

1. Contractor shall be entitled to an equitable adjustment in the Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, or causes an increase or decrease in time required for, performance of the Work; subject however, to the following:
  - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question.
  - b. With respect to Work that is paid on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03.
  - c. Contractor's entitlement to an adjustment of the Contract Times, is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
  - d. Contractor gave the notice required in Paragraph 5.06 B.
2. If Owners and Contractor agree regarding Contractor's entitlement to extent of any adjustment in Contract Times, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to extent of any adjustment in the 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.

*SC-5.06.A Delete paragraph 5.06.A to the General Conditions in its entirety and insert the following in lieu thereof:*

- A. Reports and Drawings:
  1. No reports of exploration and tests of hazardous environmental conditions at or contiguous to the site have been used by Design Engineer in preparing the Contract Documents.
  2. No drawings of hazardous environmental conditions at or contiguous to the site have been used by Design Engineer in preparing the Contract Documents.
  3. No report or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

*SC-5.06.D Add the following sentence at the end of exiting paragraph 5.06.D to the General Conditions:*

IF CONTRACTOR IMPORTS CONSTITUTENTS OF CONCERNS AND HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, COMMISSIONERS COURT, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE.

*SC-5.06.E. Paragraph 5.6.E to the General Conditions is deleted in its entirety and replaced with the following:*

- E. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or

substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and in writing notify the Owner and Engineer of the condition. In the event the Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

*SC-5.06.F Paragraph 5.6.F to the General Conditions is deleted in its entirety and replaced with the following:*

- F. Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor.

*SC-5.06.G Paragraph 5.6G to the General Conditions is deleted in its entirety and replaced with the following:*

- G. Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion due to Hazardous Conditions at the Worksite.

*SC-5.06.H Paragraph 5.6H is deleted in its entirety.*

*SC-5.06.I Paragraph 5.6.I is deleted in its entirety.*

*SC-5.06.J This paragraph is reprinted without change from the General Conditions 5.06.J.*

- 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 SHALL OBLIGATE CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**

## **ARTICLE 6 - BONDS AND INSURANCE**

*SC-6.01.A, 6.01.B, and 6.01.C to the General Conditions are deleted in their entirety and replaced with the following in lieu thereof:*

6.01

- A. The Contractor shall furnish separate payment, performance and maintenance bonds covering faithful performance of the Contract and payment of obligations arising thereunder, each bond to be in a total amount equal to 100% of the Contract Sum. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-VII" according to the latest posted ratings on the A.M. Best website, [www.ambest.com](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Engineer in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.
- B. The Contractor shall deliver copies of the required bonds to the Owner and Engineer not later than five business days after execution of the Contract by Owner. All bonds will be reviewed by the Engineer for compliance with the Contract Documents. In the event that the Engineer has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Engineer's recommendation.
- C. All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided. Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

*SC-6.01.F to the General Conditions is deleted in its entirety and replaced with the following:*

- F. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

*SC-6.02.B, 6.02.C., 6.02.D., 6.02E., 6.02F, 6.02G, 6.02H to the General Conditions are deleted in their entirety and replaced with the following in lieu thereof:*

*Insurance-General Provisions*

- B. No Work will be commenced by Contractor, and no equipment or materials can be shipped, until all requirements of this Paragraph 6.02 have been satisfied by Contractor, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Engineer in

writing of any proposed nonconformity with these requirements, and shall notify Owner and Engineer in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Commissioners Court. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Commissioners Court. Said lack of insurance may then be grounds for termination or modification of this Agreement.

- C. Satisfactory evidence of insurance required by this Article shall be provided to Owner and Engineer not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and additional insured (except as noted in subparagraph D) and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations, and additional endorsements, as they are provided to Contractor.
- D. All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than "A-VII" in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation. All insurance must be written on forms filed with an approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the Insurance company or its authorized agent and shall contain provisions representing and warranting the following:
  - 1) Sets forth all endorsements and insurance coverages according to requirements and instruction contained in this Contract.
  - 2) Shall specifically set forth the notice-of-cancellation or termination provisions to Webb County.
  - 3) A copy of all required endorsements are to be provided along with the certificate(s) of Insurance.
- E. All insurance required herein shall name the Owner, its officers, employees, representatives, or agents, as an additional insured, except Contractor's Worker's Compensation insurance.
- F. All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives, or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner.
- G. Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives, or agents.
- H. All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor. Any subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. Owner (Webb County) accepts no responsibility arising from the conduct, or lack of conduct, of the subcontractor.
- I. Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

SC-6.02      *Paragraph 6.02.I of the General Conditions shall be renumbered as Paragraph 6.02.J.*

SC-6.02      *Paragraph 6.02.J. of the General Conditions shall be renumbered as Paragraph 6.02.K.*

SC-6.03.I    *Add the following subparagraphs to paragraph 6.03.I to the General Conditions:*

- 6.      All liability policies shall contain no cross-liability exclusions or insured versus insure restrictions. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance; and

7. With respect to workers' compensation and employer's liability, comprehensive automobile liability, commercial general liability, and umbrella liability insurance, Contractor shall require Contractor's insurance carriers to waive all rights of subrogation against Owner, Engineer, Engineer's Consultants, and their respective officers, directors, partners, employees, and agents.
8. All insurance policies shall be endorsed to the effect that Webb County (Owner) will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
9. All insurance policies, which name Webb County as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
10. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
11. Contractor may maintain reasonable and customary deductible subject to approval by Webb County.
12. Insurance must be purchased from insurers that are financially acceptable to Webb County.

SC-6.03 Add the following paragraphs immediately after paragraph 6.03.J to the General Conditions:

- K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:

State:	State Statutory Limits
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Federal, if applicable (e.g., Longshoreman's)	Federal Statutory Limits
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Employer's Liability:

Bodily injury, each occurrence-each accident	\$1,000,000
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Bodily injury by disease each-occurrence	\$1,000,000
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Bodily injury, disease aggregate	\$1,000,000
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2. Contractors Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions

General Aggregate for bodily injury & Property Damage	\$2,000,000
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Products- Completed Operations Aggregate	\$2,000,000
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Personal and Advertising Injury	N/A
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Each Occurrences (Bodily Injury and Property Damage)	\$1,000,000
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3. Automobile Liability under Paragraph 6.03.D. of the General Conditions: Bodily Injury:

Bodily Injury:

Each Person \$1,000,000

Each Accident \$1,000,000

Property Damage:

Each accident \$1,000.00

Combined Single Limit of \$1,000,000

4. Excess or Umbrella Liability with respect to Commercial General Liability, Automobile Liability, & Employers Liability

Per Occurrence N/A

General Aggregate N/A

5. Contractor's Pollution Liability:

Each Occurrence \$ N/A

General Aggregate \$ N/A

6. Contractor's Professional Liability:

Each Claim \$ N/A

Annual Aggregate \$ N/A

7. Railroad Protective Liability

Per Occurrence \$ N/A

General Aggregate \$ N/A

SC-6.03.L. Add the following subparagraph immediately after 6.02.K

- L. Owner and Garver, LLC shall be included as an additional insured under the CGL, (using ISO Additional Insured Endorsement CG 20 10 11 85 or a substitute providing equivalent coverage), and under the commercial automobile liability (using ISO Additional Insured Endorsement CA 2048 or a substitute providing equivalent coverage), and commercial umbrella, if any. This insurance, including insurance provided under the commercial umbrella, if any, shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, Owner.

SC-6.05.A Add the following subparagraphs immediately after 6.05.A.13:

14. All Builders Risk Insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.

15. The Builders Risk Policy must provide transit and off-premise coverage if the contract with the Contractor makes Webb County responsible for materials. The deductible shall not exceed \$5,000.00.

SC6.06 The title to 6.06 is revised to read "Waiver of Subrogation", also paragraphs 6.06.A, 6.06.B, and 6.06.C to the General Conditions are deleted in its entirety and replaced with the following in lieu thereof:

6.06 Waiver of Subrogation

- A. All insurance required herein shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. The Contractor shall require similar written waivers in favor of the Owner, from the subcontractors and sub-subcontractors. The policies of insurance purchased and maintained by Contractor pursuant to this paragraph shall not prohibit this waiver of subrogation.
- B. The Owner, as fiduciary, shall have power to adjust and settle any loss arising out of the Work with insurers, regardless of the purchaser of the insurance policy. The Contractor upon receipt of proceeds shall, as a fiduciary, pay all subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require subcontractors to make payment to their sub-subcontractors in similar manner. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor with the insurance proceeds upon issuance of a Notice to Proceed from the Owner.
- C. The property insurance shall contain no partial occupancy restriction for utilization of the Project by Owner for the purpose intended. The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

**ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

*SC-7.01.A 7.01.A to the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:*

- A. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site during performance of the Work, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

*SC- 7.01.B. 7.01.B to the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:*

- B. Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under general conditions for such day.

*SC-7.02.B Add the following subparagraphs immediately after paragraph 7.02.B to the General Conditions:*

1. No Work shall be done between 6:00 p.m. and 7:00 a.m. without permission of Owner, excluding Sundays and holidays. However emergency work may be done without prior permission. Overtime work is work in excess of 40 hours per week or work not within regular working hours.
2. Night Work may be undertaken as a regular procedure **only** with the permission of Owner; such permission, however, may be revoked at any time by Owner if Contractor fails to maintain adequate equipment and supervision for the proper prosecution and control of the Work at night.

SC-7.03 Add the following paragraphs immediately after paragraph 7.03.C to the General Conditions:

D. Interfaces to Equipment, Instruments, and Other Components:

1. The drawings, specifications and overall design are based on preliminary information furnished by various equipment manufacturers which identify a minimum scope of supply from the manufacturers. This information pertains to, but is not limited to, instruments control devices, electrical equipment, packaged mechanical systems, and control equipment provided with mechanical systems.
2. Provide all material and labor needed to install the actual equipment furnished, and include all costs to add any additional conduit wiring, terminals, or other electrical hardware to the work, which may be necessary to make a complete, functional installation based on the actual equipment furnished:
  - a. Make all changes necessary to meet the manufacturer's wiring requirements.
3. Submit all such changes and additions to the Engineer for acceptance in accordance with the General Conditions.
4. Review the complete set of drawings and specifications in order to ensure that all items related to the electrical power and control systems are completely accounted for. Include any such items that appear on drawings or in specifications from another discipline in the scope of Work.

E. Until Substantial Completion of the Work is acknowledged by Owner, Contractor shall have the responsible charge and care of the Work and of materials to be used herein, including materials for which Contractor has received partial payment or materials which have been furnished by Owner, and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the Work.

F. Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the materials occasioned by any cause before the Work's completion and acceptance and shall bear the expense thereof. Where necessary to protect the Work or materials from damage, Contractor shall, at Contractor's own expense, provide suitable drainage and erect such temporary structures or rent such structures as are necessary to protect the Work or materials from damage. The suspension of the Work or the granting of an extension of time from any cause whatever shall not relieve Contractor or Contractor's responsibility for the Work and materials as specified herein.

G. When the quality of a material, process, or article is not specifically set forth in the Contract Documents, the best available quality of the material, process, or article shall be provided.

H. Delivery and Inspection:

1. Deliver products in undamaged condition, in manufacturer's original container or packaging with identifying labels intact and legible. Include date of manufacture on label.

SC-7.04.A Delete paragraph 7.04.A to the General Conditions in its entirety and insert the following in lieu thereof:

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the 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. If the specification or description contains the words, "or equal" or "or equal allowed", or "or equal item is permitted", Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below. Unless these words are specifically written in the description of such item, no substitution is allowed per this Contract. If the item's description is followed by words reading that "no like", "no equivalent", or "no or equal item is permitted", then no substitution of like items or like manufacturers is allowed as part of this Contract.



1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
  - a. in the exercise of reasonable judgment Engineer determines that:
    - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    - 2) it 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) it has a proven record of performance and availability of responsive service; and
    - 4) it is not objectionable to Owner.
  - b. Contractor certifies that, if approved and incorporated into the Work:
    - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

*SC-7.05.A Delete paragraph 7.05.A to the General Conditions and insert the following in lieu thereof:*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that, "or equal" or "or equal allowed", or "or equal item is permitted", then no substitution of like items is permitted. If the item's description includes the words "no substitution is permitted", "no like", "no equivalent", or "no or equal" item is permitted, then no substitution of like items or like manufacturers is allowed as part of this Contract. If the words, "or equal is permitted", "or equal", or "like items are permitted", Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall 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 material or equipment from anyone other than Contractor. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  2. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - a. shall 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 that specified, and
      - 3) be suited to the same use as that 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 that specified, and
  - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall 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.

*SC-7.06.D Delete paragraph 7.06.D to the General Conditions and insert the following in lieu thereof, and add subparagraph 7.06.D.1:*

D. Contractor shall submit to the Owner a list of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner as stipulated in the Bidding Documents. Owner's acceptance (either in writing or by failing to make written objection thereto within two weeks of submittal of the list) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation.

1. Subcontracting: Contractor shall perform with Contractor's own organization work amounting to not less than 51 percent of the combined value of all items of the Work covered by the Contract.

*SC-7.06.F Delete paragraph 7.06.F to the General Conditions and insert the following in lieu thereof:*

F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall not be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement.

*SC-7.06.P shall be added to the General Conditions as follows:*

P. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Engineer. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

*SC-7.06.Q shall be added to the General Conditions as follows:*

Q. Neither the Owner nor the Engineer shall be obligated to pay or to ensure the payment of any monies to

subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

*SC-7.06.R shall be added to the General Conditions as follows:*

**Prevailing Wage Rates**

- R. Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing wage rate determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at <https://www.wdol.gov/> or <https://beta.sa.gov/>) effective as of the date of this Agreement. In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety, and minimum wages.

*SC-7.06.S shall be added to the General Conditions as follows:*

- S. Contractor shall forfeit, as a penalty to the Owner, \$60 for each laborer, worker, or mechanic employed for each calendar day or party of the day that the worker is paid less than the wage rate stipulated in the Contract

*SC-7.07.B Delete paragraph 7.07.B to the General Conditions in its entirety.*

*SC-7.07.C. This paragraph is reprinted without change from the General Conditions 7.10.C.*

- 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.**

*SC-7.08.A Delete paragraph 7.08.A. to the General Conditions and insert the following in lieu thereof:*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (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.

*SC-7.09.A Delete the word "use" to paragraph 7.09A to the General Conditions.*

*SC-7.09 Add the following paragraph immediately after paragraph 7.09.A to the General Conditions:*

- B. Pursuant to the provision of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act, Owner is exempt from the state and local sales and use taxes on all materials incorporated into the Work. Further, Contractor may purchase, rent, or lease materials, supplies, equipment used or consumed in the performance of the Work by issuing to its Supplier an exemption certificate in lieu of the tax. Any such exemption certificate issued by Contractor in lieu of the tax shall be subject to the provision of the State Comptroller's ruling No. 05-0.09 as amended.

*SC-7.10 A Delete paragraph 7.10.A to the General Conditions and insert the following paragraph 7.10.A*

*in lieu thereof, and add the following paragraphs:*

- A. Contractor shall give all notices required by and comply with all Laws and Regulations applicable to furnishing and performance of the Work and shall cause all Contractor's agents, employees, Subcontractors, and Suppliers to observe and comply with all such laws, ordinances, and regulations.
- D. Employment Requirements: Contractor shall comply with employment requirements stipulated in the attached exhibits.

*SC-7.11 Add the following paragraph 7.11.B immediately following paragraph 7.11.A to the General Conditions:*

- B. Prior to submitting each request for progress payment, Contractor shall request Engineer's review and approval of current status of record documents. Failure to properly maintain, update, and submit record documents may result in a deferral by Engineer to recommend whole or any part of Contractor's Application for Payment, either partial or final.

*SC-7.12.B Insert the following sentence after the end of paragraph 7.12.B to the General Conditions:*

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 *et seq.*, and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

*SC-7.12.C Insert the following after the second sentence of Paragraph 7.12.C to the General Conditions:*

The following Owner safety programs are applicable to the Work: None

*SC-7.12 Add the following paragraphs immediately after paragraph 7.12.G to the General Conditions.*

- H. Contractor shall prepare, implement, and maintain a safety and health program or plan in accordance with Section 01 32 90 of the General Requirements.
- I. Contractor shall make reasonable efforts to detect and abate any violations of safety standards of which Contractor is aware and to which Contractor's employees are exposed, despite the fact that Contractor did not commit the violation.
- J. Trench and Excavation Safety System:
  - 1. This section covers trench and excavation safety system required for constructing improvements that necessitate open excavations on the project. All work under this item shall be in accordance with the current edition of the "Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P.
  - 2. The Contractor, prior to beginning any excavation, shall notify the State Department of Labor (Safety Division) that work is commencing on a project with excavations greater than five feet.
  - 3. The Contractor shall notify all Utility Companies and Owners in accordance with OSHA Administration 29 CFR 1926.651(b) (2) for the purpose of locating utilities and underground installations.

4. Where the trench or excavation endangers the stability of a building, wall, street, highway, utilities, or other installation, the Contractor shall provide support systems such as shoring, bracing, or underpinning to ensure the stability of such structure or utility.
  5. The Contractor may elect to remove and replace or relocate such structures or utilities with the written approval of the Owner of the structure or utility and the Project Owner.
  6. The work required by this item will be paid for at the price bid for "Trench and Excavation Safety Systems". After award of the Contract, the Contractor shall submit to the Engineer a breakdown of cost for work involved in the price bid for "Trench and Excavation Safety Systems" and shall, with each periodic payment request, submit a certification by the Contractor's "competent person" as defined in Subpart "P" 1926.650(b) that the Contractor has complied with the provisions of "Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System" 29 CFR 1926 Subpart P for work for which payment is requested.
- K. Contractor will comply with all applicable federal, state, and local drug and alcohol-related laws and regulations (e.g., Department of Transportation regulations, Drug-Free Workplace Act). Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies, as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.
- L. Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a weapon, and Contractor agrees that Contractor's representatives, employees, agents, and subcontractors will abide by same. Weapons may only be permitted in Owner's parking lots if weapons are locked in personal vehicles in Owner's parking lot.

*SC-7.16.A Add the following subparagraphs immediately after paragraph 7.16.A.3 to the General Conditions:*

4. The Contractor shall prepare and submit information in accordance with Specification section 01 33 00, Submittal Procedures, as required by the individual Specification sections sufficiently in advance of the related work to allow an appropriate review time by the Engineer. The types of submittals are indicated in the individual Specification sections.
5. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require submittals.

*SC-7.18.A This paragraph 7.18.A. is deleted in its entirety from the General Conditions and replaced with the following in lieu thereof:*

- A. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ENGINEER, OWNER'S COMMISSIONERS COURT, ENGINEER'S**

CONSULTANTS, OWNER'S CONSULTANTS, OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB- CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH 7.18.A ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS.

SC-7.18.B *This paragraph 7.18.B is deleted in its entirety from the General Conditions and replaced with the following:*

- B. IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER SECTION 7.18.A BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER PARAGRAPH 7.18.A SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

SC-7.18.C *This paragraph 7.18.C of the General Condition sis deleted in its entirety and replaced with the following in lieu thereof:*

- C. THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 7.18.A SHALL NOT EXTEND TO THE LIABILITY OF THE ENGINEER, THE ENGINEER'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ENGINEER; OR (2) NEGLIGENCE OF THE ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 *ET SEQ.*

SC 7.18.C *Add the following paragraphs immediately after paragraph 7.18.C to the General Conditions:*

- D. THE OWNER MAY CAUSE ANY OTHER CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION

**WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S OTHER CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 17.18.A ABOVE.**

- E. THE PROVISIONS OF PARAGRAPH 7.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.
- F. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 7.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.
- G. It is understood and agreed that paragraph 7.18 is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

#### **ARTICLE 8- OTHER WORK AT THE SITE**

*SC-8.01.A Delete the first sentence of paragraph 8.01.A to the General Conditions and insert the following in lieu thereof*

- A. Owner will have other work related to the Project at the Site performed by separate contractors and Utility owners as described in Section 01 14 00 of the Specifications.

*SC-8.02 Delete paragraph 8.02.A to the General Conditions and insert the following paragraphs in lieu thereof:*

- A. Owner intends to contract with others for the performance of other work on the Project at the Site. Contractor shall coordinate the Contract and separate contracts with the following duties, responsibilities, and limitations of authority:
  - 1. Contractor shall coordinate the scheduling of work between this Contract and other concurrent contracts so that interference with operations and conflicts with interfacing work will be minimized and to ensure the Work remains on schedule. Particular attention shall be paid to maintaining suitable traffic patterns and adequate access to the existing facilities. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. Whenever construction activities conflict with operations, Owner shall decide which activity shall be given priority.
  - 2. It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access and introduction and storage or staging of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall be responsible for coordination between Contractor's subcontractors and Owner's Separate Contractors. Contractor shall review Owner's contract with Owner's Separate Contractors and become familiar with the requirements and

scope of services contained therein.

3. If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify in writing the Engineer and Owner of apparent discrepancies or defects in the construction or operations by the Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work, and shall promptly report in writing to the Engineer and Owner if Separate Contractors fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to notify in writing the Engineer and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Separate Contractor's completed or partially completed construction is fit and proper, and is performed in a timely manner to receive the Contractor's Work. The Contractor shall not be responsible for latent discrepancies or defects that are not apparent in the construction or operations by the Owner or Separate Contractor.
4. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction.

*SC-8.02.B Delete paragraph 8.02.B of the General Conditions in its entirety.*

*SC-8.03.A Delete the first sentence in paragraph 8.03.A of the General Conditions and replace with the following:*

If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner 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 *may* be entitled to an equitable adjustment in the Contract Times, but shall not be entitled to an adjustment in the Contract Price due to delays.

#### **ARTICLE 9 - OWNER'S RESPONSIBILITIES**

*SC-9.02.A Delete the following text in the first sentence of paragraph 9.02.A to the General Conditions: "provided Contractor makes no reasonable objection to the replacement Engineer".*

*SC-9.03.A Delete paragraph 9.03.A to the General Conditions in its entirety and insert the following in lieu thereof:*

- A. The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services. Absent such timely notification, any Claim based upon lack of such information or services shall be waived.

*SC-9.06 Delete Paragraph 9.06 and subparagraph 9.06.A to the General Conditions in its entirety.*

*SC-9.11 Delete Section 9.11 and subparagraph 9.11.A to the General Conditions in its entirety.*

*SC-9.12.B Delete subparagraph 9.12.B of the General Conditions in its entirety.*

#### **ARTICLE 10- ENGINEER'S STATUS DURING CONSTRUCTION**

*SC-10.03.A. In the first sentence delete the word "If" and change the work "will" to "shall."*

*SC-10.03 Add the following new paragraphs immediately after paragraph 10.03.A to the General Conditions:*

- B. The Resident Project Representative (RPR) will be Engineer's representative at the Site, will



act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

1. General: **RPR's** dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
2. Schedules: RPR shall review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. Liaison:
  - a. RPR shall serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
  - b. RPR shall assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
  - c. RPR shall assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. Interpretation of Contract Documents: RPR shall report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. Shop Drawings and Samples:
  - a. RPR shall record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. RPR shall receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. RPR shall advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. Modifications: RPR shall consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with **RPR's** recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Review of Work and Rejection of Defective Work:
  - a. RPR shall conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. RPR shall report to Engineer whenever RPR believes that any part of

Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. Inspections, Tests, and System Startups:
  - a. RPR shall verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
  - b. RPR shall observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
10. Records:
  - a. RPR shall prepare a daily report recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
  - b. RPR shall record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
  - c. RPR shall maintain records for use in preparing Project documentation.
11. Reports:
  - a. RPR shall furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
  - b. RPR shall draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
  - c. RPR shall immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.
12. Payment Requests: RPR shall review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. Certificates, Operation and Maintenance Manuals: During the course of the Work, RPR shall verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually

installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. Completion:

- a. RPR shall participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. RPR shall participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. RPR shall observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. The RPR shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

*SC-10.06.A Delete paragraph 10.06.A of the General Conditions in its entirety and insert the following in its place:*

- A. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
  1. if the total cost of a particular item of Unit Price Work amounts to five 5 percent or more of the Contract Price at the time of award and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Bid Form; and

2. if there is no corresponding adjustment with respect to any other item of Work; and
3. if Contractor believes that Contractor has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may demand a Change in Contract Price or Contract Times. Such Change in Contract Price shall be based on any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity. If the quantity variation is such as to cause an increase in Contract Times, Contractor may request an extension for the delay resulting from performing the quantity in excess of 125 percent of the estimated quantity. If the parties are unable to agree as to the effect of any such variation in the quantity of Unit Price Work, either party may make a claim for an adjustment in the Contract Price or Contract Times in accordance with paragraph 11.04 or 11.05.

*SC-10.08 Add the following paragraph immediately after paragraph 10.08.E to the General Conditions:*

- F. Observers and Resident Project Representatives shall have no authority to permit any deviation from the plans and specifications except on written order from the Engineer.

#### **ARTICLE 11 - AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

*SC-11.01.A.3. Delete the last sentence in 11.01.A.3*

*SC-11.04.B.3 Delete the phrase "plus a Contractor's fee for overhead and profit (determined as provide in subparagraph 11.04.C)" in subparagraph 11.04.B.3 to the General Condition .*

*SC-11.04.C Paragraph 11.04.C to the General Conditions is deleted in its entirety.*

*SC-11.05 Add the following paragraphs 11.05.C and 11.05.D:*

- C. Use of Float:
  1. A claim for an adjustment of Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only when the time lost or gained exceeds the float for the activity at the time of the event giving rise to the claim. Float, the amount of time between the early start date and the late start date, or the early finish date and the late finish date, is jointly owned by both Owner and Contractor whether expressly disclosed or implied in any manner.
  2. Contractor shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to Engineer.
- D. The Contract Time includes weather day allowances as calculated by SC-4.05. Extension of Contract Time will be allowed for each month's days that are in excess of each month's anticipated weather days as identified in SC-4.05.

#### **ARTICLE 12 - CLAIMS**

*SC-12.01.A Paragraph 12.01.A of the General Conditions is deleted in its entirety and replaced with the following:*

- A. Claims by the Contractor against the Owner, including those alleging an error or omission by the Engineer, shall be referred initially to the Engineer for written recommendation. An initial recommendation by the Engineer shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Engineer with no recommendation having been rendered by the Engineer.

*SC-12.01.B. Paragraph 12.01.B of the General Conditions is deleted in its entirety and replaced with the*

*following in lieu thereof:*

- B. The Engineer shall review Claims and within ten (10) days of the receipt of the Claim and take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

*SC-12.01.C Paragraph 12.01.C of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:*

- C. If the Engineer requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either provide a response on the requested supporting data, advise the Engineer when the response or supporting data will be furnished, or advise the Engineer that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Engineer will either reject or approve the Claim in whole or in part.

*SC-12.01.D Paragraph 12.01.D of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:*

- D. Following receipt of the Engineer's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Article 17.

*SC-12.01.E Paragraph 12.01.E of the General Conditions is deleted in its entirety and replaced with the following in lieu thereof:*

- E. Upon receipt of a Claim against the Contractor or at any time thereafter, the Engineer or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Engineer or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

*SC-12.01 Paragraphs 12.01.F and G of the General Conditions are deleted in their entirety.*

### **ARTICLE 13 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

*SC-13.01.B. 5.c Insert the following after paragraph 13.01.B.5.c of the General Conditions:*

- 1) Rental rates will be determined as follows:
  - a) The base rates shall be those established in the cost guide, entitled "Rental Rate Blue Book," and revisions thereto.
  - b) Attachments (e.g. tractor with ripper and dozer or tractor with loader and backhoe) will be included in the hourly rental rate only when deemed essential to the Work as determined by Engineer.
  - c) The total established rental rate per hour shall be rounded to the nearest \$0.10.
  - d) Rental rates shall not be adjusted for regional differences
  - e) No compensation shall be allowed for shop tools having a daily rental rate less than \$10.00 as set forth in the cost guide.
- 2) If deemed necessary by Engineer to use equipment not listed in the aforementioned publications, a suitable rental rate for such equipment will be mutually established by Contractor and Engineer. Contractor may furnish any cost data that might establish a suitable rental rate for such equipment. Rental payment will be made for the actual time that such equipment is in operation on the Work and for 20 percent of the actual standby time on the Work.

- SC-13.01.D Delete subparagraph 13.01.D of the General Conditions in its entirety
- SC-13.02.A Delete "allowances so named in the Contract Documents" in the first sentence of 13.02.A of the General Conditions and insert "allowances so named in Section 012900 of the General Requirements" in lieu thereof
- SC-13.02 Delete paragraph 13.03 "Unit Price Work" and its subparagraphs "A" through "E" in its entirety.

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

SC-14.02.B Insert "Contractor" in lieu of "Owner" in paragraph 14.02.B of the General Conditions to designate the payor of independent testing laboratory services. Insert "including but not limited to the following" in lieu of "except that".

SC-14.02.B Add the following at the end of the Paragraph 14.02.B of the General Conditions:

Tests required by Contract Documents to be performed by Contractor that require test certificates be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, testing laboratories or agencies shall meet following applicable requirements: (1) "Recommended Requirements for Independent Laboratory Qualification," published by the American Council of Independent Laboratories, (2) Basic requirements of ASTM E329, "Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction, as applicable, (3) Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Bureau of Standards or accepted values of natural physical constants.

SC-14.03 Add the following paragraph immediately following paragraph 14.03.F of the General Conditions:

G. System Startup:

1. Replace or modify equipment, software, and materials that do not achieve design requirements after installation in order to attain compliance with the design requirements:
  - a. Following replacement or modification, retest the system and perform additional testing to place the complete system in satisfactory operation and obtain compliance acceptance from the Engineer.

SC-14.05 Subparagraph 14.06.C.2 of the General Conditions is deleted in its entirety and replaced with the following:

2. If the uncovered Work is not found to be defective, Contractor may be allowed 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 to the extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

**ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION**

SC-15.01.A. Delete second sentence of paragraph 15.01.A titled "Basis for Progress Payments"

SC-15.01.B Delete "At least twenty days before the date established for each progress payment (but not more than once a month)" in the first sentence of paragraph 15.01.B of the General Conditions and insert "On the last day of each calendar month" in lieu thereof and add the following subparagraphs at the end of 15.01.B:

4. Stored Materials and Equipment: Payments for stored materials and equipment shall be based only upon the actual cost of the materials and equipment to Contractor and shall not

include any overhead or profit to Contractor Partial payments will not be made for undelivered materials or equipment, except for payments associated with procurement contracts initiated by Owner and assigned to Contractor.

5. Schedules and Data: During the progress of the Work, each Application for Payment shall be accompanied by Contractor's updated schedule of operations, or progress report, with such shop drawings schedules, procurement schedules, value of material on hand included in application and other data specified in Section 01 33 00 of the specifications or reasonably required by Engineer.
6. Payment for material delivered to the work site or stored under Owner's control will be based on the vendors' paid invoices or the bill of lading showing date of delivery and the work site where the delivery took place, a copy of which shall be furnished by Contractor to Engineer with each request for progress payment. Only those materials which have been incorporated into the Project or are stored under Owner's control may be included in the progress payment as material stored.
7. In addition to the amounts which Owner may retain as provided elsewhere in the Contract Documents, Owner may withhold a sufficient amount or amounts from any payment otherwise due Contractor as in Owner's judgment may be necessary to cover:
  - a. Payments which may be due and payable for properly filed claims against Contractor or any Subcontractor for labor or materials furnished in or about the performance of the Contract.
  - b. Estimated or actual costs for correcting defective work not remedied.
  - c. Amounts claimed by Owner as forfeiture due to delays or other offsets. Owner may apply such withheld amount or amounts to the payment of such claim at Owner's discretion. In doing so, Owner shall be deemed the agent of Contractor and any payments so made by Owner shall be considered as a payment made under the Contract by Owner to Contractor, and Owner shall not be liable to Contractor for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. Owner shall render to Contractor a proper account of any such funds disbursed in or on behalf of Contractor.
8. Contractor shall disburse money paid to him, including any interest Contractor receives, to Subcontractors and Suppliers within 15 days after Contractor receives the money, in direct proportion to the Subcontractors' and Suppliers' basis in the total Contract between Contractor and Owner. Any money which is payable to a Subcontractor pursuant to this section accrues interest at the legal rate. Contractor may withhold 10 percent from the amount of any partial payment under a subcontract which is made before 50 percent of the Work has been completed under the subcontract. Thereafter Contractor shall pay any additional funds if, in the opinion of Contractor, satisfactory progress is being made in the work under the subcontract, and the payment must be equal to that paid by Owner to Contractor for the Work performed by the Subcontractor.
  - a. The Contractor may retain the amount withheld under the subcontract until the subcontract is satisfactorily completed.
  - b. The amount withheld under the subcontract is due within 15 days after the acceptance of the subcontract work by Contractor.
  - c. Whenever Contractor receives a payment of interest earned on the amount withheld from the Contract, Contractor shall within 15 days pay to each Subcontractor that portion of the interest received from the state which is attributable to the amount of money withheld from the Subcontractor.

*SC-15.01.C Add the following sub-subparagraphs at the end of subparagraph 15.01.C.6.e of the General Conditions.*

- 15.01.C.6.f. Owner compensation to Engineer at an estimated average rate of \$150.00 per each extra personnel hour for labor plus expenses because of the following Contractor-caused events:

- 15.01.C.6.f.1 witnessing retesting of corrected or replaced defective Work;
- 15.01.C.6.f.2 return visits to manufacturing facilities to witness factory testing or retesting;
- 15.01.C.6.f.3 submittal review in excess of three reviews by Engineer for substantially the same submittal;
- 15.01.C.6.f.4 evaluation of proposed substitutes and in making changes to Contract Documents occasioned thereby;
- 15.01.C.6.f.5 overtime worked by Contractor necessitating Engineer, Engineer's Consultant, Resident Project Representative's site staff, if any, to work extraordinary overtime. Such overtime would not have been contemplated by Owner at time of Bid opening; or
- 15.01.C.6.f.6 liability for liquidated damages incurred by Contractor as set forth in the Contract.

SC-15.01.D Delete paragraph 15.01.D.1 and insert the following paragraph in lieu thereof:

- c. Sixty (60) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended less amounts due to Owner and other amounts which are authorized to be reserved or retained by state law will (subject to the provisions of paragraph 15.01) become due and when due will be paid by Owner to Contractor.

SC-15.01.E.e Add the following at the end of subparagraph 15.01.E.e to the General Conditions:

"Owner's compensation to Engineer will be based on an estimated average rate of \$150.00 per each extra personnel hour of labor plus expenses because of the following Contractor-caused events: (1) witnessing retesting of corrected or replaced defective Work; (2) return visits to manufacturing facilities to witness factory testing or retesting; (3) submittal review in excess of three reviews by Engineer for substantially the same Submittal; evaluation of proposed substitutes and in making changes to Contract Documents occasioned thereby, or (4) overtime worked by Contractor necessitating Engineer, Engineer's Consultants, Resident Project Representative, or Resident Project Representative staff, if any, to work extraordinary overtime. Such overtime would not have been contemplated by Owner at time of bid Opening."

SC-15.03.A Add the following subparagraphs immediately after paragraph 15.03.A of the General Conditions:

1. A phase of the Work shall be Substantially Complete when the Work associated with that phase can treat wastewater to the quality and in the quantity in accordance with the Contract Documents. All process equipment, associated facilities, and controls associated with a phase of the work shall be installed and operational, or temporary arrangements satisfactory to Owner shall have been made. All performance testing need not be completed prior to the date of Substantial Completion.
2. For the work to be considered substantially complete, all portions of the work must be operational and ready for Owner's continuous use.

SC-15.06.D In the first sentence of paragraph 15.06.D of the General Conditions, delete the word "Thirty" and replace with "Sixty".

SC-15.06.E Final Payments: Add the following subparagraphs immediately after paragraph 15.06.D:

- E. Final Payments: At the project's completion, the Contractor shall execute a Release and Lien Waiver to release all claims against the Owner arising under and by virtue of his Contract. The date of the Release shall be that agreed to for the final acceptance of the project with the Owner. The Release form and Contractor's Affidavit form are included at the end of these Supplementary Conditions.

SC-15.08.A Delete "Substantial Completion" and insert "final acceptance" in lieu thereof.



*SC-15.08.B Delete "Substantial Completion" and insert "final acceptance" in lieu thereof.*

*SC-15.08 Add the following paragraphs immediately after paragraph 15.08.E of the General Conditions:*

- F. Contractor's obligation under this paragraph includes also providing a correction period from the substantial completion of any early completion items until the project's final completion and the beginning and completion of the 1-year completion's period as defined in paragraph 15.08.A.
- G. Remedying Defects: If, at any time before expiration of the correction period under 15.08.A, Owner determines that the goods are defective, Contractor shall either correct the defects or remove the goods and replace them with non-defective goods.
- H. Owner May Remedy: If Contractor fails to take action as required by Owner in accordance with paragraph 15.08.B, Owner may, after ten days' written notice to Contractor, remedy any such deficiency, instead of requiring removal or replacement. In an emergency where delay would cause serious risk of loss or damage, Owner may take such action without notice to or waiting for action by Contractor.
- I. Correction Period: Contractor's responsibility for remedying defects will extend for a period of one (1) year after date of final acceptance, or for such longer period of time as may be prescribed by law or by provisions of manufacturer's warranty or guarantee in conformance with the Contract Documents.

#### **ARTICLE 16 - SUSPENSION OF WORK AND TERMINATION**

*SC-16.01 Delete paragraph 16.01.A of the General Conditions and insert the following in lieu thereof:*

- 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. At the discretion of the Owner, the Contractor may be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work. Contractor shall not be entitled to any delay damages due to the suspension.

*SC-16.02 Delete paragraphs 16.02.A through 16.02.D of the General Conditions and insert the following in lieu thereof:*

- A. If Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure the completion of the Work within the Contract Times, or any extension thereof, or fails or refuses to complete such Work within such extension, or if Contractor should be adjudged bankrupt, or if Contractor should make assignment for the benefit of Contractor's creditors, or if Contractor files a petition to take advantage of any debtor's act, or if a receiver should be appointed on account of Contractor's insolvency, or if Contractor or any Subcontractor should violate any provision of the Contract, or if Contractor should persistently refuse or should fail to supply enough properly skilled workmen or proper materials to complete the Work in the time specified, or if Contractor should fail to make prompt payment to Subcontractors or for materials or labor, or if Contractor should disregard laws, ordinances, or instructions given by Owner, Engineer, or Owner's Operating Agent or disregard in any substantial way any provisions of the Contract Documents; Owner may without prejudice to any other right or remedy, serve written notice upon Contractor and Contractor's surety of Owner's intention to terminate the Contract. Such notice will contain the reasons for Owner's intention to terminate the Contract and unless such violations shall cease and satisfactory arrangements for the corrections thereof have been accepted by Owner in writing within 10 days after the service of such notice, the Contract shall upon the

expiration of said 10 days cease and terminate. In the event of such termination, the Owner shall immediately serve written notice upon the Surety and Contractor, and Contractor shall be liable for all costs necessary to complete the Work.

- B. The Surety shall, after receipt of notification from Owner of termination of the Contract, take over and perform the Work, utilizing a contractor which qualified under the prequalification criteria and which is acceptable to Engineer. The Surety shall, within 10 days after receipt of the notice of termination, provide Owner with written notice of Surety's intent to take over and complete the Work in accordance with the Contract Documents, and shall commence the Work within 10 days thereafter.
- C. If the Surety does not reply to the notice of termination, or fails to perform the Work in compliance with the Contract Documents, or provides the Owner with written notice that Surety does not intend to take over and perform the Work to completion, Owner may without prejudice on the part of the Surety, take over the Work and prosecute the same to completion by any method Owner may deem advisable for the account at the expense of Contractor, and the Surety shall be liable to Owner for any excess cost or other damage occasioned Owner thereby. In such event Owner may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to Contractor that may be on the work sites and be necessary therefor. Contractor shall turn over to Owner's Operating Agent all materials and equipment in Contractor's possession that is to be incorporated into the Project, and shall make arrangements with Owner to turn over any materials or equipment in which Owner has made payment or partial payment but is not in Owner's possession.
- D. Upon completion of the Work, if the unpaid balance of the Contract Price exceeds the direct and indirect cost of completing the Work, including, but not limited to, all costs incurred by Owner from professional services and attorneys' fees and all costs generated to insure or bond the Work of substituted contractors or subcontractors used to complete the Work, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner within 30 days upon demand; on failure of Contractor to pay, the Surety shall promptly pay the difference to Owner upon written notice of Contractor's failure of payment. Such difference or any portion thereof not paid by the Contractor or the Surety within the 30 days following the date of mailing of the demand for payment, shall earn interest at the rate of 10 percent per annum or the maximum rate authorized by state law, whichever is lower.

*SC-16.03 Delete the term "16.02.B in paragraph 16.02.E in the first sentence and replace with "16.02.A"*

*SC-16.03 Delete paragraph 16.03 in its entirety and replace with the following in lieu thereof:*

#### 16.03 Owner May Terminate For Convenience

- A. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall
  - 1. cease operations as directed by the Owner in the notice;
  - 2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
  - 3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- B. In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

*SC-16.04 Delete paragraph 16.04 in its entirety.*

**ARTICLE 17 - FINAL RESOLUTION OF DISPUTES**

*SC 17.01B Subparagraph 17.01.B.2. shall be deleted in its entirety.*

*SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.*

*SC-17.02 Dispute Resolution Process: Non-Binding Mediation*

- A. Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, shall, after written recommendation by the Engineer or thirty (30) days after submission of the Claim to the Engineer, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall be a condition precedent to the initiation of any litigation arising out of such Claims. Claims for injunctive relief shall not be subject to this Section.
- B. The parties shall endeavor to resolve their Claims by mediation. Requests for mediation shall be filed in writing with the other party to the Contract. Mediation shall be conducted by a mutually-agreed-upon mediator based in Webb County. In the event that the parties are unable to agree on a mediator then Owner shall determine who will be the mediator.
- C. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Commissioners Court, signed by the parties, if approved by the Commissioners Court, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.
- D. Any claim not resolved in mediation shall be subject to litigation in the State Courts of Webb County, Texas.


**ARTICLE 18- MISCELLANEOUS**

*SC-18.04.B. Add the following new subparagraph immediately after subparagraph 18.04.A.*


- B. This Agreement does not permit the recovery of damages, including without limitation, extended home office overhead expenses, general conditions, or other consequential damages, by Contractor for delay or disruption or for extension of time due to bad weather or acts of God or Owner caused suspension of Work. Contractor agrees that the only possible compensation for any delay is an extension of time.

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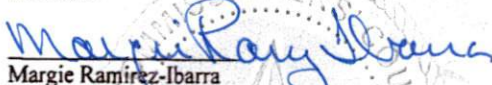
**OWNER:**  
WEBB COUNTY

  
Tano E. Tijerina  
Webb County Judge

**CONTRACTOR:**  
JMJ Diaz, Corp. d/b/a JMJ Constructors

  
Jose Luis Diaz  
President/Owner

**ATTEST:**

  
Margie Ramirez-Ibarra  
Webb County Clerk

**RELEASE**

FROM: Contractor's Name \_\_\_\_\_  
Address \_\_\_\_\_  
Owner's Name \_\_\_\_\_  
Address \_\_\_\_\_

DATE OF CONTRACT:

Upon receipt of the final payment and in consideration of that amount, the undersigned does hereby release the Owner and its agents from any and all claims arising under or by virtue of this Contract or modification thereof occurring from the undersigned's performance in connection with the project.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2023

\_\_\_\_\_  
Notary Public

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

**CONTRACTOR'S  
AFFIDAVIT**

FROM: Contractor's Name \_\_\_\_\_

Address \_\_\_\_\_

TO: Owner's Name \_\_\_\_\_

Address \_\_\_\_\_

DATE OF CONTRACT: \_\_\_\_\_

I hereby certify that all claims for material, labor, and supplies entered into contingent and incident to the construction or used in the course of the performance of the work on the \_\_\_\_\_ project have been fully satisfied.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

The Surety Company consents to the release of the retained percentage on this project with the understanding that should any unforeseen contingencies arise having a right of action on the bond that the Surety Company will not *wave* liability through the consent to the release of the retained percentage.

Dated \_\_\_\_\_

Surety Company

By \_\_\_\_\_

Resident Agent, State of