The governing body of each taxing unit shall adopt a tax rate for the current tax year and shall notify the assessor for the taxing unit of the rate adopted.

The governing body must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, except that the governing body must adopt a tax rate that exceeds the voter-approval rate not later than the 71st day before the next uniform election date prescribed by Section 41.001, Election Code, that occurs in November of that year.

Texas Local Government Code Chapter 102 Municipal Budget

- 102.0065 (c) Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the budget hearing.

Texas Local Government Code Chapter 140.010 Proposed Tax Rate notice for Counties and Municipalities

- 140.010 (f) (1) provide the notice required by Subsection (d) or (e), as applicable, not later than the later of Sept. 1 or the 30th day after the date that the taxing unit has received each applicable certified appraisal roll.

City Charter

- Sec. 6.02 The City Manager, at least thirty (30) days prior to the commencement of the fiscal year, shall prepare and submit a budget to the Council.
- Sec. 6.04 At the Council meeting at which time the budget is submitted, the Council shall, in conformance with the requirement of state law, name the date, time and place of a public hearing and shall cause to be published the date, time and place thereof.

RECOMMENDATION:

Consider action to approve Resolution No. R-2020-37 of the City Council of the City of Bastrop, Texas adopting amended Budget Planning Calendar for Fiscal Year 2021, as shown in Exhibit A and directing the Chief Financial Officer to calculate the voter-approval tax rate in the manner provided for a special taxing unit (an 8 percent rate increase, instead of a 3.5 percent rate increase); repealing all resolutions in conflict; and establishing an effective date.

ATTACHMENTS:

- Resolution R-2020-37
- Exhibit A – Amended Budget Planning Calendars FY2020-2021

RESOLUTION NO. R-2020-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, ADOPTING AMENDED BUDGET PLANNING CALENDAR FOR FISCAL YEAR 2021, AS SHOWN IN EXHIBIT A, AND DIRECTING THE CHIEF FINANCIAL OFFICER TO CALCULATE THE VOTER-APPROVAL TAX RATE IN THE MANNER PROVIDED FOR A SPECIAL TAXING UNIT (AN 8 PERCENT RATE INCREASE, INSTEAD OF A 3.5 PERCENT RATE INCREASE); REPEALING ALL RESOLUTIONS IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Charter of the City of Bastrop, Texas states that it is the responsibility of the City Council to adopt the budget annually; and

WHEREAS, the Charter of the City of Bastrop, Texas, states that it is the responsibility of the City Manager to prepare and submit a budget to the City Council 30 days prior to the commencement of the fiscal year; and

WHEREAS, the Tax Code Chapter 26 Sec. 26.04 (c-1) states the governing body of a taxing unit other than a special taxing unit may direct the designated officer or employee to calculate the voter-approval rate of the taxing unit in the manner provided for a special taxing unit if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or the president of the United States; and

WHEREAS, the Tax Code Chapter 26 Sec. 26.05 (a) states the governing body of each taxing unit shall adopt a tax rate for the current tax year and shall notify the assessor for the taxing unit of the rate adopted. The governing body must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, except that the governing body must adopt a tax rate that exceeds the voter-approval rate not later than the 71st day before the next uniform election date prescribed by Section 41.001, Election Code, that occurs in November of that year; and

WHEREAS, the City Manager and the City Council of the City of Bastrop, Texas desire to have an amended budget planning calendar that establishes a timeline with specific dates to ensure compliance with the City Charter and all applicable laws.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, THAT:

SECTION 1. The City Council hereby adopts the Fiscal Year 2020-2021 *Amended* Budget Planning Calendar as shown in the attached ***Exhibit "A"***. Dates are subject to adjustment due to scheduling requirements. Meetings will be posted in accordance with the Texas Open Meetings Act.

SECTION 2. Any prior resolution of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.

SECTION 3. Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 4. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 14th day of April 2020.

APPROVED:

Connie Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

City of Bastrop

FY 2020-21 Budget Planning Calendar

(if proposed rate is 8% or less than voter-approval rate)

Amended from 3.5% adopted Dec. 10, 2019



Preparation	January 13	Staff Budget/CIP Planning Retreat
	March 3	Budget Kick-Off Meeting (Manuals Available)
	April 16	Mid-Year Budget Workshop
	May 1	Receive preliminary notices of appraised value from Chief Appraiser
	May 7	Budgets due from Departments
	May 11	Cabinet review of budget submittals
	May 15	Community Support Applications available at City Hall and on City's website
	May 18	Cabinet review of department pages including performance measures
	May 25-27	Verify revenue projections of all funds; Meet with Non-Special Event HOT Tourism Related Organizations
	June 8	Budget book to City Manager
	June 15-19	City Manager and Directors - Discuss budget submittals and priorities
	June 22	Cabinet review of budget priorities and 5 Year Financial Forecast
	June 30	Deadline - Community Support Applications & Non-Special Event HOT Organization funding requests 5:00pm
	July 14	Community Support Organizations present their funding request to Council (limit 3 minutes)
	July 16	Special Council Budget Workshop
	July 20	Final review of revenue projections for all funds
	July 22	Hunter's Crossing Local Government Corporation Meeting to review budget and propose Special Assessments
	July 24	Deadline for Chief Appraiser to certify rolls to taxing units
Adoption	August 1	Publish Notice of proposed Special Assessments (must be posted 10 days prior to Public Hearing)
	August 4	Meeting of the Governing Body to discuss the proposed tax rate; if proposed tax rate will exceed the No-New-Revenue Tax Rate or the Voter-Approval Tax Rate (whichever is lower), take record vote and schedule public hearing
	August 11	Council Meeting - Distribute Budget to Council in Work Session and highlight major topics Set date, time and place of a public hearing (considered filed with the City Secretary); Review Financial and Purchasing Policies.
	August 11	Public Hearing Special Assessments for Hunter's Crossing PID; First Reading of the Amended and Restated Service and Assessment Plan.
	August 15	Publish Notice of proposed Tax Rate (must be posted 10 days prior to Public Hearing)
	August 18	Budget Workshop - Review Proposed Budget
	August 19	Budget Workshop#2 - Review Proposed Budget (if needed)
	August 25	Council Meeting - Public hearing on Tax Rate; Adopt Financial and Purchasing Policies; Second Reading of the Amended and Restated Service and Assessment Plan.
	August 29	Published Notice of Budget Hearing (must be posted 10 days prior to Public Hearing)
	September 8	Council Meeting - First Reading on Tax Rate Ordinance; Budget Public Hearing; First Reading on Budget Ordinance.
	September 22	Council Meeting to adopt tax rate and budget. Must adopt budget before tax rate. City Council must take a separate ratification vote to adopt any budget that will raise total property tax revenue.
Implementation	October 1	Fiscal Year begins
	October 27	Distribute Final FY2021 Adopted Budget Book
	December 7	Begin FY2020 audit
	December 15	Presentation of preliminary unaudited financial report for FY2020



STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 10A

TITLE:

Pursuant to Texas Government Code Sections 551.071, consultation with attorney regarding legal matters involving Declaration of Local State of Disaster, Emergency Orders, and related regulatory issues.

STAFF REPRESENTATIVE:

Robert Wood, Interim City Manager





STAFF REPORT

MEETING DATE: April 14, 2020

AGENDA ITEM: 11

TITLE:

Take any necessary or appropriate action on matters posted for consideration in closed/executive session

STAFF REPRESENTATIVE:

Robert Wood, Interim City Manager

