

**Contract Documents and Technical Specifications
for
Charlies Pasture Emergency Bulkhead Repairs**



September 2026

HDR Project No. 10474482



**HDR Engineering Inc.
Texas Reg. No. F-00754**

**555 N. Carancahua Street, Suite 1600
Corpus Christi, TX 78401
(361) 696-3300**

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS

for

Charlies Pasture Emergency Bulkhead Repairs

in

CITY OF PORT ARANSAS, TEXAS

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BIDDING REQUIREMENTS



CITY OF PORT ARANSAS, TEXAS

Charlies Pasture Emergency Bulkhead Repairs

NOTICE TO BIDDERS

NOTICE is hereby given that the City of Port Aransas, Texas, is requesting bids for **Charlies Pasture Emergency Bulkhead Repairs**. All bids must be labeled “**Charlies Pasture Emergency Bulkhead Repairs Bid Documents**” in the subject line. Texas Bid documents must be emailed to Anthony Allen (anthony.allen@hdrinc.com) and David Parsons (davidparsons@cityofportaransas.org) prior to **Wednesday, September 16, 2026, at 3:00 pm**. Physical delivery of bid documents is not required, and a public bid opening will not be held. Any bid delivered or received after 3:00 pm will not be considered. The City reserves the right to reject any or all bids.

This project will consist of 100 LF of metal sheet panel installation, disposal of failed concrete bulkhead panels, and backfill consisting of crushed stone, native fill and flowable fill.

Questions or requests for information relating to this request for bid may be directed to Anthony Allen, P. E., at anthony.allen@hdrinc.com no later than 12:00 P.M. CST on **Monday September 14, 2026**.

It shall be each bidder’s sole responsibility to inspect the site of the work and to inform itself regarding all local conditions under which the work is to be done. It shall be understood and agreed that all such factors have been thoroughly investigated and considered in the preparation of the bid submitted.

The successful Bidder must furnish **PAYMENT** and **PERFORMANCE BONDS** on the forms furnished with the **PROPOSAL**, in the amount of 100% of the total contract price, from a surety company holding a permit from the State of Texas to act as surety. The surety company must have a minimum Best Key Rating of “B”, or if the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The surety company and the agency or agent issuing the **PAYMENT** and **PERFORMANCE BONDS** must be authorized to issue and sign **PAYMENT** and **PERFORMANCE BONDS** in Texas in an amount equal to, or greater than, the total Contract price.

The City of Port Aransas reserves the right to reject any or all bids and to waive any informalities in the bidding. This contract will be awarded under Subchapter C, Texas Government Code Chapter 2269. In case of ambiguity or lack of clearness in stating the prices in the bids, the City of Port Aransas reserves the right to consider the most advantageous construction thereof, or to reject the bid. Unreasonable (or "unbalanced") unit prices will authorize the City of Port Aransas to reject the bid.

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

GENERAL INSTRUCTION TO BIDDERS

1. **SCOPE OF WORK**

The work to be done under the contract documents shall consist of the following:

Charlies Pasture Emergency Bulkhead Repairs

The CONTRACTOR shall furnish all labor, superintendence, machinery, equipment and all materials necessary to complete this project in accordance with the contract documents.

2. **COMPLIANCE WITH CONTRACT DOCUMENTS**

All work covered by this Contract shall be done in accordance with the contract documents as described in the General Conditions.

All bidders shall be thoroughly familiar with all of the requirements set forth in the contract documents for the construction of this project and shall be responsible for the satisfactory completion of all work contemplated by said contract documents.

3. **PLANS FOR USE BY BIDDERS**

It is the intent of the OWNER that all parties interested in submitting a bid on the project covered by the contract documents be given a reasonable opportunity to examine the documents and prepare a bid. The contract documents may be examined and downloaded electronically without charge as noted in the Notice to Bidders. Any party wishing to print a hard copy of the contract documents, including all plans and specifications, may do so at their own expense.

4. **INTERPRETATION OF TECHNICAL SPECIFICATIONS, PLANS AND OTHER DOCUMENTS**

Bidders desiring additional information or clarification of technical specifications, plans or other documents must make written requests for such information to the ENGINEER as the OWNER's representative two (2) days before the deadline specified for receipt of bids. Answers to all such requests will be given in writing, in addendum form, to all bidders, and all addenda will be bound with and become a part of the contract documents. No written or oral explanation or interpretation except that which is provided by the addenda prepared by the ENGINEER will be considered official or binding. If the bidder should find discrepancies in or omissions from the technical specifications or plans, or should some doubt exist as to their meaning, the bidder shall notify the ENGINEER in writing so that a written addendum may be sent to all bidders. It is the responsibility of the bidders to know if they have received all such addenda. A complete file on all addenda issued will be maintained at the ENGINEER's office. In the event a bidder shall fail to seek clarification or interpretation of any part or portions of the technical specifications, plans or other documents, such bidder shall be presumed to have full knowledge of the interpretation by the ENGINEER.

5. CONDITIONS OF WORK/INSPECTION OF SITE

Each bidder shall fully inform himself of the construction and working conditions under which the work will be performed. Bidders shall inspect the site and thoroughly familiarize themselves with the full bid documents including technical specifications and plans. Failure to do so will not relieve a successful bidder of his obligation to perform the work in accordance with contractual requirements. It is understood that the bid prices shall include the furnishing of all superintendence, labor, material, machinery, equipment, tools, transportation, services and other means of construction, including parts, incidentals and appurtenances, as necessary to complete the work in accordance with the contract documents, technical specifications and plans.

Bidder should carefully examine the bidding documents and the site to determine the actual conditions under which work will be done. Data in the bidding documents pertaining to existing conditions is for convenience only and does not supplant obtaining firsthand information at the site. Submission of a bid constitutes acceptance by the bidder of existing site conditions as part of the requirements of this work.

6. SUBSURFACE INFORMATION

Any information provided in regard to subsurface data, test borings, etc., is to be considered approximate. Soil reports, if any, that the ENGINEER has obtained for this project will be provided to the bidders for their use. The interpretation of soil information, results of soil borings, etc., is in no way guaranteed.

7. OPEN SPECIFICATIONS

Where equipment or materials are specified by a trade or brand name, it is not the intention of the OWNER to discriminate against an equal product of another manufacturer but rather to set a definite standard of quality and/or performance and to establish an equal basis for the evaluation of bids. Where the words "equivalent" or "equal to" are used, they shall be understood to mean that the thing referred to shall be, in the opinion or judgment of the ENGINEER, the equivalent of or equal to the product or item specified by name. Unless otherwise specified, all materials shall be the best of their respective kinds and shall be, in all cases, fully equivalent to approved samples. Notwithstanding that the words "equivalent", "equal to" or other such expressions may be used in the specifications in connection with a material, manufactured article or process, the material, article or process specifically designated shall be used unless a substitute shall be approved in writing by the ENGINEER. The ENGINEER has the right to require the use of such specifically designated materials, articles or processes.

8. PREPARATION OF BID PROPOSAL

Unless otherwise directed in the Notice to Bidders, bids shall be submitted in duplicate upon forms furnished by the OWNER or copies thereof. All bids shall be prepared in compliance with the requirements of the Notice to Bidders, these instructions and any instructions printed on the prescribed forms. All blank spaces in the form shall be correctly filled in for which he

proposes to do the work contemplated or to furnish the materials required. Such prices shall be written in ink, distinctly and legibly, or typewritten. Amounts shall be extended and totaled, and no change shall be made in the phraseology of the form or of the bid items thereon. If optional items are shown on the bid form and the bidder elects not to bid on such optional items, then "No Bid" must be entered in the blank spaces provided. If a space is left blank on the bid form, the OWNER will interpret such blank as a "No Bid".

The bidder must sign the bid proposal in ink in the space provided on the bid form; unsigned bids will not be accepted. If the proposal is submitted by an individual, his name must be signed by him or his duly authorized agent. A bid submitted by a sole proprietorship must be signed by the proprietor and must clearly set out the name under which the proprietor is conducting business. If the proposal is submitted by a firm, association or partnership, then the name and address of the firm, association or partnership must be shown together with the name and address of each member, and the proposal must be signed by a member of the firm, association or partnership or other person duly authorized.

If the proposal is submitted by a company or corporation, the company or corporate name and business address, the name of the registered agent, the address of the registered office, and the names, addresses and offices of each corporate officer, must be given. Bids submitted by a corporation must be signed by an officer of the corporation having the authority to execute such documents for the corporation, which authority is granted either by the corporate charter, the by-laws of the corporation or a resolution of the board of directors of the corporation, and shall specify under what authority the proposal is signed; the proposal shall be attested to by the secretary or an assistant secretary of the corporation, and the corporate seal shall be affixed thereto.

Powers of attorney authorizing agents or others to sign proposals must be properly certified and must be in writing and submitted with the proposal.

Each bid proposal shall be emailed, addressed as specified in the Notice to Bidders and bearing the bidder's name and the notation "Charlies Pasture Emergency Bulkhead Repairs"

9. QUESTIONS

Submit questions about bidding documents in writing to the ENGINEER. Inquiries are permitted until two (2) days prior to bid deadline. Necessary replies will be issued to bidders of record as addenda, which become a part of the bidding documents. Oral instructions do not form a part of the bidding documents. Bidders should contact the ENGINEER not less than 24 hours before bid opening to secure any addenda that may affect bidding.

10. BID BOND NOT REQUIRED

11. LIST OF SUBCONTRACTORS AND MAJOR SUPPLIERS

With the bid, submit a list of subcontractors for major portions of the work and major suppliers. Give the names and addresses of the selected subcontractors and major suppliers listed in the bid proposal. Include on the list all “local” subcontractors and major suppliers. “Local” shall be defined as those subcontractors and major suppliers whose principal business location is in Nueces County.

12. STATEMENT OF QUALIFICATIONS

Each bid must be accompanied by a statement of the qualifications of the Bidder to properly execute the work. No bid will be considered unless such a statement is submitted. Include in the statement of qualifications a list of five (5) references minimum. The references shall consist of projects of similar nature, cost of the project, OWNER's name, ENGINEER or prime contact and telephone number.

Before being awarded the Contract, the apparent low, responsive and responsible bidder must identify the foreman intended to be assigned on the project. Once approved by the OWNER, the foreman may not be removed from the project unless approved in writing by the OWNER. This specifically precludes the foreman supervising more than one jobsite and specification requires that the foreman be on the jobsite 100% of the time when work is being performed. If the foreman leaves the jobsite for any reason, work must cease.

13. All Bidders are required to submit the following with their bid:

- a. Bid Proposal
- b. List of Subcontractors and Major Suppliers
- c. Statement of Qualifications Form
- d. Financial Statement
- e. Conflict of Interest Questionnaire

Note to Bidders: The amount of experience on projects similar in type, size and complexity as this project which the bidders and key subcontractors have and the degree of success on such projects may affect the award.

It is the OWNER's desire that the successful bidder and his key subcontractors be qualified and experienced in providing successful projects; that such successful bidder and key subcontractors have recent successful experience on several projects of similar size and nature as this project. Failure to demonstrate satisfactory experience may result in rejection of the bid even if the bid is the lowest bid.

14. FINANCIAL STATEMENT

Each bid must be accompanied by a financial statement of the bidder as reflected by his most recently prepared statement; the financial statement submitted must be current and shall not have been prepared prior to twelve (12) months immediately preceding the date specified for

receipt of bids. The financial statement shall be submitted in a sealed envelope, properly identified as to contents and project description. The bidder's financial statement will be examined only if the bid submitted is actively considered for award; otherwise, it will be returned unopened after the execution of the Contract.

15. DELIVERY OF BIDS

It is the bidder's responsibility to deliver his bid in accordance with the instructions contained in the Notice to Bidders. Bids that have not been received by the date and time specified will not be considered.

16. BID MODIFICATIONS

At any time prior to the deadline set for receipt of bids, a bid may be withdrawn and resubmitted by submitting a written request to do so to the person who holds the bid, but no proposal may be altered after the closing time set for receipt of bids. In addition, bidder may not modify or withdraw its bid by verbal, facsimile, or electronic means.

17. WITHDRAWAL OF BID

At any time prior to the time set for opening of the bids, a bid proposal may be withdrawn by submitting a written request to do so to the person who holds the bid.

18. REJECTION OF IRREGULAR OR IMPROPER BID

Any bid which contains any omission, alteration, erasure, addition or change of any nature, or which does not include prices for each and every bid item (excluding optional items) may, at the option of OWNER, be deemed irregular. In order for any such bid to be considered, any alteration, erasure or other change must be initialed by the bidder prior to submission of the bid. In addition, any bid in which the prices are obviously unbalanced or which fails in any manner to conform to the bidding procedures as set forth may be considered irregular. Any bid proposal which is deemed irregular may be rejected and returned to the bidder without being considered.

Further, any proposal containing any conditions which provide for changes in the stated bid price due to increases or decreases in the cost of materials, labor or other items required for the project will be rejected and returned to the bidder without being considered.

19. OWNER'S RIGHT TO REQUIRE ADDITIONAL INFORMATION

The OWNER reserves the right, after the bids have been opened and before the contract has been awarded, to conduct such investigations as the OWNER deems necessary to assist in the evaluation of the bids and to establish the responsibility, qualifications and financial ability of bidders, proposed subcontractors, suppliers and other persons and organizations to perform the work in accordance with the Contract Documents; and to require of a bidder additional

information to aid in the evaluation of the bid and the bidders qualifications including but not limited to the following information:

- (a) The experience record of the bidder and key subcontractors, suppliers and other persons showing completed jobs of similar scope and work requirements to the one covered by the proposed Contract and all work in progress with bond amounts and percentage completed;
- (b) A sworn statement of the current financial condition of the bidder, key subcontractors and suppliers
- (c) An equipment schedule.

20. AWARD OF CONTRACT

Unless all bids are rejected, the OWNER will award the Contract as promptly as possible, consistent with the time required for a thorough analysis of the bids submitted. However, the OWNER reserves the right to delay award for sixty (60) days after receipt of bids. If no award is made within sixty (60) days after receipt of bids, a bidder may withdraw his bid without prejudice to himself by submitting a written request for its withdrawal to the person who holds the bid. The Contract will be awarded to the lowest responsible bidder as provided by Texas Government Code Chapter 2269, Subchapter C. In determining the award of the Contract, the OWNER may consider:

- the purchase price;
- the reputation of the bidder and of the bidder's goods or services (including subcontractors);
- the quality of the bidder's goods or services (including subcontractors);
- the extent to which the goods or services meet the OWNER's needs;
- the bidder's past relationship with the OWNER;
- the impact on the ability of the OWNER to comply with laws and rules;
- relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
- the total long- term cost to the OWNER to acquire the bidder's goods or services; and
- any relevant criteria specifically listed in the request for bids.

The OWNER reserves the right to reject any or all bids and to waive bid irregularities as the interest of the OWNER may require. Also, the OWNER reserves the right to reject the bid of any bidder if the OWNER believes that it would not be in the best interest of the Project to make an award to that bidder, whether because the bid is not responsive or the bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the OWNER. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sums.

21. DEFAULT

The failure of the successful Bidder to execute an Agreement within five (5) days after the prescribed forms are presented for signature, or within such extended period as the OWNER may grant, based upon reasons determined sufficient by the OWNER shall constitute a default,

and the OWNER may either award the Contract to the next lowest responsible Bidder or re-advertise for Bids, and may charge the defaulting Bidder the amount of the Bid Bond. If a more favorable Bid is received by re-advertising, the defaulting Bidder shall have no claim against the OWNER for a refund.

22. PERFORMANCE AND PAYMENT BONDS

The successful Bidder must furnish PERFORMANCE and PAYMENT BONDS on the forms furnished with the PROPOSAL, in the amount of 100% of the total contract price, from a surety company holding a permit from the State of Texas to act as surety. The surety company must have a minimum Best Key Rating of "B", or if the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the related rules and regulations of the Treasury Department. The surety company and the agency or agent issuing the PAYMENT and PERFORMANCE BONDS must be authorized to issue and sign PAYMENT and PERFORMANCE BONDS in Texas in an amount equal to, or greater than, the total Contract price.

23. INSURANCE

The CONTRACTOR shall not commence work under this Contract until it has obtained all insurance as required in the Insurance Requirements and Acknowledgement Form, set forth in the contract documents, from an underwriter authorized to do business in the State of Texas and satisfactory to the OWNER. Proof of coverage shall be furnished to the OWNER and written notice of cancellation or any material change shall be provided to the OWNER not less than thirty (30) days in advance of cancellation or change. All policies shall contain an agreement on the part of the insurer waiving the right to subrogation.

The insurance certificates furnished shall name the OWNER, HDR Engineering, Inc., their agents and employees, as an additional insured and shall further state that all subcontractors are named as additional insured or, in the alternative, shall be accompanied by a statement from the CONTRACTOR to the effect that no work on this particular project shall be subcontracted.

24. BOUND COPIES OF CONTRACT DOCUMENTS

The Agreement, Bonds and all related contract documents will be prepared and signed in not less than **five (5)** multiple original counterparts. Each set of contract documents shall be bound and shall include all documents made available to bidder for his inspection in accordance with the Contract.

The OWNER will furnish the CONTRACTOR with **two (2)** sets of conforming contract documents, technical specifications and plans free of charge. Additional sets, if needed, can be obtained by the CONTRACTOR at its own expense. Plans and specifications for use during

construction will only be furnished directly to the CONTRACTOR. The CONTRACTOR shall then distribute copies of plans and specifications to suppliers, subcontractors or others as required for proper prosecution of the work contemplated by the CONTRACTOR.

25. TIME AND ORDER FOR COMPLETION

The construction covered by the contract documents shall commence within five (5) days after written Notice to Proceed shall have been given by the ENGINEER and be completed within _____ **calendar days** from the date specified in the Notice to Proceed.

Failure of the CONTRACTOR to complete the work within the contract time, including any extensions granted shall entitle the OWNER to deduct from the money due to the CONTRACTOR an amount equal to \$500 for each calendar day of delay in completion of the work, not as a penalty, but as liquidated damages and added expense for supervision.

The CONTRACTOR will be permitted to prosecute the work in the order of his own choosing unless stated otherwise in the Contract Documents, provided, however, the OWNER reserves the right to require the CONTRACTOR to submit a progress schedule of the work contemplated by the contract documents. In the event the OWNER requires a progress schedule to be submitted and it is determined by the OWNER that the progress of the work is not in accordance with such schedule, the OWNER may direct the CONTRACTOR to take such action as the OWNER deems necessary to insure completion of the project within the time specified.

26. WAGE RATES

The CONTRACTOR must abide by the Wage and Hour Laws of the State of Texas and must pay not less than the legally prescribed rate for Nueces County.

27. TEXAS STATE SALES TAX

This Contract is issued by an organization that qualifies for exemption provisions pursuant to provisions of Tex. Tax Code §§ 151.301, 151.307, 151.309 and 151.311.

The CONTRACTOR must obtain a limited sales, excise and use tax permit or exemption certificate which shall enable him to buy the materials to be incorporated into the work without paying the tax at the time of purchase.

28. CONTRACTORS REPRESENTATIVE

The successful bidder shall be required to have a responsible local representative available at all times while the work is in progress under this Contract. The successful bidder shall be required to furnish the name, address and telephone number where such local representative may be reached during the time that the work contemplated by this Contract is in progress.

29. WORKING HOURS

All construction work under this contract shall be performed between the hours of 6:00 a.m. to 7:00 p.m., Monday through Saturday and 8 a.m. to 5:00 p.m. on Sunday, unless specific authorization is granted by the project representative after obtaining OWNER's concurrence, or unless extension of working hours is necessary either to avoid lengthy interruption of utility service to the OWNER's customers, or due to an emergency situation.

Construction work under this Contract requiring an on-site project representative will not be performed on weekends or holidays unless the following conditions exist:

- (a) The project being constructed is essential to the OWNER's ability to provide the necessary service to its citizens; or
- (b) Delays in construction are due to factors outside the control of the CONTRACTOR. The CONTRACTOR is approaching the penalty provisions of the Contract and can show that he has made a diligent effort to complete the Contract within the allotted time.

Before construction work requiring an on-site project representative is to be performed on weekends or holidays, the CONTRACTOR must notify the OWNER's representative not less than three (3) full working days prior to the weekend or holiday he desires to do work and obtain written permission from the OWNER's representative to do such work. The final decision on whether to allow construction work requiring an on-site project representative on weekends or holidays will be made by the OWNER's representative in coordination with the OWNER.

The CONTRACTOR is made aware that no work shall be permitted on legal holidays.

Construction work requiring an on-site representative will be any work where excavation, installation of pipes, materials, backfill or paving surface material installation is occurring and any work where investigation processes or testing processes are occurring or are required.

In any event, if a condition should occur or arise at the site of this project or from the work being done under this Contract which is hazardous or dangerous to property or life, the CONTRACTOR shall immediately commence work, regardless of the day of the week or the time of day, to correct or alleviate such condition so that it is no longer dangerous to property or life.

30. MATERIALS AND WORKMANSHIP

The intent of these contract documents is that only materials and workmanship of the best quality and grade will be furnished. The fact that the specifications may fail to be sufficiently complete in some detail will not relieve the CONTRACTOR of full responsibility for providing materials of high quality and for protecting them adequately until completion of the project and acceptance by the OWNER. The presence or absence of a representative of the OWNER on the construction site will not relieve the CONTRACTOR of full responsibility for

complying with this provision. The specifications for materials and methods set forth in the contract documents provide minimum standards of quality which the OWNER believes necessary to procure a satisfactory project.

31. GUARANTEES

All equipment and materials incorporated in the project and all construction shall be guaranteed against defective materials and workmanship. Prior to final acceptance, the CONTRACTOR shall furnish the OWNER with a written general guarantee which shall provide that the CONTRACTOR shall remedy any defects in the work, at no cost to the OWNER, and pay for any and all damages of any nature whatsoever resulting from such defects when such defects appear as a result of defective materials or workmanship within one (1) year from the date of final acceptance of the work. Upon notice from OWNER, his agent or assigns, repair defects in all construction, which develop during specific period at no cost to OWNER or his assigns. Neither final acceptance nor final payment nor any provision in Contract Documents relieves CONTRACTOR of above guarantee. Notice of observed defects upon notice entitles OWNER or his assigns to repair or replace it and recover reasonable cost therefrom from CONTRACTOR and/or his surety. This guarantee does not include damage due to improper operation and maintenance by the OWNER, provided the CONTRACTOR provides the following:

- The CONTRACTOR furnish the OWNER with written operational and maintenance instructions on all items.
- During the warranty period, the CONTRACTOR makes trips to the project site at six (6) months and eleven (11) months and inspects the items for proper operation and maintenance.
- After each inspection trip, the CONTRACTOR shall submit his findings in writing to the OWNER and the ENGINEER.

Failure to fulfill any one or all of these conditions will make the CONTRACTOR liable for repairing damage (at no cost to the OWNER) to items under warranty, even if in his opinion, it was due to improper operation and/or maintenance by the OWNER.

32. PROTECTION OF THE WORK

The CONTRACTOR shall be responsible for the care, preservation, conservation and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities and all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid or not paid for such work until the date the OWNER issues its certificate of completion to the CONTRACTOR.

33. PROTECTION OF SUBSURFACE LINES AND STRUCTURES

It shall be the CONTRACTOR's responsibility to prosecute the work contemplated by the contract documents in such a way as to exercise due care to locate and prevent damage to all underground pipelines, utility lines, conduits or other underground structures which might or

could be damaged by CONTRACTOR during the construction of the project contemplated by these contract documents. The OWNER will furnish CONTRACTOR with the approximate information of utility lines of which it has knowledge. However, such fact shall not relieve the CONTRACTOR of his responsibilities aforementioned; the location and depth of utilities shown on any drawings must be regarded as approximate, and it shall be the responsibility of the CONTRACTOR to determine for himself the exact location and depth of any utilities which exist in the project site. All such underground lines or structures cut or damaged by CONTRACTOR during the prosecution of the work contemplated by this Contract shall be repaired immediately by CONTRACTOR, at CONTRACTOR's expense, to the satisfaction of the OWNER.

34. BARRICADES AND SAFETY MEASURES

The CONTRACTOR shall, at its own expense, furnish and erect such barricades, fences, lights and danger signals, and shall take such other precautionary measures for the protection of persons, property and the work as may be necessary.

The CONTRACTOR will be held responsible for all damage to the work due to failure of barricades, signs and lights to protect it; and when damage is incurred, the damaged portion shall be immediately removed and replaced by CONTRACTOR at his own cost and expense.

The CONTRACTOR's responsibility for maintenance of barricades, signs and lights shall not cease until the date of issuance to CONTRACTOR of the OWNER's certificate of acceptance of the project.

The CONTRACTOR will be held responsible for all damage to the work which may occur prior to final acceptance by the OWNER regardless of the adequacy of protective barricades and lighting, and when damage is incurred, the damaged portion shall be immediately removed and replaced by CONTRACTOR at its own cost and expense.

35. EXPLOSIVES

The use of explosives will not be permitted.

36. PAYMENT OF EMPLOYEES

The CONTRACTOR and each of his subcontractors agree to pay all employees engaged in work on the project under this Contract in full (less mandatory legal deductions), and further agree that no such employees shall look to the OWNER for payment of wages or compensation earned by reason of such work.

37. PAYMENT TO CONTRACTOR

All payments due to CONTRACTOR shall be made in accordance with the provisions of the General Conditions of Agreement of the contract documents.

38. AFFIDAVITS OF BILLS PAID

The OWNER reserves the right, prior to final acceptance of this project and with the project's pay estimate submitted each month, to require the CONTRACTOR to execute an affidavit certifying that all bills for labor, materials and incidentals incurred in the construction of the improvements contemplated by the contract documents have been paid in full and that there are no claims pending of which the CONTRACTOR has been notified.

39. TEC FORM 1295

The CITY OF PORT ARANSAS may not enter into this Contract unless the CONTRACTOR submits a disclosure of interested parties to the OWNER at the time the Contractor submits the signed Contract to the OWNER. The CONTRACTOR agrees to submit such disclosure as required by Section 2252.908 of the Texas Government Code on form 1295, prescribed by the Texas Ethics Commission, unless the CONTRACTOR is a publicly traded entity or a wholly owned subsidiary of same, in which case no disclosure is required. The CONTRACTOR agrees to access the Texas Ethics Commission website and complete the form 1295, receive a confirmation number and a PDF version of the completed form 1295, execute and notarize a hard copy version of the completed form 1295, and submit it, along with the confirmation number, to the OWNER.

40. HOUSE BILL 89 FORM

Verification No Boycott Israel. As required by Texas Government Code Chapter 2270, Subtitle F, the Bidder hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The OWNER will require the successful bidder to complete "The State of Texas – House Bill 89 Verification" Form prior to contract award.

41. HOUSE BILL 1196 FORM

Verification No Undocumented Workers. As required by Texas Government Code Chapter 2264, Subtitle F, the Bidder hereby verifies that it does not and will not knowingly employ an undocumented worker. If, after receiving a public subsidy, the Bidder is convicted of a violation under 8 U.S.C. Section 1324a(f), the Bidder shall repay the amount of the public subsidy with interest at a rate of five percent (5%), and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the OWNER notifies the above-named company of the violation. The OWNER will require the successful bidder to complete "The State of Texas – House Bill 1196 Verification" Form prior to contract award.

42. SENATE BILL 252 FORM

Verification Foreign Terrorist Organization Prohibition. As required by Texas Government Code Chapter 2252, Subtitle F, and Chapters 806 and 807, the Bidder hereby verifies that it does not engage in business with Iran, Sudan or any foreign terrorist organization. The term “foreign terrorist organization” as used in this section means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189. The OWNER will require the successful bidder to complete “The State of Texas – Senate Bill 252 Verification” Form prior to contract award.

43. SENATE BILL 13 FORM

Verification No Boycott Energy Companies. As required by Texas Government Code Chapter 2274, Subtitle F, the Bidder hereby verifies that it does not boycott energy companies currently and will not boycott energy companies during the term of this Agreement. The OWNER will require the successful bidder to complete “The State of Texas – Senate Bill 13 Verification” Form prior to contract award.

44. SENATE BILL 19 FORM

Verification No Discrimination Against Firearm Entity or Firearm Trade Association. As required by Texas Government Code Chapter 2274, Subtitle F, the Bidder hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against firearm entity or firearm trade associations currently and will not discriminate against a firearm entity or fire trade association during the term of this Agreement. The OWNER will require the successful bidder to complete “The State of Texas – Senate Bill 19 Verification” Form prior to contract award.

45. SENATE BILL 2116 FORM

Verification Critical Infrastructure: Not Owned or Controlled by China, Iran, North Korea, Russia or a Designated Country. As required by Texas Government Code Chapter 2274, Subtitle F, the Bidder hereby verifies that it will not grant direct or remote access to or control of critical infrastructure in this State, excluding access specifically allowed by the governmental entity for product warranty and support purposes and is not owned by or the majority of stocks or other ownership interest of the company is held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia or a designated country; or (ii) a company or other entity, including a government entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country. The OWNER will require the successful bidder to complete “The State of Texas – Senate Bill 2116 Verification” Form prior to contract award.

END OF GENERAL INSTRUCTIONS TO BIDDERS

SUBCONTRACTORS AND MAJOR SUPPLIERS FORM

SUBCONTRACTORS AND TYPE OF WORK TO BE PERFORMED

LOCAL SUBCONTRACTORS

(PRINCIPAL BUSINESS LOCATION IN NUECES COUNTY)

MAJOR SUPPLIERS

LOCAL MAJOR SUPPLIERS

(PRINCIPAL BUSINESS LOCATION IN NUECES COUNTY)

**BID PROPOSAL
BID FOR UNIT PRICE CONTRACT**

DATE: _____

Proposal of

(Hereinafter called "Bidder")

TO: THE MAYOR AND MEMBERS OF CITY COUNCIL
CITY OF PORT ARANSAS
(Hereinafter called "Owner")

The Bidder, in compliance with your invitation for bids for the construction of:

**Charlies Pasture Emergency Bulkhead Repairs
HDR Project No. 10474482**

having carefully examined the plans, specifications, instructions to bidders, notice to bidders and all other related contract documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials and supplies and to construct the project in accordance with the plans, specifications and contract documents, within the time set forth therein and at the prices stated in Exhibit "A" attached hereto.

The Bidder binds himself, upon acceptance of his proposal, to execute a contract and any required bonds, according to the accompanying forms, for performing and completing the said work within the time stated and for the prices stated in Exhibit "A" of this proposal.

Bidder hereby agrees to commence the work on the above project on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within _____ **consecutive calendar** days thereafter as stipulated in the specifications and other contract documents. Bidder hereby further agrees to pay to Owner as liquidated damages the sum of **\$ 500** for each consecutive calendar day in excess of the time set forth hereinabove for completion of this project, all as more fully set forth in the General Conditions of the contract documents.

The following unit prices are bid and shall be complete compensation as measured in place for all materials, labor, overhead, profits and any other cost that is necessary to complete the job to the Engineers specifications and satisfaction. It is also understood that the quantities shown are only an estimate of the work to be done. No re-negotiation of prices bid will be made for overruns or underruns of quantities.

Bidder understands and agrees that this bid proposal shall be completed and submitted in accordance with the General Instructions to Bidders.

Bidder understands that the Owner reserves the right to reject any or all bids, use deductible bid items and to waive any formality in the bidding.

Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.

Bidder acknowledges receipt of the following addenda:

The undersigned Bidder hereby declares that he has visited the site of the work and has carefully examined the plans, specifications and contract documents pertaining to the work covered by this bid, and he further agrees to commence work on or before the date specified in the written notice to proceed and to substantially complete the work on which he has bid, as provided in the contract documents.

Unit Prices are to be shown in Figures. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

The unit prices shall include all labor, materials, dewatering, shoring, removal, overhead, incidental costs, fees, profit, insurance, etc., to cover the finished work of the several kinds called for.

The undersigned Bidder hereby declares to fully comply with the prevailing wage rates for Nueces County, and that he and their Subcontractors will pay not less than those for each craft or type of "Laborer", "Workman" or "Mechanic" employed on this project.

Bidder understands and agrees that the contract to be executed by Bidder shall be bound and include all contract documents made available to him for his inspection in accordance with the Notice to Bidders.

Respectfully submitted,

Bidder (Company Name)

Name of
Person Signing:_____

Signature

Office Held:_____

Bidder's
Address:_____

(If Bidder is a Corporation)

Attest:

Secretary

(Corporate Seal)

EXHIBIT-A
BID PROPOSAL
CITY OF PORT ARANSAS, TEXAS

A. CHARLIES PASTURE EMERGENCY BULKHEAD REPAIRS					
ITEM	ITEM DESCRIPTION	UNIT	QTY.	UNIT PRICE	TOTAL AMOUNT
1	Mobilization, Demobilization, General Conditions, Bonds and Insurance (Max 5% of Bid)	L.S.	1	\$	\$
3	Failed Concrete Bulkhead Wall Disposal	L.S.	1	\$	\$
4	New Metal Sheet Panel Wall	LF	101	\$	\$
5	Wall End Closure	EA.	2	\$	\$
6	No. 57 Crushed Stone Fill	CY	1,500	\$	\$
7	Native Fill	CY	1,800	\$	\$
8	Flowable Fill	CY	60	\$	\$
TOTAL					\$

Quantities depicted for fill are estimated. Final quantities will be determined during construction.

Contractor to provide the following details pertaining to the construction schedule			
B.	SCHEDULE & DETAILS		
1	Construction Start Date		mm/dd/yyyy
2	New Metal Sheet Panel Delivery Date to Construction Site		mm/dd/yyyy
3	Supplier That New Metal Sheet Panels Will Be Procured From		Vendor Name
4	New Metal Sheet Panel Wall Installation Completion Date		mm/dd/yyyy
5	Project Completion Date		mm/dd/yyyy
6	Total Construction Calendar Days		# of Days

City of Port Aransas, Texas
Charlies Pasture Emergency Bulkhead Repairs

STATEMENT OF BIDDER'S QUALIFICATIONS

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

Name of Bidder (Legal Name): _____ Date Organized: _____

Address: _____ Date Incorporated _____

Federal ID Number: _____ No. of Years in contracting business under present name: _____

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

CONTRACTS ON HAND (ATTACH PAGES AS REQUIRED):

Contract	Amount \$	Completion Date
----------	-----------	-----------------

Type of work performed by your company: _____

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

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

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

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

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

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

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

List the similar projects most recently completed by your firm (attach pages as required):

Project	Amount \$	Mo/Yr Completed
---------	-----------	-----------------

Major equipment available for this contract: _____

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

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

City of Port Aransas, Texas
Charlies Pasture Emergency Bulkhead Repairs

Bank References

Bank Name: _____ Contact Name: _____

Bank Address: _____

Phone Number: _____ Credit available: \$ _____

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

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

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

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

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner and/or Owner's Representative in verification of the recitals comprising this Statement of Bidder's Qualifications.

Executed this _____ day of _____, 20_____.

By: (Signature) _____ (Print Name) _____

Company Name _____ Title: _____

Notary Statement:

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

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

Notary Public

Signature

Printed Name

My Commission Expires: _____

The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

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

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

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

- (2) the vendor:

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

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

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

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

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

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

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

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

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

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

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

- (1) the date that the vendor:

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

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

- (2) the date the vendor becomes aware:

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

7

Name of signatory

Signature

Date

CONTRACT

FORMS

STANDARD FORM OF AGREEMENT

STATE OF TEXAS

COUNTY OF NUECES

THIS CONTRACT, made and entered into this, the ____ day of _____, A.D. 20____, by and between the City of Port Aransas, of the County of Nueces and State of Texas, acting by and through the undersigned City Manager thereunto duly authorized to do so, hereinafter referred to as “OWNER”, and _____, a corporation duly authorized to do business and existing under the laws of the State of Texas, acting by and through a duly authorized officer thereof as attested to by the Secretary of said corporation of the City of _____, County of _____, State of _____, hereinafter referred to as “CONTRACTOR”.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, and under the conditions expressed in the bond(s) bearing even date herewith (if any), the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction of certain improvements described as follows:

Charlies Pasture Emergency Bulkhead Repairs

and all necessary work of every kind or nature, including all extra work in connection therewith necessary to complete said improvements, under the terms as stated in the contract documents, including the General Conditions of Agreement, and, at its own proper cost and expense, to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Bidding Documents (Notice to Bidders, General Instructions to Bidders, etc.), General and Supplementary Conditions of Agreement, Special Conditions, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore, as prepared by HDR Engineering, Inc., hereinafter called “ENGINEER”, each of which has been identified by the CONTRACTOR and the ENGINEER, together with CONTRACTOR’s written Proposal, the General Conditions of Agreement and the Payment and

Performance Bonds hereto attached, all of which are made a part hereof and collectively evidence and constitute the entire Contract.

The CONTRACTOR hereby agrees to commence work within five (5) days after the date written notice to do so shall have been given to it and to complete the same within the time specified in the contract documents, subject to such extensions of time as shall be specified in the General and Supplementary Conditions or shall have been specifically agreed to in writing by the parties hereto, which writing shall be attached to this Contract as a part hereof.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract in accordance with the Proposal submitted therefor, which forms a part of this Contract, subject to additions and deductions as provided in the contract documents, and to make payment on account thereof as provided therein.

The undersigned persons executing this Contract and all other documents executed simultaneously herewith, do certify and attest that they are executing the same in their capacity and that they have authority to do so under the terms of the Charter, By-laws, ordinances, resolutions, and other applicable laws and regulations governing the OWNER and CONTRACTOR.

IN WITNESS WHEREOF, the City Manager has executed this Contract in the year and date first above written, under the authority granted to them by the City of Port Aransas.

CITY MANAGER, City of Port Aransas

ATTEST:

SECRETARY, City of Port Aransas

IN WITNESS WHEREOF, the undersigned officers of the corporation, whose names are hereinafter set out, do certify and attest that they have executed this Contract in their capacities as herein stated, for and on behalf of said corporation, and that they have authority to do so under specific authorization granted to them under the Charter or By-laws of said corporation or, if said Charter and By-laws are silent, then under authority granted to them under a resolution duly adopted by the Board of Directors of said corporation, as set out in the official minute book of said corporation, and an excerpt of said resolution is herein previously set out.

CONTRACTING CORPORATION (CONTRACTOR)

Officer

Office Held

ATTEST:

Secretary

PERFORMANCE BOND

STATE OF TEXAS

COUNTY OF NUECES

KNOW ALL MEN BY THESE PRESENTS THAT WE, _____,
as Principal, (the “CONTRACTOR”), and the other subscriber hereto, _____,
as Surety (the “SURETY”), do hereby acknowledge ourselves to be held and firmly bound to the City
of Port Aransas (the “OWNER”), of the County of Nueces and State of Texas, in the penal sum of
_____ (\$ _____) in lawful money of the United
States, for the payment of which sum, well and truly to be made to the OWNER, its successors and
assigns, CONTRACTOR and SURETY to bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the CONTRACTOR has executed a Contract in writing with the OWNER on the
day as specified in the Agreement for

Charlies Pasture Emergency Bulkhead Repairs

all of such work to be done as set out in full in said Contract Documents therein referred to and adopted
by the OWNER, all of which are made a part of this instrument as fully and completely as if set out in
full herein.

NOW THEREFORE, if the said CONTRACTOR shall faithfully and strictly perform the
Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect,
and in accordance with the Contract Documents referred to therein and shall comply strictly with each
and every provision of the Contract and with this Bond, then this obligation shall become null and
void and shall have no further force and effect; otherwise the same is to remain in full force and effect.
Should the CONTRACTOR fail to faithfully and strictly perform the Contract in all its terms,
including but not limited to the indemnifications thereunder, the SURETY shall be liable for all
damages, losses, expenses and liabilities that the OWNER may suffer in consequence thereof, as more
fully set forth herein.

IT IS FURTHER PROVIDED herein that pursuant to this undertaking, the CONTRACTOR hereof and the SURETY shall both be bound for such period of warranty as shall be expressed and set out in the General Conditions and Supplemental Conditions of Agreement, under the terms and conditions thereof for a period of one (1) year as is provided for in Chapter 2253, Texas Government Code, as amended.

It is further understood and agreed that the SURETY does hereby relieve the OWNER or its representatives from the exercise of any diligence whatever in securing compliance on the part of the CONTRACTOR with the terms of the Contract, and the SURETY agrees that it shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the CONTRACTOR in all matters pertaining to the Contract. The SURETY understands and agrees that the provision in the Contract that the OWNER will retain certain amounts due the CONTRACTOR until the expiration of 30 days from the acceptance of the Work is intended for the OWNER's benefit, and the OWNER will have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the SURETY hereon in any degree.

It is further expressly agreed by SURETY that the OWNER or its representatives are at liberty at any time, without notice to the SURETY, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any extension of time, any change in, addition to, or deduction from the Work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the SURETY therefrom.

It is further expressly agreed and understood that the CONTRACTOR and SURETY will fully indemnify, defend and save harmless the OWNER from any liability, loss, cost, expense, or damage arising out of CONTRACTOR's performance of the Contract.

If the OWNER gives SURETY notice of CONTRACTOR's default, SURETY shall, within 45 days, take one of the following actions:

1. Arrange for CONTRACTOR, with consent to the OWNER, to perform and complete the Contract; or
2. Take over and assume completion of the Contract itself, through its agents or through independent contractors, and become entitled to the payment of the balance of the Contract Price.

If the SURETY fails to take either of the actions set out above, it shall be deemed to have waived its right to perform and complete the Contract and receive payment of the balance of the Contract Price and the OWNER shall be entitled to enforce any remedies available at law, including but not limited to completing the Contract itself and recovering any cost in excess of the Original Contract price from the SURETY.

This Bond and all obligations created hereunder shall be performable in Nueces County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated herein by this reference.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other Party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said CONTRACTOR and SURETY have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)

Witness: (if not a corporation)

By: _____

Name: _____

Title: _____

Name of Contractor

By: _____

Name: _____

Title: _____

Date: _____

(SEAL)

Full Name of Surety

Address of Surety for Notice

ATTEST/SURETY WITNESS:

Telephone Number of Surety:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: Attorney in Fact

Date: _____

PAYMENT BOND

STATE OF TEXAS

COUNTY OF NUECES

KNOW ALL MEN BY THESE PRESENTS THAT WE, _____,
as Principal, (the “CONTRACTOR”), and the other subscriber hereto, _____,
as Surety (the “SURETY”), do hereby acknowledge ourselves to be held and firmly bound to the City
of Port Aransas (the “OWNER”), of the County of Nueces and State of Texas, in the penal sum of
_____ (\$ _____) in lawful money of the United
States, for the payment of which sum, well and truly to be made to the OWNER, its successors and
assigns, CONTRACTOR and SURETY to bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the CONTRACTOR has executed a Contract in writing with the OWNER on the
day as specified in the Agreement for

Charlies Pasture Emergency Bulkhead Repairs

all of such work to be done as set out in full in said Contract Documents therein referred to and adopted
by the OWNER, all of which are made a part of this instrument as fully and completely as if set out in
full herein.

NOW, THEREFORE, if the said CONTRACTOR shall pay all claimants supplying labor
and materials to him or a Subcontractor in the prosecution of the Work provided for in the Contract,
then, this obligation shall be void; otherwise the same is to remain in full force and effect;

PROVIDED HOWEVER, that this Bond is executed pursuant to the provisions of Chapter
2253, Texas Government Code, as amended, and all liabilities on this Bond shall be determined in
accordance with the provisions of said Article to the same extent as if it were copied at length herein.

IN WITNESS THEREOF, the said CONTRACTOR and SURETY have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)

Witness: (if not a corporation)

By: _____

Name: _____

Title: _____

Name of Contractor

By: _____

Name: _____

Title: _____

Date: _____

(SEAL)

Full Name of Surety

Address of Surety for Notice

ATTEST/SURETY WITNESS:

Telephone Number of Surety:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: Attorney in Fact

Date: _____

Implementation of House Bill 1295

Certificate of Interested Parties (Form 1295):

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission was required to adopt rules necessary to implement that law, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's website. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015. The commission also adopted new rules (Chapter 46) on November 30, 2015, to implement the law. The commission does not have any additional authority to enforce or interpret House Bill 1295.

Filing Process:

Starting on January 1, 2016, the commission will make available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

The governmental entity or state agency must notify the commission, using the commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency.

Information regarding how to use the filing application will be available on this site starting on January 1, 2016.

Additional Information:

HB 1295

Certificate of Interested Parties (Form 1295)

New Chapter 46, Ethics Commission Rules:

46.1. Application

46.3. Definitions

46.5. Disclosure of Interested Parties Form

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

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

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

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

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

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

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

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

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

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

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

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

STATE OF TEXAS – HOUSE BILL 89 VERIFICATION

I, _____, the undersigned representative of
(Person Name)

(Company or Business Name)

hereby referred to as company, being an adult over the age of eighteen (18) years of age, do hereby certify the above-named company, under the provisions of **Subtitle F, Title 10, Texas Government Code Chapter 2270:**

- 1. Does not boycott Israel currently; and**
- 2. Will not boycott Israel during the term of the contract for goods or services with the above-named Company, business or individual with the City of Port Aransas.**

Pursuant to Section 2270.001, Texas Government Code:

- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
- 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

Date

Position/Title

Signature of Company Representative

STATE OF TEXAS – HOUSE BILL 1196 VERIFICATION

I, _____, the undersigned representative of
(Person Name)

(Company or Business Name)

hereby referred to as company, being an adult over the age of eighteen (18) years of age, do hereby certify the above-named company, under the provisions of **Subtitle F, Title 10, Texas Government Code Chapter 2264:**

1. Does not and will not knowingly employ an undocumented worker; and
2. That if, after receiving a public subsidy, the above-named company is convicted of a violation under 8 U.S.C. Section 1324a(f), the above-named company shall repay the amount of the public subsidy with interest at a rate of five percent (5%), and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the Owner notifies the above-named company of the violation.

Pursuant to Section 2264.001, Texas Government Code:

1. *"Undocumented Worker" means an individual who, at the time of employment, is not:*
 - (A) *lawfully admitted for permanent residence to the United States; or*
 - (B) *authorized under law to be employed in that manner in the United States.*
2. *"Public Subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.*

Date

Position/Title

Signature of Company Representative

STATE OF TEXAS – SENATE BILL 13 VERIFICATION

I, _____, the undersigned representative of
(Person Name)

(Company or Business Name)

hereby referred to as company, being an adult over the age of eighteen (18) years of age, do hereby certify the above-named company, under the provisions of **Subtitle F, Title 10, Texas Government Code Chapter 2274:**

- 1. Does not boycott energy companies currently; and**
- 2. Will not boycott energy companies during the term of the contract for goods or services.**

Pursuant to Section 2274.001, Texas Government Code:

- 1. "Boycott Energy Companies" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:*
 - a. engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or*
 - b. does business with a company described by Paragraph (a) above; and*
- 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

Date

Position/Title

Signature of Company Representative

STATE OF TEXAS – SENATE BILL 19 VERIFICATION

I, _____, the undersigned representative of
(Person Name)

(Company or Business Name)

hereby referred to as company, being an adult over the age of eighteen (18) years of age, do hereby certify the above-named company, under the provisions of **Subtitle F, Title 10, Texas Government Code Chapter 2274:**

1. **Does not have a practice, policy, guidance, or directive that discriminates against firearm entity or firearm trade associations currently; and**
2. **Will not discriminate against a firearm entity or fire trade association during the term of the contract for goods or services.**

Pursuant to Section 2274.001, Texas Government Code:

1. *"Firearm entity" means:*
 - a. *a firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and*
 - b. *a sport shooting range as defined by Section 250.001, Local Government Code.*
2. *"Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:*
 - a. *is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;*
 - b. *has two or more firearm entities as members; and*
 - c. *is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.*
3. *"Ammunition" means a loaded carriage case, primer, bullet, or propellant powder with or without a projectile.*
4. *"Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases.*

5. *"Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.*
6. *"Discriminate against a firearm entity or firearm trade association"*
- a. *means, with respect to the entity or association, to:*
 - i. *refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;*
 - ii. *refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or*
 - iii. *terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and*
 - b. *does not include:*
 - i. *the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and*
 - ii. *a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship:*
 - 1. *to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or*
 - 2. *for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity of firearm trade association.*
7. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

Date

Position/Title

Signature of Company Representative

STATE OF TEXAS – SENATE BILL 252 VERIFICATION

I, _____, the undersigned representative of
(Person Name)

(Company or Business Name)

hereby referred to as company, being an adult over the age of eighteen (18) years of age, do hereby certify on behalf of the above-named company, under the provisions of **Subtitle F, Texas Government Code Chapter 2252, and Chapters 806 and 807 of the Texas Government Code:**

Foreign Terrorist Organization.

- 1. Neither the Company, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Company (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code.**
2. The term “foreign terrorist organization” as used in this section means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

Date

Position/Title

Signature of Company Representative

STATE OF TEXAS – SENATE BILL 2116 VERIFICATION

I, _____, the undersigned representative of
(Person Name)

(Company or Business Name)

hereby referred to as company, being an adult over the age of eighteen (18) years of age, do hereby certify the above-named company, under the provisions of **Subtitle F, Title 10, Texas Government Code Chapter 2274:**

1. **Will not grant direct or remote access to or control of critical infrastructure in this State, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and**
2. **Is not owned by or the majority of stocks or other ownership interest of the company is held or controlled by:**
 - a. **individuals who are citizens of China, Iran, North Korea, Russia or a designated country; or**
 - b. **a company or other entity, including a government entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country.**

regardless of whether the company's or its parent company's securities are publicly traded or the company or its parent company is listed on a public stock exchange as a Chinese, Iranian, North Korean, or Russian company or a company of a designated country.

Pursuant to Section 2274.0101, Texas Government Code:

1. *"Critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.*
2. *"Cybersecurity" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.*

3. *"Designated country" means a country designated by the governor as a threat to critical infrastructure under Section 2274.0103.*
4. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

Date

Position/Title

Signature of Company Representative

INSURANCE REQUIRED FOR THIS CONTRACT

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
• COMMERCIAL GENERAL LIABILITY 1. Commercial Broad Form 2. Premises – Operations 3. Underground Hazard 4. Products/Completed Operations 5. Contractual Liability 6. Independent Contractors 7. Personal and Advertising Injury Explosion, Collapse and Underground property damage hazards included. Products and Completed Operations Liability, Mobile Equipment Liability, Personal Injury Offenses and Contractual Liability shall be included. The policy will include the Per Project General Aggregate endorsement. This General Liability coverage will be primary and noncontributory to any policies written for the benefit of the Owner and HDR Engineering, Inc. Additional Insured and Waiver of Subrogation clauses in favor of the Owner and HDR Engineering, Inc..	\$1,000,000 Per Occurrence \$2,000,000 Annual Aggregate Limits
• AUTOMOBILE LIABILITY POLICY Coverage is to include all cars and trucks owned, rented, borrowed, hired, or leased, and others of non-ownership nature used by employees. Additional Insured and Waiver of Subrogation clauses in favor of the Owner and HDR Engineering, Inc.	\$1,000,000 Combined Single Limit
• WORKERS' COMPENSATION Statutory including Employer's Liability. Persons providing services on the project ("subcontractor") – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. Workers' Compensation and Occupational Disease Insurance in accordance with applicable laws. Must include Waiver of Subrogation.	Statutory
• BUSINESS UMBRELLA LIABILITY The Umbrella policy will provide coverage over the General Liability, Products Liability, Completed Operations Liability, Automobile Liability and Employers' Liability coverages. The Umbrella Liability policy will be following form to all primary policies' coverages.	\$1,000,000 Per Claim \$1,000,000 Annual Aggregate
• POLLUTION LIABILITY CONTRACTOR shall obtain and maintain coverage to include exposure of long-term environmental impact.	\$1,000,000 Aggregate Per Claim \$1,000,000 Limits
• BUILDER'S RISK Adequate to fully cover the insurable portion of the project. (Only applicable if there is a building on the project).	☐ Required ☒ Not Required

WORKERS' COMPENSATION INSURANCE COVERAGE

A. DEFINITIONS:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the CONTRACTOR's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in 406.096) - includes persons or entities performing or part of the services the CONTRACTOR has undertaken to perform on the project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent CONTRACTORS, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for employees of the CONTRACTOR providing services on the project for the duration of the project.
- C. The CONTRACTOR must provide a certificate of coverage to the OWNER ("CITY OF PORT ARANSAS") prior to being awarded the contract.
- D. If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER showing that coverage has been extended.
- E. The CONTRACTOR shall obtain from each person providing services on a project, and provide to the OWNER:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- (2) no later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The CONTRACTOR shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any changes that materially affects the provision of coverage of any person providing services on the project.
- H. The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

NOTICE
REQUIRED WORKER'S COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by worker's compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identify of their employer or status as an employee."

"Call the Texas Worker's Compensation Commission at (512) 440-3789 to receive information on the legal requirements for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

- I. The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
 - 2. provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage, showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. obtain from each other person with whom it contracts, and provide to the CONTRACTOR:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage shown extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. notify the OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 7. contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the project will be covered by worker's compensation coverage for the duration of the project, that the coverage agreements will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the CONTRACTOR void if the CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from the OWNER.

Insert Contractors Insurance

CONDITIONS
OF THE
CONTRACT

STANDARD GENERAL CONDITIONS

OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS

OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

- 22. *Engineer*—The individual or entity named as such in the Agreement.
- 23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- 24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
- 25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
- 26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
- 27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
- 28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
- 29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
- 30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
- 31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
- 32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

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

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

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

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

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

B. *Resolving Discrepancies*

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

3.04 *Requirements of the Contract Documents*

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

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

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

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

5.01 *Availability of Lands*

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

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:

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

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

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

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

5.04 *Differing Subsurface or Physical Conditions*

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

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

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

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

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

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

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

7.10 *Taxes*

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

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

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

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

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

D. Resubmittal Procedures for Shop Drawings and Samples

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

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

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

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

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

8.03 *Legal Relationships*

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

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

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

9.03 *Furnish Data*

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

9.04 *Pay When Due*

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

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

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

9.07 *Change Orders*

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

9.08 *Inspections, Tests, and Approvals*

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

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

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

9.11 *Evidence of Financial Arrangements*

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

9.12 *Safety Programs*

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

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

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

10.05 *Determinations for Unit Price Work*

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

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

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

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

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

10.08 *Compliance with Safety Program*

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

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

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

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

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

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

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
 - 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
 - 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
 - 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
 - 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

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

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

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

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

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

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

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

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

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

14.05 *Uncovering Work*

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

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work,

or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

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

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

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

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

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

18.10 *Headings*

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

SUPPLEMENTARY CONDITIONS

OF THE CONSTRUCTION CONTRACT

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SUPPLEMENTARY CONDITIONS

OF THE CONSTRUCTION CONTRACT

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). The General Conditions remain in full force and effect except as amended.

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

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

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

SC-1.01.A.16 Add the following to Paragraph 1.01.A.16.:

When the Project is to be constructed under multiple direct Contracts awarded by the Owner, the term "Contractor" shall mean the appropriate prime contractor. Whenever a specific prime Contractor is referred to, terms such as "General Contractor", "Electrical Contractor", "Plumbing Contractor", "HVAC Contractor", or other appropriate Contract-indicating term will be used.

SC-1.01.A.39 Amend Paragraph 1.01.A.39. by adding the following subparagraphs:

- a. Design Specification – Whenever the term "Design Specification" is used, it shall be understood that the performance of the completed work is as designed by the Engineer, and the Contractor must follow the requirements of the drawings and specifications; follow the manufacturer's recommendations (material and equipment); follow industry standard procedures and provide top quality workmanship.
- b. Performance Specification – Whenever the term "Performance Specification" is used, it shall be understood that the performance of the completed work is the responsibility of the Contractor, provided the Owner has faithfully followed all written operational and maintenance instructions supplied by the Contractor. The Contractor is not relieved of the responsibility for improper performance of the completed work even if there was improper operation and/or maintenance by the Owner but it obviously was not the cause of improper performance. In a performance specification, the Contractor is responsible for the design of the item furnished and installed by him. It is intended that the item function properly without excessive operation and maintenance being required by the Owner. The item furnished must incorporate the features specified but still perform as intended. The materials specified are to set a minimum standard but shall not be considered a design. If the design furnished by the Contractor requires higher quality material in order to perform as intended, it shall be furnished at no increase in cost to the Contract amount. When minimum dimensions are specified, they

EJCDC® C-800, Supplementary Conditions of the Construction Contract.

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shall not be considered a design. If the design furnished by the CONTRACTOR requires larger dimensions in order to perform as intended, it shall be furnished at no increase in cost to the Contract amount.

SC-1.01.A.40 Add the following to Paragraph 1.01.A.40.:

Trucking, shipping, delivery firms, consultants, and entities performing testing or inspection retained by Contractor or any Subcontractor are considered to be Subcontractors.

SC-1.01.A.44 Add the following to Paragraph 1.01.A.44.:

Entities that rent construction equipment or machinery, but are not incorporated into the Work, are considered to be Suppliers. If such rental entity furnishes both equipment and one or more personnel to operate and maintain the equipment, such entity is a Subcontractor.

1.02 *Terminology*

SC-1.02 Delete Paragraph 1.02.C. in its entirety and insert the following in its place:

- C. *Calendar Day*: A "Calendar Day", as related to contract time of completion as stipulated in the Contract Documents, is any day of the calendar, including Saturdays, Sundays and Holidays, of 24 hours measured from midnight to the next midnight.

SC-1.02 Add the following new paragraph immediately after Paragraph 1.02.G.:

- H. *Special Conditions*: Whenever the term "Special Conditions" is used, it shall be understood as being those general requirements that are set out in such detail that they apply only to this Contract.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

SC-2.01 Delete Paragraphs 2.01.B. and C. in their entirety and insert the following in their place:

- B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies (including all endorsements, and identification of applicable self-insured retentions and deductibles) of insurance required to be provided by Contractor in this Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

2.02 *Copies of Documents*

SC-2.02 Delete Paragraph 2.02.A. in its entirety and insert the following new paragraph in its place:

- A. Owner shall furnish to Contractor two (2) paper copies of conformed Contract Documents incorporating and integrating all Addenda and amendments, if any, negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the Agreement), and one (1) copy in electronic portable document format (PDF). Additional paper copies of the conformed Contract Documents will be furnished upon request at the cost of reproduction.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

SC-3.01 Delete Paragraph 3.01.C. in its entirety and insert the following new paragraph in its place:

- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the various Contract Documents, the priority of interpretation shall be in the following order: Signed Agreement, Federal or State Requirements (if any), Addenda, Drawings, Special Conditions, Invitation for Bids, Instructions to Bidders, Supplementary Conditions, General Conditions, Technical Specifications, Proposal, Notice to Bidders and Bonds.

SC-3.01 Add the following new paragraphs immediately after Paragraph 3.01.E.:

- F. The Specifications and other verbal components of the Contract Documents may vary in form, format, and style. Some Specification sections are written in varying degrees of streamlined or declarative style and some Specifications sections may, in comparison, employ a more-narrative style. Omissions of such words and phrases as "Contractor shall," "in conformity with," "as shown," or "as specified" are intentional in streamlined language in the Contract Documents. Omitted words and phrases are incorporated by inference. Similar types of provisions may appear in various parts of a Specifications section or elsewhere in the Contract Documents. Contractor shall not attempt to take advantage of any variation of form, format or style in Change Proposal(s) and Claim(s).
- G. Cross referencing of Specification sections in a Specifications section's heading "Related Sections includes, but are not necessarily limited to: "and elsewhere within each Specifications section is provided as an aid and convenience to Contractor. Contractor shall not rely on cross referencing indicated and is responsible for coordinating the entire Work and providing a complete Project whether or not cross referencing is provided in each Specifications section or whether or not cross referencing is complete.

3.02 *Reference Standards*

SC-3.02.A.1. Add the following to Paragraph 3.02.A.1.:

Reference to technical society, organization or body is made in specifications in accordance with the following abbreviations:

ASHO	American Association of State Highway Officials
ACI	American Concrete Institute
ASA	American Standards Association
ASTM	American Society for Testing Materials
AWWA	American Water Works Association
FS	Federal Specifications
PCA	Portland Cement Association
AIEE	American Institute of Electrical Engineers
NEC	National Electrical Code
UL	Underwriter's Laboratories

AISI	American Iron and Steel Institute
API	American Petroleum Institute
IPCEA	Insulated Power Cable Engineer's Association
NEMA	National Electrical Manufacturer's Association
AWS	American Welding Society
AISC	American Institute of Steel Construction

3.03 *Reporting and Resolving Discrepancies*

SC-3.03.A.2. Add the following to Paragraph 3.03.A.2.:

Further, it is the intent of the Contract Documents that the Contractor shall perform all work to complete the project ready for its intended use. The Contractor will not be allowed extra payment when a literal interpretation of any portion of the Contract Documents would conflict with the obvious intent of the Contract Documents. Contractor shall bear the expense of correcting any discrepancies on the drawings or specifications, which are not discovered or reported by the Contractor prior to construction and which, in the opinion of the Engineer, could have been discovered by reasonable diligence on the part of the Contractor.

SC-3.03.A.3. Add the following to Paragraph 3.03.A.3.:

However, If the Contractor feels that there is insufficient information in order for him to prepare his bid and/or construct the work, he is required to make a written request for additional information. The Contractor shall not use the lack of information as a basis for requesting extra compensation.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.04 *Progress Schedule*

SC-4.04 Add the following new paragraph immediately after Paragraph 4.04.A.2.:

3. Progress schedules shall be revised once each month to show actual progress to proposed progress. A copy of the revised progress schedule shall be submitted with the Contractor's Monthly Request for Payment. The monthly request for payment may not be approved by the Engineer until the revised progress schedule has been received.

4.05 *Delays in Contractor's Progress*

SC-4.05.C. Amend Paragraph 4.05.C by adding the following subparagraphs:

5. *Weather-Related Delays*

- a. If "abnormal weather conditions" as set forth in Paragraph 4.05.C.2. of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: (1) that weather conditions were abnormal for the period of time in which the delay occurred, (2) that such weather conditions could not have been reasonably anticipated, and (3) that such weather conditions had an adverse effect on the Work on the critical path at the time of the delay.

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

5.02 *Use of Site and Other Areas*

SC-5.02 Add the following new paragraphs immediately after Paragraph 5.02.D.:

- E. *Contractor's Buildings:* The building of structures for housing men, or the erection of tents or other forms of protection, will be permitted only at such places as the Engineer shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the Engineer.
- F. *Sanitation:* Necessary sanitary conveniences for the use of laborers on the work, properly secluded from the public observation, shall be constructed and maintained by the Contractor in such manner and at such points as shall be approved by the Engineer, and their use shall be strictly enforced.
- G. *Utility Services for Construction:* If temporary utility services, including water, are required, contract with utility company concerned. Contractor to furnish all temporary utility services and water at his expense.
- H. *Fences and Other Obstructions:* Where necessary to take down fences, signs or other obstructions, replace facilities to their original or better condition, regardless if on public or private property. Contractor to notify Engineer, Owner, and private property owner prior to removal and/or replacement of obstruction.

5.03 *Subsurface and Physical Conditions*

SC-5.03 Delete Paragraph 5.03.A. in its entirety and insert the following new paragraph in its place:

- A. *Reports and Drawings:* There are no reports of explorations and tests of subsurface conditions at or adjacent to the Site.

SC-5.03 Delete Paragraph 5.03.B. in its entirety and insert the following new paragraph in its place:

- B. *Underground Facilities:* The Drawings show as much information as can be reasonably obtained by an engineering survey party and from City and utility company records regarding the location and nature of pipelines, storm sewers, water lines, sanitary sewer, telephone conduits, etc. However, the accuracy of or completeness of such information is not guaranteed. It shall be the Contractor's responsibility to locate such underground features sufficiently in advance of operation to preclude damage to same. In the event of damage to underground facilities whether shown or not in the drawings, the Contractor shall make the necessary repairs to place the facilities back in service at no increase in the Contract price and all such repairs shall conform to the requirements of the company or agency servicing the facility. Whenever existing utilities present obstructions to grades and alignment of structures, immediately notify Engineer who, without delay, will determine whether existing improvements are to be relocated. Where necessary to move services, poles, guy wires, pipelines or other obstructions, make arrangements with owners of utilities. Owner will not be liable for damages on account of delays due to changes made by owners of privately owned utilities which hinder progress of work.

SC-5.04.A Add the following new paragraph immediately after Paragraph 5.04.A.4.:

5. Contractor encounters human remains, recognizes the existence of burial markers, archaeological sites, historical sites, artifacts of potential archaeological or historical interest, or wetlands not shown or indicated in the Contract Documents, Contractor shall immediately cease operations that may disturb such area(s) and secure the adjacent Work; and Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations (Contractor shall continue to suspend such operations until otherwise instructed by Owner but shall continue with all other operations that do not affect those remains or features);

5.06 *Hazardous Environmental Conditions*

SC-5.06 Delete Paragraph 5.06.A. in its entirety and insert the following new paragraph in its place:

- A. *Reports and Drawings:* There are no reports or drawings known to the Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

ARTICLE 6—BONDS AND INSURANCE

6.03 *Contractor's Insurance*

SC-6.03 Delete Paragraph 6.03.A. in its entirety and insert the following new paragraph in its place:

- A. *Required Insurance:* Refer to separate "Insurance Requirements" section for a schedule of insurance coverage required for this Project.

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Delete Paragraph 6.04 and all sub-sections in their entirety.

6.05 *Property Losses: Subrogation*

SC-6.05 Delete Paragraph 6.05 and all sub-sections in their entirety.

6.06 *Receipt and Application of Property Insurance Proceeds*

SC-6.06 Delete Paragraph 6.06 and all sub-sections in their entirety.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.02 *Supervision and Superintendence*

SC-7.02 Add the following to Paragraph 7.01, following Paragraph 7.02.B.:

- C. Unless Owner otherwise agrees in writing, the superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

7.03 *Labor; Working Hours*

SC-7.03 Add the following new subparagraphs immediately after Paragraph 7.03.C.:

1. Regular working hours will be 7:00 a.m. to 6:00 p.m.

2. Owner's legal holidays are New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and the Day After, Christmas Eve, and Christmas Day.

SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C.:

- D. Contractor shall be responsible for the cost of overtime (premium) pay and other expenses incurred by Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

7.04 *Services, Materials, and Equipment*

SC-7.04 Add the following to the end of Paragraph 7.04.A.:

and whether the Contractor has been paid, partially paid, or not paid for such work.

SC-7.04 Add the following new subparagraph immediately after Paragraph 7.04C.:

1. No materials shall be stored nor shall any equipment be parked on adjacent property without the expressed consent of the owner of the property concerned. Watertight storage facilities of suitable size with floors raised above the ground shall be provided for materials liable to damage from exposure to the weather. Other materials shall be stored on blocks off the ground per Supplier's recommendation or as directed by the Engineer. Materials shall be so placed as to permit easy access for inspection and identification. Any material, which has deteriorated, become damaged or is otherwise unfit for use, shall not be used in the work. Upon completion of all work or when directed by the Engineer, the Contractor shall remove the storage facilities from the site.

7.07 *Concerning Subcontractors and Suppliers*

SC-7.07 Add a new paragraph immediately after Paragraph 7.07.M.:

- N. The Contractor shall have the manufacturer or supplier of all materials used in the construction of this project certify that the particular material being furnished conforms to the requirements of these specifications. The furnishing of this certificate does not prevent the Engineer from rejecting at the project site any material that has been damaged or that does not, in the opinion of the Engineer, meet the requirements of these specifications.

7.10 *Taxes*

SC-7.10 Add a new paragraph immediately after Paragraph 7.10.A.:

- B. Owner is exempt from payment of sales and compensating use taxes of the State of Texas and of cities and counties thereof on all materials to be incorporated into the Work.
 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of materials and equipment to be incorporated into the Work. The Owner will make no further allowance for and will make no price adjustment above or below the originally bid unit prices on account of this tax.

2. Owner's exemption does not apply to construction tools or machinery, construction equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

7.13 Safety and Protection

SC-7.13 Add the following new subparagraphs immediately after subparagraph 7.13.C.3.:

- a. *Adjoining Property:* The said Contractor shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and, he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. The Contractor agrees to indemnify, save and hold harmless the Owner against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the Contract; but, any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.
- b. *Private Utilities:* The Contractor shall protect all buildings and other property, which may be endangered during progress of the work and leave same in as good condition as when found. Where sewer mains, water mains, sewer services, water services, gas mains, gas services, telephone or electrical conduits, poles and facilities of other public utilities are encountered, give protection in all cases. Where excavation is made below existing utilities, substantially support with wood blocks, beams or other means as directed, any pipe, conduit, or other units so that same may be left in good working condition with no damage of after settlement. The Contractor shall replace or repair damaged property at no cost to the Owner. No valve, switch or other control on existing utility systems shall be operated for any purposes by the Contractor without approval of the Engineer and the utility. Exercise care in performing work so as not to interrupt service. Locate and uncover existing utilities ahead of heavy excavation equipment. If utility service must be interrupted, all consumers affected by such operations shall be notified by the Contractor as directed by the Engineer and/or utility before the operation and advised of the probable time when service will be restored.
- c. *Trees, Plants and Shrubs:* Except when shown otherwise on the drawings, all existing trees, plants and shrubs shall be protected from damage during construction operations. Substantially constructed guards, barricades or other protective measures shall be provided as required to protect against moving equipment. Contractor shall replace at his own expense any trees, plants and shrubs which, in the opinion of the Engineer, are damaged or destroyed due to carelessness. Trees, plants and shrubs that fall within the limits of street, sidewalk or driveway excavation shall be removed by the Contractor. If the abutting property owner requests it, the Contractor shall remove them in a manner suitable for replanting and carefully deposit them on the landowner's property (large trees are excepted); otherwise, they shall become the property of the Contractor. Unless shown otherwise on the drawings, trees, plants and shrubs that fall within the limits of pipe trench excavation shall be removed and replanted by the Contractor in their original position as nearly as possible. As long as the Contractor uses

reasonable diligence in removing and replanting trees, plants and shrubs, he shall not be responsible for their survival.

SC-7.13 Add the following new paragraph immediately after Paragraph 7.13.E.:

- F. The Contractor shall provide barricades, signs, lights, guards and any other items required to maintain properly marked detours around his operation.

SC-7.13 Add the following new paragraph immediately after Paragraph 7.13.H.:

- I. It is the declared and acknowledged intent of these specifications that all work such as backfilling of excavations, repairs to roads and driveways, and cleanup work or other such operations shall follow as closely as practical to the laying and constructing operation in such manner that the public is not unnecessarily inconvenienced, nor a hazard to public safety created. The Owner and/or Engineer shall be entitled to notify the Contractor if his force and/or equipment are insufficient to such a degree that the public is unnecessarily inconvenienced and/or a hazard to the public safety is created. The Contractor, upon such notification by the Owner and/or Engineer, shall make the necessary changes to his force and/or equipment, or the Owner and/or Engineer may stop the work in order to insure the proper execution of the work and to avoid inconveniences to the public or avoid safety hazards as herein noted.

7.14 *Hazard Communication Programs*

SC-7.14 Add the following new paragraph immediately after Paragraph 7.14.A.:

- B. *Single Prime Contract:* Contractor shall be responsible for coordinating exchange of safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations. Contractor shall provide a centralized location for the maintenance of the safety data sheets or other hazard communication information required to be made available by any employer on the Site. Location of the material safety data sheets or other hazard communication information shall be readily accessible to the employees of employers on the Site.

7.16 *Submittals*

SC-7.16 Add the following new subparagraph immediately before Paragraph 7.16.A.1.:

- 2. The Contractor shall furnish to the Engineer, for approval, within 10 days of the date of the "Notice to Proceed with Construction", a complete list of all items on which shop drawings will be prepared.

SC-7.16 Delete subparagraphs 7.16.A.2. and 3. in their entirety and insert the following in their place:

- 2. Shop drawings shall be prepared in such a form and detail that full compliance with the Contract Documents and the best practices of the industry are clearly demonstrated. All shop drawings involving equipment of any nature shall include a full and complete parts list, the current street address and current phone number of the nearest authorized dealer, the current street address and current phone number of the nearest authorized repair facility, and a full and complete list of recommended spare parts. The Contractor shall include with each and every shop drawing submitted a signed statement that the submittal has been reviewed by the Contractor and is in full compliance with the Contract Documents. In the event there are minor deviations from the Contract

Documents, the Contractor shall itemize each and every deviation and state in writing why the deviation is required and exactly how the submitted equipment or material will be equal to or better than that required by the Contract Documents. Shop Drawings received without the required statement and/or without a complete list of deviations shall be rejected and a resubmittal will be required.

3. The Contractor shall receive no direct payment for the preparation of shop drawings; that cost is considered subsidiary to the appropriate bid item.

SC-7.16 Delete subparagraphs 7.16.C.4. and in its entirety and insert the following in its place:

4. Engineer's review and approval of a Shop Drawing, Sample, or variation from the requirements of the Contract Documents shall not constitute acceptance by the Engineer of any responsibility for the accuracy, coordination and completeness of the shop drawings or the items of equipment or material represented in the submission. Accuracy, coordination and completeness of shop drawings shall be the sole responsibility of the Contractor, including full responsibility to conform with any of the Engineer's review comments, corrections, modifications or notes and to fully conform with the Contract Documents. In all cases, the Contractor and the Contractor alone is responsible for the correctness of dimensions.

7.17 *Contractor's General Warranty and Guarantee*

SC-7.17 Add the following new subparagraph immediately after subparagraph 7.17.C.2.:

3. damage due to improper operation and maintenance by the Owner, provided the Contractor provides the following:
 - a. The Contractor furnishes the Owner with written operational and maintenance instructions on all items.
 - b. During the warranty period, the Contractor makes trips to the project site at six (6) months and eleven (11) months and inspects the items for proper operation and maintenance.
 - c. After each inspection trip, the Contractor shall submit his findings in writing to the Owner and the Engineer.

Failure to fulfill any one or all of these conditions will make the Contractor liable for repairing damage (at no cost to the Owner) to items under warranty, even if in his opinion, it was due to improper operation and/or maintenance by the Owner.

SC-7.17 Add the following new paragraph immediately after Paragraph 7.17.E.:

- F. *Accelerated Implementation of Date of Guarantee*: Upon written request to the Owner, certain items of equipment will be considered for beginning their warranty period prior to the date of Certificate of Substantial Completion. To be considered, the following conditions must be present:
 1. Item must be in full, continuous and satisfactory operation for at least 30 days before beginning warranty period.
 2. Placing the item into full service must be acceptable to the Owner.

3. Like items will be considered as a group. Example: If a lift station contains 4 pumps, all 4 pumps must be in place and operating in a fully automatic mode before beginning the warranty period can be considered.

If the Owner does allow the Contractor to begin the warranty period on certain items prior to the issuance of the Certificate of Substantial Completion, that in no way affects the Guarantee on the remainder of the work.

ARTICLE 8—OTHER WORK AT THE SITE

No Supplementary Conditions in this Article.

ARTICLE 9—OWNER’S RESPONSIBILITIES

No Supplementary Conditions in this Article.

ARTICLE 10—ENGINEER’S STATUS DURING CONSTRUCTION

10.03 Resident Project Representative

SC-10.03 Add the following new subparagraph immediately after Paragraph 10.03.A.:

1. On this Project, by agreement with Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.

10.04 Engineer’s Authority

SC-10.04 Add the following new subparagraph immediately after Paragraph 10.04.D.:

1. The Engineer shall be entitled to make such changes and alterations as the Engineer may see fit in the line, location, grade, form, dimensions, scope of the work, plans or material for the work herein contemplated, or any part thereof either before or after the beginning of this construction, without affecting the validity of this Contract and the accompanying Performance and Payment Bonds. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under the Measurement and Payment provisions. If the amount of work is increased, and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under this Contract, except as provided for unit price items under the Measurement and Payment provisions; otherwise, such additional work shall be paid for as provided under Article 11 of the General Conditions. In case the Engineer shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the Contractor shall be compensated for any material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

10.07 *Limitations on Engineer's Authority and Responsibilities*

SC-10.07 Add the following to Paragraph 10.07.B.:

However, if at any time the working force of the Contractor is inadequate for securing the progress herein specified, the Contractor shall, if so ordered in writing by the Owner and/or the Engineer, increase his force or equipment, or both, to such an extent as to give reasonable assurance of compliance with the schedule of progress.

10.08 *Compliance with Safety Program*

SC-10.08 Add the following new paragraph immediately after Paragraph 10.08.A.:

- B. Neither the Engineer's activities, nor the presence of Engineer or its employees and sub-consultants at a construction site, shall relieve the Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Engineer and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Contractor shall be solely responsible for jobsite safety.

ARTICLE 11—CHANGES TO THE CONTRACT

No Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No Supplementary Conditions in this Article.

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

13.01 *Cost of the Work*

SC-13.01.B.5.c.(1) Supplement Paragraph 13.01.B.5.c.(1) by adding the following subparagraphs:

- a) Prior to commencing Work at the Site, submit to Owner, through Engineer, copies of the equipment rental agreements for Owner's approval.
- b) Should Contractor perform Work using rented construction equipment or machinery without Owner's written approval of the associated rental agreement and the parties subsequently disagree on the applicable rental rates, use of such construction equipment and machinery will be compensated on the basis of the rental rate book indicated in Paragraph SC-13.01.B.5.c.(2).
- c) When the rental rate book is used basis for determining compensation for construction equipment and machinery leased from a rental firm, the hourly rate for such equipment shall be determined in accordance with Paragraph 13.01.B.5.(2) of the General Conditions.

SC-13.01.B.5.c.(2) Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of Rental Rate Blue Book published by EquipmentWatch.

SC-13.01.B.5.c Supplement Paragraph 13.01.B.5.c by adding the following subparagraphs:

- 4) *Inactive Equipment and Machinery:* Rental of construction equipment and machinery shall cease when the use thereof is no longer necessary for the Work. Periods of inactivity for such construction equipment or machinery will not be compensable unless agreed upon in writing by Owner, unless the costs of disassembly, removal, transportation, reassembly, and remobilization, as submitted to and accepted by Owner (with advice of Engineer) would exceed the cost of continuing to rent the item(s) during the period(s) of inactivity. Contractor is responsible for obtaining Owner's written approval for compensation for construction equipment and machinery for periods of inactivity. Owner is not responsible for retroactively approving such inactivity. "Period of inactivity" for such items includes periods when the construction equipment or machinery is not used or necessary for the logical and efficient progression of the Work, or when other, available equipment or machinery is suitable for performing the given task.
- 5) *Condition of Equipment and Machinery:* Construction equipment and machinery will be compensable only for serviceable construction equipment and machinery capable of efficiently performing its intended function at the Site. Construction equipment and machinery not in compliance with this Paragraph SC-13.01.B.5.c.5) is not eligible for compensation.
- 6) *Capped Compensation:* Compensation paid Contractor for a given item of Contractor-owned construction equipment or machinery will be capped at, and shall not exceed, the comparable purchase price of such item of equal or comparable capacity and capability.

SC-13.01.C.2. Supplement Paragraph 13.01.C.2 by adding the following definition of small tools and hand tools:

- a. For purposes of this paragraph, "small tools and hand tools" means items in one or more of the following categories: (1) Items that are ordinarily required for the performing worker's job function, including but not limited to equipment which ordinarily has no associated licensing, insurance, or substantive storage costs; such as hammers, wrenches, socket tools, manual saws, power saws, chainsaws, common power tools, impact drills, threaders, benders, transits and theodolites and related equipment, and other tools transportable by hand, regardless of ownership of such items; (2) Items such as gang-boxes, ladders, hand carts and similar wheeled items manually operated by workers, extension cords, and similar items; (3) common testing equipment such as insulation testers (megger-testing equipment), amp meters, gas detectors, pressure gauges, and similar items; (4) A purchase price (if purchased new, at retail) of \$500, although such limit is not absolute, and certain items may be deemed by Owner or Engineer as "small tools

or hand tools" (and not eligible for compensation) even though such item may have a purchase price greater than the amount indicated in this Paragraph 13.01.C.2.

SC-13.03 Delete Paragraph 13.03.E. in its entirety and insert the following in its place:

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than 25% percent from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

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

No Supplementary Conditions in this Article.

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.01 *Progress Payments*

SC-15.01.A. Delete Paragraph 15.01.A. in its entirety and insert the following in its place:

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Engineer.
 1. For lump sum bid items, the Schedule of Values shall be used for determining the value of work accomplished each month by the Contractor so that partial payments may be made. This "Cost Breakdown" shall be prepared in such a manner and in sufficient detail to allow the Engineer to certify the value of work completed and to recommend payment be made to the Contractor. The Engineer shall be the sole judge as to the suitability of the "Cost Breakdown" furnished for the above-stated purpose. The Engineer will not allow an "unbalanced cost breakdown". This "Cost Breakdown" will be used for establishing prices for Extra Work only if the prices are agreeable to both the Contractor and the Owner.
 2. For unit price bid items, payment will be made on the basis of actual measured and/or computed length, area, solid contents, number and weight, as determined under the provisions of Paragraph 13.03. No extra measurements and measurements customary in the trade shall be used as a basis for payment hereunder. The Contractor agrees that he will make no claim for damages, anticipated profits, or otherwise on account of any

differences which may be found between the quantities of work actually done, the material actually furnished under this Contract and the estimated quantities contemplated and contained in the proposal, unless one or more of the conditions stipulated in SC-13.03.E. occurs.

SC-15.01.B.4 Delete Paragraph 15.01.B.4 in its entirety and insert the following in its place:

4. Retainage shall be withheld on every progress payment until final payment at a rate of 10% for contracts under \$400,000 and 5% for contracts of \$400,000 or more.

SC-15.01.E. Delete subparagraph 15.01.E.1.j. in its entirety and replace with the following:

- j. The Time of Completion is the essence of the Contract. For each Calendar Day that any work shall remain incomplete after the time specified in the Proposal and Contract, or as automatically increased by additional work ordered after the Contract is signed, the Damages in the amount of \$500.00 Per Calendar Day will be deducted from the moneys due the Contractor, as liquidated damages. The moneys thus deducted for such delay, failure or non-completion is not to be considered as a penalty but shall be deemed, taken and treated as reasonable liquidated damages since it would be impractical and most difficult to fix the actual damages. Contractor shall not be charged with liquidated damages when the delay in completion of the work is due to any preference, priority or allocation order duly issued by the Owner or to unforeseen causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and abnormal and unforeseeable weather (such as abnormal rainfall, tornadoes and hurricanes). The Contractor is required to promptly give written notice of such delays to the Engineer.

15.03 *Substantial Completion*

SC-15.03.B. Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined by Engineer not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer or other entity retained by Owner, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

17.02 *Arbitration*

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

SC-17.02 *Arbitration*

- A. All matters subject to final resolution under this Article will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Paragraph SC-17.02). Any controversy or claim in the amount of \$100,000 or less will be settled in accordance with the American Arbitration Association's supplemental rules for Fixed Time and Cost Construction Arbitration. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitration administrator, and a copy will be concurrently sent to Engineer for information. The demand for arbitration will be made within the specific time required in Article 17, or, if no specified time is applicable, within a reasonable time after the matter in question has arisen, and in no event will any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.
- C. The arbitration will be held in the same municipality as the Owner's principal office location.
- D. The arbitrator(s) must be licensed engineers, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the [Construction Arbitration Rules] that contemplate in-person hearings. The arbitrator(s) will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Contract. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
- E. The Arbitrator(s) will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Contract permits them to do so.
- F. The award of the arbitrator(s) must be accompanied by a reasoned written opinion and a concise breakdown of the award. The written opinion will cite the Contract provisions deemed applicable and relied on in making the award.
- G. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver by that party to present evidence or cross-examine witness. In such event, the other party shall be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.
- H. No arbitration arising out of or relating to the Contract will include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer's consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 - 1. the inclusion of such other individual or entity will allow complete relief to be afforded among those who are already parties to the arbitration;

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration, and which will arise in such proceedings;
 3. such other individual or entity is subject to arbitration under a contract with either Owner or Contractor, or consents to being joined in the arbitration; and
 4. the consolidation or joinder is in compliance with the arbitration administrator's procedural rules.
- I. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.
 - J. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Contract. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.

17.03 *Attorneys' Fees*

SC-17.03 Add the following new paragraph immediately after Paragraph 17.02.

SC-17.03 *Attorneys' Fees*

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

ARTICLE 18—MISCELLANEOUS

SC-18.11 Add a new paragraph immediately after Paragraph 18.10:

SC-18.11 *Confidential Information*

- A. All Drawings, Specifications, technical data, and other information furnished to Contractor either by Owner or Engineer or developed by Contractor or others in connection with the Work are, and will remain, the property of Owner or Engineer, and shall not be copied or otherwise reproduced or used in any way except in connection with the Work, or disclosed to third parties or used in any manner detrimental to the interests of Owner or Engineer.
- B. The following information is not subject to the above confidentiality requirements:
 1. information in the public domain through no action of Contractor in breach of the Contract Documents; or
 2. information lawfully possessed by Contractor before receipt from Owner or Engineer; or
 3. information required to be disclosed by Laws or Regulations, or by a court or agency of competent jurisdiction. However, in the event Contractor shall be so required to

disclose such information, Contractor shall, prior to disclosure, provide reasonable notice to Owner and Engineer, who shall have the right to interpose all objections Owner may have to the disclosure of such information.

SC-18.12 Add a new paragraph immediately after Paragraph 18.11, to read as follows:

SC-18.12 *Publicity*

- A. Contractor shall not disclose to any third party the nature of its Work on the Project, nor engage in publicity or public media disclosures with respect to the Project without the prior written consent of Owner.

WAGE SCALE FOR ENGINEERING CONSTRUCTION

- 1.01 Pursuant to Chapter 2258 of the Texas Government Code, the public body awarding the Contract has determined the following to be the general prevailing wage rates applicable for the construction of this Project and the locality in which the Work is to be performed.
- 1.02 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.03 The wage scale for engineering construction is to be applied to all site work greater than 5 feet from an exterior wall of new building under construction or from an exterior wall of an existing building.
- 1.04 The appropriate wage scales shall be applied per the schedules for the appropriate work type.

"General Decision Number: TX20260021 05/18/2026

State: Texas

Construction Types: Heavy

Counties: Texas Counties of
Nueces and San Patricio

Modification Number	Publication Date
0	01/02/2026
1	05/18/2026

SUTX1987-001 12/01/1987

	Rates	Fringes
POWER EQUIPMENT OPERATORS: MOTOR GRADER.....	\$ 8.72	0.00
POWER EQUIPMENT OPERATORS: (BACKHOE).....	\$ 9.21	0.00
LABORERS: (UTILITY).....	\$ 7.68	0.00
LABORERS: (COMMON).....	\$ 7.25	0.00
ELECTRICIAN.....	\$ 13.37	2.58
CONCRETE FINISHER.....	\$ 7.56	0.00
CARPENTER (EXCLUDING FORM SETTING).....	\$ 9.05	0.00

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers

at least \$13.65 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract from May 11, 2026, through December 31, 2026. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than **SU**, **UAVG**, **SA**, or **SC** denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The **SU** identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted

average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

◆SU◆ wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ◆SA◆ identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ◆SA◆ identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

=====
END OF GENERAL DECISION

"

AGREEMENT FOR FINAL PAYMENT
AND CONTRACTOR'S SWORN RELEASE

In order to insure that the rights, obligations and responsibilities of all parties to the original contract document are fully protected, which contract document was signed and executed on the day of _____, 20_____ by _____, referred to therein as CONTRACTOR and hereinafter referred to as CONTRACTOR, and the OWNER on the day of _____, 20_____, and further in consideration for the final payment of all sums due and claimed by the CONTRACTOR against the OWNER, the CONTRACTOR makes the following representations to the OWNER, either individually if a proprietorship, jointly by all partners if a partnership, or if a corporation, by action of the president and secretary of said corporation, as duly authorized by appropriate action of the stockholders and/or board of directors of said corporation, their signatures hereon constituting a representation under oath by said individuals that they have the power and authority to execute this Agreement for and on behalf of the said corporation:

I.

The CONTRACTOR has received _____ (number) payments pursuant to _____ (number) of CONTRACTOR Payment Estimates, copies of which are attached hereto and marked Exhibit "A", presented to the OWNER and paid during the progress of the job referred to in the Contract between the parties; and in this regard, the undersigned CONTRACTOR represents to the OWNER that it does not claim nor intend to claim at any future date, any additional sums of money of any nature whatsoever under and by virtue of the payment estimates previously submitted to the Professional for approval, or any other sums of money of any nature whatsoever for materials furnished and used in the job or for work done, and hereby releases and discharges the OWNER

from any liabilities of any nature whatsoever, for any claims of any nature made by the CONTRACTOR at some future date, or by its successors or assigns.

II.

The undersigned CONTRACTOR further represents to the OWNER that the Final Payment Estimate, reflecting all associated Change Orders, if any, submitted by the CONTRACTOR to the OWNER, whether or not modified, corrected or changed in some way by deletions or other modifications by the Professional, the CONTRACTOR or the OWNER, a copy of which is attached hereto and marked Exhibit "B", is true, correct and accurate; and it is further agreed and stipulated by the undersigned CONTRACTOR that upon the receipt of final payment in the amount as set out on the Final Payment Estimate, the CONTRACTOR, by execution of this instrument of release, does, therefore, release and forever discharge the OWNER of and from all manner of debts, demands, obligations, suits, liabilities and causes of action of any nature whatsoever under and by virtue of the terms and provisions of the Contract hereinbefore referred to, and any change or modification thereof, or in any manner growing out of or arising from or by virtue of the work, labor and services performed by the CONTRACTOR.

III.

CONTRACTOR, IN ADDITION TO THE PROVISIONS SET OUT IN THE CONTRACT DOCUMENT, AGREES TO INDEMNIFY AND HOLD THE OWNER HARMLESS FROM ANY AND ALL CAUSES OF ACTION, CLAIMS, DEMANDS OR SUITS MADE BY ANY PERSON OR OTHER ENTITY AGAINST THE OWNER, BY REASON OF THE WORK PERFORMED BY SUCH CONTRACTOR, AND AGREES TO DEFEND OR TO CAUSE THE SAME TO BE DEFENDED AT THE CONTRACTOR'S SOLE EXPENSE AND OBLIGATION, WHENEVER SUCH ACTIONS MAY BE

BROUGHT, AND FURTHER TO PAY ALL COSTS INCURRED BY THE OWNER IN THE DEFENSE THEREOF, INCLUDING ADMINISTRATIVE COSTS AND ATTORNEY'S FEES, AND FURTHER TO PAY ANY JUDGMENTS OR SETTLEMENTS THAT MAY BE ENTERED INTO OR AGREED TO AGAINST OR FOR THE BENEFIT OF THE OWNER.

It is, however, specifically agreed that the OWNER shall not enter into any settlement agreements without the acquiescence and agreement of the CONTRACTOR.

IV.

The CONTRACTOR, acting by and through the person or persons whose names are subscribed hereto, swears and affirms that all bills and claims have been paid to all materialmen, suppliers, laborers, subcontractors, or other entities performing services or supplying materials, and that the OWNER shall not be subject to any bills, claims, demands, litigation or suits in connection therewith.

V.

It is further specifically understood and agreed that this Agreement for Final Payment and Contractor's Sworn Release shall constitute a part of the original Contract of the parties heretofore previously referred to, and it is also specifically understood and agreed that this Agreement shall not act as a modification, waiver or renunciation by the OWNER of any of its rights or remedies as set out in the contract itself, but this Agreement for Final Payment and Contractor's Sworn Release shall constitute a supplement thereto for the additional protection of the OWNER.

VI.

This Agreement for Final Payment and Contractor's Sworn Release shall be considered to be continuing and binding upon the parties hereto and shall not terminate upon receipt and acceptance by the CONTRACTOR of final payment, but shall be deemed continuing so long as any actions,

claims or other demands contemplated herein against the OWNER, may lawfully be brought under applicable statutes of limitations, and shall in addition be deemed to be continuing for such additional period of time as shall be necessary to compensate and repay to the OWNER, all costs or damages incurred by it by reason of such claims.

SIGNED and EXECUTED this, the _____ day of _____, 20_____.

(CONTRACTOR)

Signature

Print Name: _____

[If CONTRACTOR is a proprietorship, OWNER must sign; if a partnership, each partner must sign; if a corporation, the following language should be used.]

SIGNED and EXECUTED this, the _____ day of _____, 20_____,
by _____, a Texas corporation, under authority
granted to the undersigned by said corporation as contained in the Charter, By-Laws or Minutes of a
meeting of said corporation regularly called and held.

CONTRACTOR

By: _____
President

ATTEST:

Corporate Secretary
(Corporate Seal)

[This form is for use by either a proprietorship or a partnership. In the event CONTRACTOR is a partnership or a joint proprietorship, additional signature lines should be added for each individual.]

AFFIDAVIT

STATE OF TEXAS

COUNTY OF NUECES

BEFORE ME, the undersigned authority, on this day personally appeared the person or persons whose name(s) are subscribed to the above and foregoing Agreement for Final Payment and Contractor's Sworn Release, who each, after being by me duly sworn, on their oaths deposed and said:

I(We) am(are) the person(s) who signed and executed the above and foregoing Agreement for Final Payment and Contractor's Sworn Release, and I(we) have read the facts and statements as therein set out and the representations as made therein, and I(we) state that the above and foregoing are true and correct.

CONTRACTOR - Affiant

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

Notary Public, State of Texas

My Commission Expires: _____

[This form is for use in the event CONTRACTOR is a corporation.]

AFFIDAVIT

STATE OF TEXAS

COUNTY OF NUECES

BEFORE ME, the undersigned authority, on this day personally appeared the persons who signed and executed the above and foregoing Agreement for Final Payment and Contractor's Sworn Release, whose names are set out above, who each, after being by me duly sworn, on their oaths deposed and said:

We each are the persons whose names are subscribed above, and hold respectively the offices in the corporation as set out above, and each state under oath that we have the authority to execute this Agreement for Final Payment and Contractor's Sworn Release for and on behalf of said corporation, pursuant to authority granted to us in the Charter of said corporation, the By-Laws of said corporation and/or the Minutes of said corporation; and the facts, statements and representations as set out in the instrument to which this Affidavit is attached, are true and correct.

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

Notary Public, State of Texas

My Commission Expires: _____

STATE OF _____

COUNTY OF _____

**SUBCONTRACTOR/MATERIALMAN'S
FULL AND FINAL
RELEASE AND WAIVER OF CLAIMS AND LIENS**

For consideration in hand paid, _____, (Company) does hereby certify and acknowledge that Company has been fully paid for all work and labor done by it, and for materials supplied by it, to date on that certain project described as follows:

Contractor:

Project Description:

Obligee:

Amount:

Company does hereby waive all rights, claims and liens which it may have, or be entitled including statutory and constitutional liens on such project for such work and labor done and material supplied by it to date, or arising out of such transactions.

Company hereby releases in full all claims and liens it has heretofore filed on such property for such work including labor and material.

Executed this _____ day of _____, 20_____.

By: _____

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned, a Notary Public in and for said County, _____ on this day personally appeared _____ Known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said _____, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

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

Notary Public

**CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT**

**Conforms with the American Institute
of Architects, AIA Document G707**

Owner
Architect
Contractor
Surety
Other

PROJECT:
(Name, address)

TO (Owner)

ARCHITECT'S PROJECT NO:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR:

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(here insert name and address of Surety Company)

on bond of (here insert name and address of Contractor) **, SURETY COMPANY**

CONTRACTOR,
hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve
the Surety Company of any of its obligations to (here insert name and address of Owner)

, OWNER,
as set forth in the said Surety Company's bond.

IN WITNESS, WHEREOF,
the Surety Company has hereunto set its hand this day of

Surety Company

Attest:
(Seal):

Signature of Authorized Representative

Title

NOTE: This form is to be used as a companion document to AIA DOCUMENT G706, CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS,
Current Edition

TECHNICAL SPECIFICATIONS



The Engineer's seal affixed to this document is intended to certify only the Technical Specifications section and does not extend to, nor imply approval of, any other sections, attachments, or supporting information contained herein.

SUBMITTAL LIST

City of Port Aransas - Charlie's Pasture Bulkhead Repair

10474482COPACPBR

	Type	Item	Paragraph
31 23 00.00 20	SD-01 Preconstruction Submittals	Dewatering Work Plan	1.7.2
31 23 00.00 20	SD-01 Preconstruction Submittals	Shoring And Sheeting Plan	1.7.1
31 23 00.00 20	SD-03 Product Data	Borrow Site Testing	1.6
31 23 00.00 20	SD-03 Product Data	Porous Fill	3.8.2.3
31 23 00.00 20	SD-03 Product Data	Select Material	3.8.2.2
31 23 00.00 20	SD-06 Test Reports	Density tests	3.8.2.4
31 23 00.00 20	SD-06 Test Reports	Fill And Backfill	3.8.2.1
31 23 00.00 20	SD-06 Test Reports	Moisture Content Tests	3.8.2.5
31 23 23	SD-01 Preconstruction Submittals	Work plan	1.5.1
31 23 23	SD-03 Product Data	Product Data	2.1.2
31 23 23	SD-06 Test Reports	Material Test Reports	1.5.4
31 23 23	SD-07 Certificates	Qualification Data	1.5.2
31 41 16.13 45	SD-01 Preconstruction Submittals	Noise reduction and emission monitoring program	1.5.1
31 41 16.13 45	SD-02 Shop Drawings	Metal Sheet Piling	2.1
31 41 16.13 45	SD-03 Product Data	Driving	3.2.3.2
31 41 16.13 45	SD-03 Product Data	Manufacturer's product data and material	1.5.2
31 41 16.13 45	SD-03 Product Data	Pile Driving Equipment	3.2.2
31 41 16.13 45	SD-03 Product Data	Pulling and Redriving	3.2.7
31 41 16.13 45	SD-03 Product Data	Statements	1.5.3
31 41 16.13 45	SD-06 Test Reports	Daily Records	1.5.5
31 41 16.13 45	SD-06 Test Reports	Materials Tests	2.4.1
31 41 16.13 45	SD-11 Closeout Submittals	Pile Driving Records	1.5.6

SECTION 31 23 00.00 20

EXCAVATION AND FILL
02/11, CHG 2: 08/15

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

AMERICAN WATER WORKS ASSOCIATION (AWWA)

AWWA C600 (2017) Installation of Ductile-Iron Mains and Their Appurtenances

ASTM INTERNATIONAL (ASTM)

ASTM C33/C33M (2018) Standard Specification for Concrete Aggregates

ASTM C136/C136M (2019) Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates

ASTM D422 (1963; R 2007; E 2014; E 2014) Particle-Size Analysis of Soils

ASTM D698 (2012; E 2014; E 2015) Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/cu. ft. (600 kN-m/cu. m.))

ASTM D1140 (2017) Standard Test Methods for Determining the Amount of Material Finer than 75- μ m (No. 200) Sieve in Soils by Washing

ASTM D1556/D1556M (2015; E 2016) Standard Test Method for Density and Unit Weight of Soil in Place by Sand-Cone Method

ASTM D1557 (2012; E 2015) Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³) (2700 kN-m/m³)

ASTM D2216 (2019) Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass

ASTM D2321 (2020) Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications

ASTM D2487 (2017; E 2020) Standard Practice for Classification of Soils for Engineering

	Purposes (Unified Soil Classification System)
ASTM D3786/D3786M	(2018) Standard Test Method for Bursting Strength of Textile Fabrics-Diaphragm Bursting Strength Tester Method
ASTM D4318	(2017; E 2018) Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
ASTM D4355/D4355M	(2014) Deterioration of Geotextiles from Exposure to Light, Moisture and Heat in a Xenon-Arc Type Apparatus
ASTM D4491/D4491M	(2017) Standard Test Methods for Water Permeability of Geotextiles by Permittivity
ASTM D4533/D4533M	(2015) Standard Test Method for Trapezoid Tearing Strength of Geotextiles
ASTM D4632/D4632M	(2015a) Grab Breaking Load and Elongation of Geotextiles
ASTM D4751	(2020) Standard Test Method for Determining Apparent Opening Size of a Geotextile
ASTM D4759	(2011; R 2018) Standard Practice for Determining the Specification Conformance of Geosynthetics
ASTM D4833/D4833M	(2007; R 2020) Standard Test Method for Index Puncture Resistance of Geomembranes and Related Products
ASTM D6938	(2017a) Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth)

U.S. ARMY CORPS OF ENGINEERS (USACE)

EM 385-1-1	(2014) Safety -- Safety and Health Requirements Manual
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U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

EPA SW-846.3-3	(1999, Third Edition, Update III-A) Test Methods for Evaluating Solid Waste: Physical/Chemical Methods
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1.2 DEFINITIONS

1.2.1 Capillary Water Barrier

A layer of clean, poorly graded crushed rock, stone, or natural sand or gravel having a high porosity which is placed beneath a building slab with or without a vapor barrier to cut off the capillary flow of pore water to

the area immediately below a slab.

1.2.2 Degree of Compaction

Degree of compaction is expressed as a percentage of the maximum density obtained by the test procedure presented in [ASTM D698](#), for general soil types, abbreviated as percent laboratory maximum density.

1.2.3 Hard Materials

Weathered rock, dense consolidated deposits, or conglomerate materials which are not included in the definition of "rock" but which usually require the use of heavy excavation equipment, ripper teeth, or jack hammers for removal.

1.2.4 Rock

Solid homogeneous interlocking crystalline material with firmly cemented, laminated, or foliated masses or conglomerate deposits, neither of which can be removed without systematic drilling and blasting, drilling and the use of expansion jacks or feather wedges, or the use of backhoe-mounted pneumatic hole punchers or rock breakers; also large boulders, buried masonry, or concrete other than pavement exceeding [1/2 cubic yard](#) in volume. Removal of hard material will not be considered rock excavation because of intermittent drilling and blasting that is performed merely to increase production.

1.2.5 Pile Supported Structure

As used herein, a structure where both the foundation and floor slab are pile supported.

1.3 SUBMITTALS

Submit the following in accordance with Section [01 33 00](#) SUBMITTAL PROCEDURES:

[SD-01 Preconstruction Submittals](#)

[Shoring And Sheeting Plan](#)

[Dewatering Work Plan](#)

[SD-03 Product Data](#)

[Borrow Site Testing](#)

[Select Material](#)

[Porous Fill](#)

[SD-06 Test Reports](#)

[Density tests](#)

[Moisture Content Tests](#)

[Fill And Backfill](#)

Copies of all laboratory and field test reports within 24 hours of the completion of the test.

1.4 DELIVERY, STORAGE, AND HANDLING

Perform in a manner to prevent contamination or segregation of materials.

1.5 CRITERIA FOR BIDDING

Base bids on the following criteria:

- a. Surface elevations are as indicated.
- b. Pipes or other artificial obstructions, except those indicated, may not be encountered.
- c. Ground water elevations indicated by the boring log were those existing at the time subsurface investigations were made and do not necessarily represent ground water elevation at the time of construction.
- d. Suitable backfill in the quantities required is available at the project site.
- e. Blasting will not be permitted. Remove material in an approved manner.

1.6 REQUIREMENTS FOR OFF SITE SOIL

Soils brought in from off site for use as backfill shall be tested for petroleum hydrocarbons, BTEX, PCBs and HW characteristics (including toxicity, ignitability, corrosivity, and reactivity). Backfill shall not contain concentrations of these analytes above the appropriate State and/or EPA criteria, and shall pass the tests for HW characteristics. Determine petroleum hydrocarbon concentrations by using appropriate State protocols. Determine BTEX concentrations by using EPA SW-846.3-3 Method 5035/8260B. Perform complete TCLP in accordance with EPA SW-846.3-3 Method 1311. Perform HW characteristic tests for ignitability, corrosivity, and reactivity in accordance with accepted standard methods. Perform PCB testing in accordance with accepted standard methods for sampling and analysis of bulk solid samples. Provide borrow site testing for petroleum hydrocarbons and BTEX from a grab sample of material from the area most likely to be contaminated at the borrow site (as indicated by visual or olfactory evidence), with at least one test from each borrow site. For each borrow site, provide borrow site testing for HW characteristics from a composite sample of material, collected in accordance with standard soil sampling techniques. Do not bring material onsite until tests results have been received and approved by the Owner.

1.7 QUALITY ASSURANCE

1.7.1 Dewatering Work Plan

Submit procedures for accomplishing dewatering work.

1.7.2 Utilities

Movement of construction machinery and equipment over pipes and utilities during construction shall be at the Contractor's risk. Perform work adjacent to non-Owner utilities as indicated in accordance with procedures

outlined by utility company. Excavation made with power-driven equipment is not permitted within **two feet** of known Owner-owned utility or subsurface construction. For work immediately adjacent to or for excavations exposing a utility or other buried obstruction, excavate by hand. Start hand excavation on each side of the indicated obstruction and continue until the obstruction is uncovered or until clearance for the new grade is assured. Support uncovered lines or other existing work affected by the contract excavation until approval for backfill is granted by the Owner. Report damage to utility lines or subsurface construction immediately to the Owner.

PART 2 PRODUCTS

2.1 SOIL MATERIALS

2.1.1 Satisfactory Materials

Any materials classified by **ASTM D2487** as GW, GP, GM, GP-GM, GW-GM, GC, GP-GC, GM-GC, SW, SP, SW-SM, SC, SW-SC, SP-SC, CL, CL-ML, free of debris, roots, wood, scrap material, vegetation, refuse, soft unsound particles, and deleterious, or objectionable materials. Unless specified otherwise, the maximum particle diameter is 3 inches.

2.1.2 Unsatisfactory Materials

Materials which do not comply with the requirements for satisfactory materials. Unsatisfactory materials also include man-made fills, trash, refuse, or backfills from previous construction. Unsatisfactory material also includes material classified as satisfactory which contains root and other organic matter, frozen material, and stones larger than **3 inches**. The Owner shall be notified of any contaminated materials.

2.1.3 Cohesionless and Cohesive Materials

Cohesionless materials include materials classified in **ASTM D2487** as GW, GP, SW, and SP. Cohesive materials include materials classified as GC, SC, ML, CL, MH, and CH. Materials classified as GM, GP-GM, GW-GM, SW-SM, SP-SM, and SM shall be identified as cohesionless only when the fines are nonplastic (plasticity index equals zero). Materials classified as GM and SM will be identified as cohesive only when the fines have a plasticity index greater than zero.

2.1.4 Expansive Soils

Soils that have a plasticity index equal to or greater than 35 when tested in accordance with **ASTM D4318**.

2.1.5 Common Fill

Approved, unclassified soil material with the characteristics required to compact to the soil density specified for the intended location.

2.1.6 Backfill and Fill Material

ASTM D2487, classification GW, GP, GM, SW, SP, SM, SC with a maximum **ASTM D4318** liquid limit of 45, maximum **ASTM D4318** plasticity index of 30, and a maximum of 25 percent by weight passing **ASTM D1140**, No. 200 sieve.

2.1.7 Select Material

Provide materials classified as GW, GP, SW, or SP by [ASTM D2487](#) where indicated. The liquid limit of such material shall not exceed 35 percent when tested in accordance with [ASTM D4318](#). The plasticity index shall not be greater than 12 percent when tested in accordance with [ASTM D4318](#), and not more than 35 percent by weight shall be finer than [No. 200](#) sieve when tested in accordance with [ASTM D1140](#).

The combined material shall conform to the following sieve analysis:

Sieve Size	Percent Passing by Weight
2 1/2 inches	100
No. 4	40 - 85
No. 10	20 - 80
No. 40	10 - 60
No. 200	5 - 25

2.1.8 Topsoil

Provide as specified in Section [31 23 00.02](#) TOPSOIL.

2.2 POROUS FILL FOR CAPILLARY WATER BARRIER

[ASTM C33/C33M](#) fine aggregate grading with a maximum of 3 percent by weight passing [ASTM D1140](#), [No. 200](#) sieve, or [1-1/2 inches](#) and no more than 2 percent by weight passing the [No. 4](#) size sieve and conforming to the general soil material requirements specified in paragraph entitled "Satisfactory Materials."

2.3 UTILITY BEDDING MATERIAL

Except as specified otherwise in the individual piping section, provide bedding for buried piping in accordance with [AWWA C600](#), Type 4, except as specified herein. Backfill to top of pipe shall be compacted to 95 percent of [ASTM D698](#) maximum density. Plastic piping shall have bedding to spring line of pipe. Provide [ASTM D2321](#) materials as follows:

- a. Class I: Angular, [0.25 to 1.5 inches](#), graded stone, including a number of fill materials that have regional significance such as coral, slag, cinders, crushed stone, and crushed shells.
- b. Class II: Coarse sands and gravels with maximum particle size of [1.5 inches](#), including various graded sands and gravels containing small percentages of fines, generally granular and noncohesive, either wet

or dry. Soil Types GW, GP, SW, and SP are included in this class as specified in [ASTM D2487](#).

2.3.1 Sand

Clean, coarse-grained sand classified as by [ASTM D2487](#) for bedding and backfill.

2.3.2 Gravel

Clean, coarsely graded natural gravel, crushed stone or a combination thereof or having a classification of GW in accordance with [ASTM D2487](#) for bedding and backfill. Maximum particle size shall not exceed [1.5 inches](#).

2.4 BACKFILL FOR UNDERDRAINAGE SYSTEMS

Clean sand, crushed rock, or gravel meeting the following requirements:

- a. Perforated or Slotted-Wall Pipe with Filter Fabric: Backfill meeting requirements of Type I material as specified in Table 1.

TABLE 1			
	Type I Gradation E 11 ASTM C33/C33M	Type II Gradation 57 ASTM C33/C33M	
ASTM D422 Sieve Size	Percent Passing	Percent Passing	
1.5 inches	--	100	
1 inch	--	90 - 100	
3/8 inch	100	25 - 60	
No. 4	95 - 100	5 - 40	
No. 8	--	0 - 20	
No. 16	45 - 80	--	
No. 50	10 - 30	--	

TABLE 1			
	Type I Gradation E 11 ASTM C33/C33M	Type II Gradation 57 ASTM C33/C33M	
ASTM D422 Sieve Size	Percent Passing	Percent Passing	
No. 100	0 - 10	--	

2.5 FILTER FABRIC

Provide a pervious sheet of polyester, nylon, glass or polypropylene, ultraviolet resistant filaments woven, spun bonded, fused, or otherwise manufactured into a nonraveling fabric with uniform thickness and strength. Fabric shall have the following manufacturer certified minimum average roll properties as determined by ASTM D4759:

		<u>Class B</u>
a. Grab tensile strength (ASTM D4632/D4632M) machine and transversed direction		80 lbs.
b. Grab elongation (ASTM D4632/D4632M) machine and transverse direction		15 percent
c. Puncture resistance (ASTM D4833/D4833M)		25 lbs.
d. Mullen burst strength (ASTM D3786/D3786M)	min. 290	130 psi
e. Trapezoidal Tear (ASTM D4533/D4533M)	min. 50	25 lbs.
f. Apparent Opening Size (ASTM D4751)	See Criteria Below	
(1) Soil with 50 percent or less particles by weight passing US No. 200 Sieve, AOS less than 0.6 mm (greater than #30 US Std. Sieve)		
(2) Soil with more than 50 percent particles by weight passing US No. 200 Sieve, AOS less than 0.297 mm (greater than #50 US Std. Sieve)		

		Class B
g. Permeability (ASTM D4491/D4491M)	k fabric greater than k Soil	
h. Ultraviolet Degradation (ASTM D4355/D4355M)	70 percent Strength retained at 150 hours	

PART 3 EXECUTION

3.1 PROTECTION

3.1.1 Shoring and Sheeting

Provide shoring and trench protection where indicated. In addition to Section 25 A and B of [EM 385-1-1](#) and other requirements set forth in this contract, include provisions in the shoring and sheeting plan that will accomplish the following:

- a. Prevent slippage or movement in banks or slopes adjacent to the excavation.
- b. Allow for the abandonment of shoring and sheeting materials in place in critical areas as the work is completed. In these areas, backfill the excavation to within [3 feet](#) of the finished grade and remove the remaining exposed portion of the shoring before completing the backfill.

3.1.2 Drainage and Dewatering

Provide for the collection and disposal of surface and subsurface water encountered during construction.

3.1.2.1 Drainage

So that construction operations progress successfully, completely drain construction site during periods of construction to keep soil materials sufficiently dry. The Contractor shall establish/construct storm drainage features (ponds/basins) at the earliest stages of site development, and throughout construction grade the construction area to provide positive surface water runoff away from the construction activity and/or provide temporary ditches, dikes, swales, and other drainage features and equipment as required to maintain dry soils and prevent erosion. When unsuitable working platforms for equipment operation and unsuitable soil support for subsequent construction features develop, remove unsuitable material and provide new soil material as specified herein. It is the responsibility of the Contractor to assess the soil and ground water conditions presented by the plans and specifications and to employ necessary measures to permit construction to proceed. Excavated slopes and backfill surfaces shall be protected to prevent erosion and sloughing. Excavation shall be performed so that the site, the area immediately surrounding the site, and the area affecting operations at the site shall be continually and effectively drained.

3.1.2.2 Dewatering

Groundwater flowing toward or into excavations shall be controlled to prevent sloughing of excavation slopes and walls, boils, uplift and heave in the excavation and to eliminate interference with orderly progress of construction. French drains, sumps, ditches or trenches will not be permitted within 3 feet of the foundation of any structure, except with specific written approval, and after specific contractual provisions for restoration of the foundation area have been made. Control measures shall be taken by the time the excavation reaches the water level in order to maintain the integrity of the in situ material. While the excavation is open, the water level shall be maintained continuously, at least 2 feet below the working level.

3.1.3 Underground Utilities

Location of the existing utilities indicated is approximate. The Contractor shall physically verify the location and elevation of the existing utilities indicated prior to starting construction.

3.1.4 Machinery and Equipment

Movement of construction machinery and equipment over pipes during construction shall be at the Contractor's risk. Repair, or remove and provide new pipe for existing or newly installed pipe that has been displaced or damaged.

3.2 EXCAVATION

Excavate to contours, elevation, and dimensions indicated. Reuse excavated materials that meet the specified requirements for the material type required at the intended location. Keep excavations free from water. Excavate soil disturbed or weakened by Contractor's operations, soils softened or made unsuitable for subsequent construction due to exposure to weather. Excavations below indicated depths will not be permitted except to remove unsatisfactory material. Unsatisfactory material encountered below the grades shown shall be removed as directed. Refill with satisfactory material and compact to 95 percent of ASTM D698 maximum density. Unless specified otherwise, refill excavations cut below indicated depth with satisfactory material and compact to 95 percent of ASTM D698 maximum density. Satisfactory material removed below the depths indicated, without specific direction of the Owner, shall be replaced with satisfactory materials to the indicated excavation grade; except as specified for spread footings. Determination of elevations and measurements of approved overdepth excavation of unsatisfactory material below grades indicated shall be done under the direction of the Owner.

3.2.1 Excavated Materials

Satisfactory excavated material required for fill or backfill shall be placed in the proper section of the permanent work required or shall be separately stockpiled if it cannot be readily placed.

3.3 FILLING AND BACKFILLING

Fill and backfill to contours, elevations, and dimensions indicated. Compact each lift before placing overlaying lift.

3.3.1 Common Fill Placement

Provide for general site. Use satisfactory materials. Place in 8 inch lifts. Compact areas not accessible to rollers or compactors with mechanical hand tampers. Aerate material excessively moistened by rain to a satisfactory moisture content. Finish to a smooth surface by blading, rolling with a smooth roller, or both.

3.3.2 Backfill and Fill Material Placement

Provide for areas requiring backfill against proposed structures, except where select material is provided. Place in 8 inch lifts. Do not place over wet or frozen areas. Place backfill material adjacent to structures as the structural elements are completed and accepted. Backfill against concrete only when approved. Place and compact material to avoid loading upon or against the structure.

3.3.3 Backfill and Fill Material Placement Over Pipes and at Walls

Backfilling shall not begin until construction below finish grade has been approved, underground utilities systems have been inspected, tested and approved, forms removed, and the excavation cleaned of trash and debris. Backfill shall be brought to indicated finish grade. Where pipe is coated or wrapped for protection against corrosion, the backfill material up to an elevation 2 feet above sewer lines and 1 foot above other utility lines shall be free from stones larger than 1 inch in any dimension. Heavy equipment for spreading and compacting backfill shall not be operated closer to foundation or retaining walls than a distance equal to the height of backfill above the top of footing; the area remaining shall be compacted in layers not more than 4 inches in compacted thickness with power-driven hand tampers suitable for the material being compacted. Backfill shall be placed carefully around pipes or tanks to avoid damage to coatings, wrappings, or tanks. Backfill shall not be placed against foundation walls prior to 7 days after completion of the walls. As far as practicable, backfill shall be brought up evenly on each side of the wall and sloped to drain away from the wall.

3.3.4 Trench Backfilling

Backfill as rapidly as construction, testing, and acceptance of work permits. Place and compact backfill under structures and embankment areas in 6 inch lifts to top of trench and in 8 inch lifts to one foot over pipe outside structures and embankment areas.

3.4 BORROW

Where satisfactory materials are not available in sufficient quantity from required excavations, approved borrow materials shall be obtained as specified herein.

3.5 COMPACTION

Determine in-place density of existing subgrade; if required density exists, no compaction of existing subgrade will be required.

3.5.1 General Site

Compact underneath areas designated for vegetation and areas outside the 5 foot line of the embankment area or structure to 95 percent of ASTM D698.

3.5.2 Structures

Compact top 12 inches of subgrades to 95 percent of ASTM D698. Compact common fill to 95 percent of ASTM D698.

3.6 FINISH OPERATIONS

3.6.1 Grading

Finish grades as indicated within one-tenth of one foot. Grade areas to drain water away from structures and toe of berm construction. Maintain areas free of trash and debris. For existing grades that will remain but which were disturbed by Contractor's operations, grade as directed.

3.6.2 Protection of Surfaces

Protect newly backfilled, graded, and topsoiled areas from traffic, erosion, and settlements that may occur. Repair or reestablish damaged grades, elevations, or slopes.

3.7 DISPOSITION OF SURPLUS MATERIAL

Remove from property soil material not suitable for filling or backfilling including brush, refuse, stumps, roots, and timber.

3.8 FIELD QUALITY CONTROL

3.8.1 Sampling

Take the number and size of samples required to perform the following tests.

3.8.2 Testing

Perform one of each of the following tests for each material used. Provide additional tests for each source change.

3.8.2.1 Fill and Backfill Material Testing

Test fill and backfill material in accordance with ASTM C136/C136M for conformance to ASTM D2487 gradation limits; ASTM D1140 for material finer than the No. 200 sieve; ASTM D4318 for liquid limit and for plastic limit; ASTM D698 or ASTM D1557 for moisture density relations, as applicable.

3.8.2.2 Select Material Testing

Test select material in accordance with ASTM C136/C136M for conformance to ASTM D2487 gradation limits; ASTM D1140 for material finer than the No. 200 sieve; ASTM D698 or ASTM D1557 for moisture density relations, as applicable.

3.8.2.3 Porous Fill Testing

Test porous fill in accordance with ASTM C136/C136M for conformance to gradation specified in ASTM C33/C33M.

3.8.2.4 Density Tests

Material Type	Location of Material	Test Frequency
Undisturbed Native Soil	Structures	Two random tests in native soil building footings and two tests on subgrade within building line.
Fills and backfill	Structures (adjacnt to)	One test per structure per 2,000 sq. ft taken 12 inches below finished grade.
Material type	Location of Material	Test Frequency
Subgrades	Site (except airfields)	One test per lift per 2,500 sq. ft
Embankments or borrow	Any	One test per lift per 500 cubic yds placed.
Native soil subgrade other than structures and parking	Any	One test or one test per 10,000 sq. ft whichever is greater.
Borrow	Any	One test per lift per 500 cubic yds placed.

Test density in accordance with [ASTM D1556/D1556M](#), or [ASTM D6938](#). When [ASTM D6938](#) density tests are used, verify density test results by performing an [ASTM D1556/D1556M](#) density test at a location already [ASTM D6938](#) tested as specified herein. Perform an [ASTM D1556/D1556M](#) density test at the start of the job, and for every 10 [ASTM D6938](#) density tests thereafter. Test each lift at randomly selected locations every [2000 square feet](#) of existing grade in fills for structures and concrete slabs, and every [2500 square feet](#) for other fill areas and every [2000 square feet](#) of subgrade in cut. Include density test results in daily report.

Bedding and backfill in trenches: One test per [50 linear feet](#) in each lift.

3.8.2.5 Moisture Content Tests

In the stockpile, excavation or borrow areas, a minimum of two tests per day per type of material or source of materials being placed is required during stable weather conditions. During unstable weather, tests shall be made as dictated by local conditions and approved moisture content shall be tested in accordance with [ASTM D2216](#). Include moisture content test results in daily report.

-- End of Section --

SECTION 31 23 23

CEMENTIOUS FILL MATERIALS

04/22

PART 1 GENERAL

1.1 SECTION INCLUDES

This section specifies cementitious fill materials for the following applications:

1. Backfilling the area behind the existing bulkhead wall and new sheet piles after the new work is complete.

1.2 DEFINITIONS

Ready-mix Controlled Low Strength Material (CLSM) is used as an alternative to compacted soil and is also known as controlled density fill or flowable fill. Controlled Low Strength Material differs from Portland cement concrete as it contains a low cementitious content to reduce strength development for possible future removal. Chemical admixtures may be used in Controlled Low Strength Material to modify performance properties of strength, flow, set and permeability.

Controlled Low Strength Materials are considered machine tool excavatable at compressive strength of 200 psi (1.5 MPa) maximum at 1 year, or hand tool excavatable at compressive strength of 100 to 150 psi (0.7 MPa) maximum at 1 year.

1.3 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

AMERICAN CONCRETE INSTITUTE (ACI)

ACI 229 (1994) Controlled Low Strength Materials (CLSM)

ASTM INTERNATIONAL (ASTM)

ASTM C109/C109M (2021) Standard Test Method for Compressive Strength of Hydraulic Cement Mortars (Using 2-in. or (50-mm) Cube Specimens)

ASTM C940 (2016) Standard Test Method for Expansion and Bleeding of Freshly Mixed Grouts for Preplaced-Aggregate Concrete in the Laboratory

1.4 SUBMITTALS

Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Work plan

SD-03 Product Data

Product Data

SD-06 Test Reports

Material Test Reports

SD-07 Certificates

Qualification Data

1.5 QUALITY ASSURANCE

1.5.1 Work Plan

Describe in detail the materials, methods, equipment, and sequence of operations to be used for the filling operations.

1.5.2 Qualification Data

Submit Qualification Data for installers and manufacturers to demonstrate their capabilities and experience. Include lists of at least 5 completed projects, within the last 10 years, comparable in size and complexity, to this Project, with a minimum of the following information:

1. Owner's Name
2. Project Name and Location
3. Brief Description / Scope of Work for the Project
4. Address and phone number of Owner
5. Address and phone number of project Design Consultant
6. Date work was performed.

1.5.3 Manufacturer Qualifications

Manufacturers shall have factory-trained representatives who are available for consultation and project site inspection at no additional cost. Controlled Low Strength Materials shall be manufactured by a ready-mix concrete producer with a minimum of 1 year of experience in the production of similar products.

1.5.4 Materials

For each type of material required for the work of this Section, provide primary materials which are the products of one manufacturer. If not otherwise specified here, materials shall comply with recommendations of **ACI 229**, "Controlled Low Strength Materials."

Submit Material Test Reports a qualified testing agency indicating and interpreting test results for compliance of requirements indicated, in paragraph MIXES.

1.5.5 Pre-Installation Conference

A pre-installation conference shall be held prior to commencement of field

operations to establish procedures to maintain optimum working conditions and to coordinate this work with related and adjacent work.

1.6 DELIVERY, STORAGE, AND HANDLING

Deliver and handle in strict compliance with manufacturer's recommendations. Protect from damage due to weather, excessive temperatures, and construction operations.

1.7 PROJECT CONDITIONS

1.7.1 Environmental Limitations

Perform work only when existing and forecasted weather conditions are within the limits established by the manufacturer of the materials and products used. Tidal variations will occur along the work area and Contractor shall coordinate the work accordingly.

1.7.2 Fill Areas in First Stage

Fill Areas in the first stage, as shown on the drawings, will require placement of fill material below water. Measures shall be taken (sealing of the bulkhead, etc.) to prevent migration of fine materials into or clouding of the water of the **ship channel**.

1.7.3 Fill Areas in Second Stage

For fill Areas in second stage, as shown on the drawings, Contractor shall excavate or provide pathway areas as necessary to provide continuous void filling operations.

PART 2 PRODUCTS

2.1 MIXES

2.1.1 Flowable Fill

Mix design shall produce a consistency that will result in a flowable product at the time of placement which does not require manual means to move it into place.

1. For the first placement of fill material, mix shall have a unit weight of 75 - 90 lbs/ft³ measured at the point of placement after a 60 minute ready-mix truck ride. Majority of the placement will be under sea water. Provide a mix with compressive strength of maximum 200 psi when measured 7 days after placement.
2. For the second placement of fill material, mix shall have a unit weight of 75 - 90 lbs/ft³ measured at the point of placement after a 60 minute ready-mix truck ride. Provide a mix with compressive strength of maximum 100 psi when measured 7 days after placement.
3. Controlled Low Strength Material shall have minimal subsidence and bleed water which is measured as a final bleeding of less than 2.0 percent (retains 98.0 percent of original height after placement, approximately 1/4-inch per foot of depth) as measured in Section 10 of **ASTM C940** "Standard Test Method for Expansion and Bleeding of Freshly Mixed Grouts for Preplaced-Aggregate Concrete in the Laboratory".

4. In the absence of strength data the cementitious content shall be a maximum of 150 lbs/cy.
5. Flowable Fill shall have an in-place yield of 98 percent of design yield.

2.1.2 Product Data

Include material descriptions, chemical composition, physical properties, test data, and mixing and application instructions.

1. Include Material Safety Data Sheets, if applicable.
2. Flowable fill mix design.
3. Historical compressive strength test results according to ASTM C109/C109M.

2.2 MATERIALS

2.2.1 Flowable Fill

All materials used for the mix shall be in compliance with recommendations in ACI 229, which includes water, cement, aggregate, fly ash, admixtures and other materials.

PART 3 EXECUTION

3.1 EXAMINATION

Examine conditions of substrates and other conditions under which work is to be performed and notify **Owner**, in writing, of circumstances detrimental to the proper completion of the work. Do not proceed until unsatisfactory conditions are corrected.

Notify **Owner** 48 hours in advance of dates when void fill operations will begin. Do not proceed with work until the **Owner** is on site.

3.2 APPLICATION OF FILL MATERIALS

Secure pipes, bulkheads, shoring and other members to be encased or adjacent to fill material to prevent displacement during placement of fill materials. Provide protection of underground drainage pipes, structures, conduits, etc. so that cementitious fill material does not enter spaces or cause flow or access blockage.

Do not execute the work of this section unless the Design Consultant or Owner's representative is present and has authorized the work to commence.

Prior to executing the void fill operations, notify the cementitious fill material's manufacturer to arrange for a representative to be on site before initial placement begins.

3.3 PROTECTION

Protect fill material from traffic or other construction until sufficient strength has been achieved for further construction operations.

3.4 PREPARATION

Protect people, motor vehicles, equipment, surrounding construction,

project site, storm sewer inlets and piping, and surrounding buildings from injury resulting from void fill work.

Prepare bulkheads, pathways, relief venting and other work necessary to place fill material.

3.5 APPLICATION

All fill materials: Place as follows:

1. Place fill materials in a manner that does not cause movements or excessive deflections in structural members including, but not limited to, the existing concrete stepped seawall, existing concrete sheet piling.
2. Materials shall be placed to provide, at a minimum, 90 percent coverage of the surfaces under or beside which the fill is being placed.

-- End of Section --

SECTION 31 41 16.13 45

METAL SHEET PILING
07/18

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

AMERICAN WELDING SOCIETY (AWS)

AWS D1.1/D1.1M (2020; Errata 1 2021) Structural Welding
Code - Steel

ASTM INTERNATIONAL (ASTM)

ASTM A252 (2010) Standard Specification for Welded
and Seamless Steel Pipe Piles

ASTM A572/A572M (2021; E 2021) Standard Specification for
High-Strength Low-Alloy Columbium-Vanadium
Structural Steel

ASTM A6/A6M (2021) Standard Specification for General
Requirements for Rolled Structural Steel
Bars, Plates, Shapes, and Sheet Piling

ASTM A690/A690M (2013a; R 2018) Standard Specification for
High-Strength Low-Alloy Nickel, Copper,
Phosphorus Steel H-Piles and Sheet Piling
with Atmospheric Corrosion Resistance for
Use in Marine Environments

1.2 BASIS OF BID

1.2.1 Production Pile Acceptance Criteria

Drive piles to minimum tip elevation shown on drawings

1.3 SYSTEM DESCRIPTION

Submit to the **Owner** for approval descriptions of pile driving equipment to be employed in the work. Descriptive information includes manufacturer's name, model numbers, capacity, rated energy, hammer details, cushion material, helmet, templates, and jetting equipment.

1.4 SUBMITTALS

Submit the following in accordance with SECTION **01 33 00** SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Noise reduction and emission monitoring program

SD-02 Shop Drawings

Metal Sheet Piling

SD-03 Product Data

Manufacturer's product data and material

Driving

Pile Driving Equipment

Pulling and Redriving

Statements

SD-06 Test Reports

Materials Tests

Surface Preparation and Protective Coating Certification

Daily Records

SD-11 Closeout Submittals

Pile Driving Records

1.4.1 Noise Reduction And Emission Monitoring Program

Submit noise reduction and emission monitoring program.

Submit detailed fabrication and erection drawings for steel sheet piles, king/ pipe piles, and accessories prior to installation. Drawings shall include:

1. Detailed bulkhead wall layout drawings, indicating each standard steel sheet pile, each king/ pipe pile, each special fabricated section, each corner section, and showing quantity and length of each type.
2. Details of special fabricated sections, including complete dimensions and minimum section properties.
3. Details and dimensions of templates and other temporary guide structures for installing the steel sheet pile bulkhead system.

1.4.2 Manufacturer's Product Data and Material

Submit manufacturer's product data and material certification that steel sheet piles, connectors, king/ pipe piles, and hardware meet the specified requirements.

1.4.3 Statements

Statements:

1. Pile pulling method.

2. Material certificates:

- a. Submit for each shipment of piling, and king/ pipe piling; certificates identified with specific lots prior to installing piling. Identification data should include piling type, dimensions, chemical composition, mechanical properties, section properties, heat number and mill identification mark.
 - b. Submit certificates and statements of conformance and acceptability for turnbuckles and ultrasonic test results.
 - c. Submit mill certificates, with chemical composition and mechanical properties, and product cut-sheet data on headed anchor stud connectors.
3. Pile driving equipment: Submit descriptions of pile driving equipment to be employed in the work to the Chief Construction Manager for approval. Descriptive information should include manufacturer's name, model numbers, capacity, rated energy, hammer details, cushion material, helmet and templates.

1.4.4 Daily Records

During pile driving, submit records each day, including the following for king/ pipe piles, and steel sheet pile:

1. Name of bulkhead, king/ pipe pile number or steel sheet pile pair number.
2. Driven pile length.
3. Pile length after cut off (if required).
4. The Top of pile elevation.

1.4.5 Pile Driving Records

Maintain a pile driving record for steel sheet piles and king/ pipe piles

Indicate on the installation record installation date and times, type and size of hammer, rate of operation, total driving time, dimensions of driving helmet and cap used, blows required per foot of each foot of penetration, final driving resistance in blows for final 6 inches, pile locations, tip elevations, ground elevations, and any reheading or cutting of piles.

Record any unusual pile driving problems during driving.

1.5 QUALITY ASSURANCE

1.5.1 Production Pile Acceptance Criteria

Drive piles to minimum tip elevation shown on drawings.

1.5.2 Material Certificates

For each shipment, submit certificates identified with specific lots prior to installing piling. Include in the identification data piling type,

dimensions, chemical composition, mechanical properties, section properties, heat number, and mill identification mark.

1.6 DELIVERY, STORAGE, AND HANDLING

Materials delivered to the site shall be new and undamaged and shall be accompanied by certified test reports. Deliver steel sheet piles in pairs. Provide the manufacturer's logo and mill identification mark on the sheet piling as required by the referenced specifications. Store and handle sheet piling in the manner recommended by the manufacturer to prevent permanent deflection, distortion or damage to the interlocks; as a minimum, support on level blocks or racks spaced not more than 10 feet apart and not more than 2 feet from the ends. Supports between multiple lifts shall be aligned in a vertical plane. Handle piling using handling holes or lifting devices. Handle long length piles with multiple lifting points and care to prevent damage. Handling of epoxy coated piles shall be by sling.

Storage of sheet piling should also facilitate required inspection activities and prevent damage to coatings and corrosion prior to installation.

Pile shall not have a camber or sweep in excess of the permitted mill tolerance and ASTM A6/A6M.

PART 2 PRODUCTS

2.1 METAL SHEET PILING

- A. Submit detail drawings for sheet piling, including fabricated sections, showing complete piling dimensions and details, driving sequence and location of installed piling.
 - 1. Include in the drawings details of tip protection if needed, lagging, fabricated additions to plain piles, cut-off method, and dimensions of templates and other temporary guide structures for installing piling. Provide details of the method for handling piling to prevent permanent deflection, distortion or damage to piling interlocks.
- B. Steel sheet piles and king/ pipe piles shall be manufactured of hot-rolled steel conforming to the following:
 - 1. Pipe piles and connectors: ASTM A690/A690M, ASTM A252, or ASTM A572/A572M, minimum yield strength 50,000 psi.
 - 2. Steel Sheet Piles: ASTM A690/A690M or ASTM A572/A572M may be installed in pairs. Piles shall be Grade 50 minimum yield strength of 50,000 psi.
- C. The connectors shall be continuously welded to the pipe full length on both sides, as shown on the drawings. Interlocks of sheet piling shall be free sliding, allowing a swing angle of at least 5 degrees when threaded and maintain continuous interlocking when installed.
- D. Sheet piling, including corner sections, king/ pipe pile connectors, and special fabricated sections, shall be full-length sections to the dimensions shown, or required to complete the bulkhead to the overall dimensions indicated.

- E. Fabricated sections shall conform to the requirements herein and the piling manufacturer's recommendations for fabricated sections. Fabricated corners, tees and cross pieces shall be fabricated of piling sections with a minimum thickness of **1/2-inch**.
- F. Provide piling with standard pulling holes.
- G. Provide elevation reference and mark each pile to permit determination of the pile tip and top elevation.

2.2 SHOP PROTECTIVE COATING

2.2.1 Interlocks

The interlocks of sheet piling shall be free-sliding, provide a swing angle suitable for the intended installation but not less than 5 degrees when interlocked, and maintain continuous interlocking when installed.

2.2.2 General Requirements

Sheet piling shall be full-length sections of the dimensions shown. Provide fabricated sections conforming to the requirement and the piling manufacturer's recommendations for fabricated sections. Fabricated tees, wyes and cross pieces shall be fabricated of piling sections with a minimum web thickness of **0.375 inch**. Provide sheet piling with standard pulling holes. Metalwork fabrication for sheet piling shall be as specified.

2.3 APPURTENANT METAL MATERIALS

Provide metal plates, shapes, bolts, nuts, rivets and other appurtenant fabrication and installation materials conforming to manufacturer's standards and to the requirements specified.

2.4 TESTS, INSPECTIONS, AND VERIFICATIONS

Requirements for material tests, workmanship and other measures for quality assurance shall be as specified.

2.4.1 Materials Tests

Submit certified materials tests reports showing that sheet piling and appurtenant metal materials meet the specified requirements, for each shipment and identified with specific lots prior to installing materials. Material test reports shall meet the requirements of **ASTM A6/A6M**. Perform materials tests conforming to the following requirements. Sheet piling and appurtenant materials shall be tested and certified by the manufacturer to meet the specified chemical, mechanical and section property requirements prior to delivery to the site. Testing of sheet piling for mechanical properties shall be performed after the completion of all rolling and forming operations. Testing of sheet piling shall meet the requirements of **ASTM A6/A6M**.

PART 3 EXECUTION

3.1 EARTHWORK

Perform in accordance with SECTION **31 23 00.00 20** EXCAVATION AND FILL.

Pre-excavation will not be permitted. Backfill as indicated.

3.2 INSTALLATION

3.2.1 Pile Driving Equipment

Submit complete descriptions of sheet piling driving equipment including hammers, extractors, protection caps and other installation appurtenances, prior to commencement of work. Provide pile driving equipment conforming to the following requirements.

3.2.1.1 Driving Hammers

Hammers shall be steam, air, or diesel drop, single-acting, double-acting, differential-acting, or vibratory type. The driving energy of the hammers shall be as recommended by the manufacturer for the piling weights and subsurface materials to be encountered. Repair damage to piling caused by use of a pile hammer with excess delivered force or energy.

3.2.1.2 Jetting Equipment

Jetting will not be permitted.

3.2.2 Placing and Driving

3.2.2.1 Placing

Any excavation required within the area where sheet pilings are to be installed shall be completed prior to placing sheet pilings. Pilings properly placed and driven shall be interlocked throughout their length with adjacent pilings to form a continuous diaphragm throughout the length or run of piling wall.

- a. Pilings shall be carefully located as shown. Pilings shall be placed plumb with out-of-plumbness not exceeding **1/8 inch per foot** of length and true to line. Place the pile so the face will not be more than **6 inches** from vertical alignment at any point. Top of pile at elevation of cut-off shall be within **1/2 inch** horizontally and **2 inches** vertically of the location indicated. Manipulation of piles to force them into position will not be permitted. Check all piles for heave. Redrive all heaved piles to the required tip elevation.
- b. Provide temporary walls, templates, or guide structures to ensure that the pilings are placed and driven to the correct alignment. Use a system of structural framing sufficiently rigid to resist lateral and driving forces and to adequately support the sheet piling until design tip elevation is achieved. Use two templates, at least, when placing each piling not less than **20 feet** apart. Templates shall not move when supporting sheet piling. Fit templates with wood blocking to bear against the web of each alternate sheet pile and hold the sheet pile at the design location alignment. Provide outer template straps or other restraints as necessary to prevent the sheets from warping or wandering from the alignment. Mark template for the location of the leading edge of each alternate sheet pile. If in view, also mark the second level to assure that the piles are vertical and in position. If two guide marks cannot be seen, other means shall be used to keep the sheet pile vertical along its leading edge.

3.2.2.2 Driving

Submit records of the completed sheet piling driving operations, including a system of identification which shows the disposition of approved piling in the work, driving equipment performance data, piling penetration rate data, piling dimensions and top and bottom elevations of installed piling. Drive pilings with the proper size hammer and by approved methods so as not to subject the pilings to damage and to ensure proper interlocking throughout their lengths.

- a. Maintain driving hammers in proper alignment during driving operations by use of leads or guides attached to the hammer. Caution shall be taken in the sustained use of vibratory hammers when a hard driving condition is encountered to avoid interlock-melt or damages. Discontinue the use of vibratory hammers and use impact hammers when the penetration rate due to vibratory loading is **one foot** or less per minute.
- b. Employ a protecting cap in driving when using impact hammers to prevent damage to the tops of pilings. Remove and replace pilings damaged during driving or driven out of interlock at the Contractor's expense.
- c. Drive pilings without the aid of a water jet.
- d. Take adequate precautions to ensure that pilings are driven plumb. Where possible, drive Z-pile with the ball end leading. If an open socket is leading, a bolt or similar object placed in the bottom of the interlock will minimize packing material into it and ease driving for the next sheet. If at any time the forward or leading edge of the piling wall is found to be out-of-plumb in the plane of the wall the piling being driven shall be driven to the required depth and tapered pilings shall be provided and driven to interlock with the out-of-plumb leading edge or other approved corrective measures shall be taken to insure the plumbness of succeeding pilings. The maximum permissible taper for any tapered piling shall be **1/8 inch per foot** of length.
- e. Pilings in each run or continuous length of piling wall shall be driven alternately in increments of depth to the required depth or elevation. No piling shall be driven to a lower elevation than those behind it in the same run except when the pilings behind it cannot be driven deeper. Incrementally sequence driving of individual piles such that the tip of any sheet pile shall not be more than **4 feet** below that of any adjacent sheet pile. When the penetration resistance exceeds five blows per **inch**, the tip of any sheet pile shall not be more than **2 feet** below any adjacent sheet pile. If the piling next to the one being driven tends to follow below final elevation it may be pinned to the next adjacent piling.
- f. If obstructions restrict driving a piling to the specified penetration, the obstructions shall be removed or penetrated with a chisel beam. If the Contractor demonstrates that removal or penetration is impractical, make changes in the design alignment of the piling structure as directed to ensure the adequacy and stability of the structure. Pilings shall be driven to depths shown and shall extend up to the elevation indicated for the top of pilings. A tolerance of **2 inches** above the indicated top elevation will be permitted. Pilings shall not be driven within **100 feet** of concrete

less than 7 days old.

3.2.3 Penetration

All piles shall be driven to the penetration shown on the Drawings. Allowance for loss of pile length due to damage of the top shall be made in ordering pile lengths or welded extensions at no cost to the Owner.

When the pile cannot be driven to the required penetration without excessive damage, or within the aforesaid tolerances, the Contractor shall notify the Owner and provide recommendations for advancing the pile to meet design tip.

3.2.4 Cutting-Off and Splicing

Pilings driven to refusal or to the point where additional penetration cannot be attained and are extending above the required top elevation in excess of the specified tolerance shall be cut off to the required elevation. Pilings driven below the required top elevation and pilings damaged by driving and cut off to permit further driving shall be extended as required to reach the top elevation by splicing when directed at no additional cost to the Owner.

- a. Pilings adjoining spliced pilings shall be full length unless otherwise approved. If splices are allowed in adjoining pilings, the splices shall be spaced at least 2 feet apart in elevation. Splicing of pilings shall be as indicated. Ends of pilings to be spliced shall be squared before splicing to eliminate dips or camber. Pilings shall be spliced together with concentric alignment of the interlocks so that there are no discontinuities, dips or camber at the abutting interlocks. Spliced pilings shall be free sliding and able to obtain the maximum swing with contiguous pilings. Welding of splices shall conform to specifications. Shop and field welding, qualification of welding procedures, welders, and welding operators shall be in accordance with AWS D1.1/D1.1M.
- b. The tops of pilings excessively battered during driving shall be trimmed when directed, at no cost to the Owner. Piling cut-offs shall become the property of the Contractor and shall be removed from the site.
- c. Cut holes in pilings for bolts, rods, drains or utilities in a neat and workmanlike manner, as shown or as directed. Use a straight edge in cuts made by burning to avoid abrupt nicks. Bolt holes in steel piling shall be drilled or may be burned and reamed by approved methods which will not damage the surrounding metal. Holes other than bolt holes shall be reasonably smooth and the proper size for rods and other items to be inserted. Do not use explosives for cutting.

3.2.5 Inspection of Driven Piling

Perform continuous inspection during pile driving. Inspect all piles for compliance with tolerance requirements. Bring any unusual problems which may occur to the attention of the Owner. Inspect the interlocked joints of driven pilings extending above ground. Pilings found to be out of interlock shall be removed and replaced at the Contractor's expense.

Contractor shall be required to use divers to inspect the underwater portions of sheet piling to verify the integrity of interlocks between

sheets.

3.2.6 Pulling and Redriving

Submit the proposed method of pulling sheet piling, prior to pulling any piling. Pull, as directed, selected pilings after driving to determine the condition of the underground portions of pilings. Any piling so pulled and found to be damaged, to the extent that its usefulness in the structure is impaired, shall be removed and replaced at the Contractor's expense. Pilings pulled and found to be in satisfactory condition shall be redriven when directed.

3.3 STRUCTURAL STEEL FABRICATION AND INSTALLATION

A. DESCRIPTION:

1. The Contractor shall furnish, fabricate and install, all structural steel caps, brackets, or other attachments shown on the drawings.
2. The Contractor shall furnish, fabricate and install all fittings, corners and connections to the sheet piling necessary to construct the bulkhead in the location and to the alignment shown on the drawings.

B. Formation of holes: Except as set out hereafter, holes for bolts, rivets, and pins shall be punches, drilled, or sub-punched and drilled as called for on the drawings, and in accordance with specifications for the design, fabrication and erection of structural steel for buildings of the American Institute of Steel Construction; however, field holes may be made by gas burning the hole undersize all around and reaming to the proper size.

D. Holes for anchor rods: When anchor rods are to be inserted through bored holes, the diameter of the holes through the bulkhead and anchor wall shall be only large enough to insert the boring tool. In all other cases, the hole diameters shall be more than 1/4" larger than the anchor rod diameter. The excess opening around rods through the bulkhead shall be made watertight to prevent the loss of the backfill.

E. Coated members: Wherever burning, drilling, welding, or other operations cause damage to coating, such damage shall be repaired by recoating in accordance with Specification Section 09 97 02 PAINTING: HYDRAULIC STRUCTURES. Where such damage is to the back side of the piling and would require excavation of more than three feet of earth solely in order to make the damaged area accessible, such inaccessible areas need not be repaired unless otherwise ordered by the chief construction manager, in which case the cost of such excavation will be borne by the Owner.

3.4 ANCHORAGE STRUCTURES

- A. Construct all anchorage structures as they are shown on the drawings.
- B. All steel bearing piles, including batter piles shall be furnished and driven in accordance with applicable provisions of the sections for steel h-piles and steel pipe piles. Steel piles shall be driven to the batter lines shown on the drawings. The tops of piles shall not vary

from planned locations by more than 1-1/2 inches in a plane through the axis of the pile that is normal to the face of the bulkhead..

3.5 DRAIN WELLS AND WEEP HOLES

Drain wells where shown on the Drawings, shall be constructed to the size and depth and at the locations, as shown on the Drawings. The wells shall be filled with a mixture of graded gravel and sand meeting the requirements for coarse and fine aggregates for concrete, well mixed in the proportions of three parts of gravel passing a 1-1/2-inch screen and two parts of sand.

Prior to filling the drain wells, install a weep hole consisting of a length of 4-inch steel pipe extending through and welded to the steel sheet piling as shown on the Drawing. The pipe is to be coated as required for steel sheet piling. Damage to coating due to welding shall be repaired on the front face of bulkhead in accordance with the requirements for coating.

Horizontal drains, where called for on the Drawings, shall be constructed using the gravel and sand fill specified above, laid down on the lines and grades required by the details. The drain fill shall be compacted to a stable density.

3.6 INSTALLATION RECORDS

Maintain a pile driving record for each sheet pile driven. Indicate on the installation record: installation dates and times, type and size of hammer, rate of operation, total driving time, dimensions of driving helmet and cap used, blows required per foot for each foot of penetration, final driving resistance in blows for final 6 inches, pile locations, tip elevations, ground elevations, cut-off elevations, and any re-heading or cutting of piles. Record any unusual pile driving problems during driving. Submit complete records to the Owner.

-- End of Section --

APPENDIX A

Environmental Requirements



PROTECTED SPECIES CONSTRUCTION CONDITIONS, NOAA FISHERIES SOUTHEAST REGIONAL OFFICE

The action agency and any permittee shall comply with the following construction conditions for protected species under the jurisdiction of NOAA Fisheries Southeast Regional Office (SERO) Protected Resources Division (PRD):¹

Protected Species Sightings—The action agency and any permittee shall ensure that all personnel associated with the project are instructed about the potential presence of species protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). All on-site project personnel are responsible for observing water-related activities for the presence of protected species. All personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing listed species and all marine mammals. To determine which protected species and critical habitat may be found in the transit area, please review the relevant [marine mammal](https://www.fisheries.noaa.gov/find-species) and [ESA-listed species](https://www.fisheries.noaa.gov/find-species) at Find A Species (<https://www.fisheries.noaa.gov/find-species>) and the consultation documents that have been completed for the project.

1. **Equipment**—Turbidity curtains, if used, shall be made of material in which protected species cannot become entangled and be regularly monitored to avoid protected species entrapment. All turbidity curtains and other in-water equipment shall be properly secured with materials that reduce the risk of protected species entanglement and entrapment.
 - a. In-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) shall be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, shall be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line shall be allowed in the water. All anchoring shall be in areas free from hardbottom and seagrass.
 - b. Turbidity curtains and other in-water equipment shall be placed in a manner that does not entrap protected species within the project area and minimizes the extent and duration of their exclusion from the project area.
 - c. Turbidity barriers shall be positioned in a way that minimizes the extent and duration of protected species exclusion from important habitat (e.g. critical habitat, hardbottom, seagrass) in the project area.
2. **Operations**—For construction work that is generally stationary (e.g., barge-mounted equipment dredging a berth or section of river, or shore-based equipment extending into the water):
 - a. Operations of moving equipment shall cease if a protected species is observed within 150 feet of operations.

¹ Manatees are managed under the jurisdiction of the U.S. Fish and Wildlife Service.

- b. Activities shall not resume until the protected species has departed the project area of its own volition (e.g., species was observed departing or 20 minutes have passed since the animal was last seen in the area).
3. **Vessels**—For projects requiring vessels, the action agency, and any permittee shall ensure conditions in the [Vessel Strike Avoidance Measures](#) are implemented as part of the project/permit issuance (<https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance>).
4. **Consultation Reporting Requirements**—Any interaction with a protected species shall be reported immediately to NOAA Fisheries SERO PRD and the local authorized stranding/rescue organization.

To report to NOAA Fisheries SERO PRD, send an email to takereport.nmfsser@noaa.gov. Please include the species involved, the circumstances of the interaction, the fate and disposition of the species involved, photos (if available), and contact information for the person who can provide additional details if requested. Please include the project's Environmental Consultation Organizer (ECO) number and project title in the subject line of email reports.

To report the interaction to the local stranding/rescue organization, please see the following website for the most up to date information for reporting sick, injured, or dead protected species:

Reporting Violations—To report an ESA or MMPA violation, call the NOAA Fisheries Enforcement Hotline. This hotline is available 24 hours a day, 7 days week for anyone in the United States.

NOAA Fisheries Enforcement Hotline (800) 853-1964

5. **Additional Conditions**—Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the project consultation and must also be complied with.

For additional information, please contact NOAA Fisheries SERO PRD at:

NOAA Fisheries Service
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701
Tel: (727) 824-5312

Visit us on the web at [Protected Marine Life in the Southeast](#)
(<https://www.fisheries.noaa.gov/region/southeast#protected-marine-life>)

Revised: May 2021



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

O:\forms\Sea Turtle and Smalltooth Sawfish Construction Conditions.doc





VESSEL STRIKE AVOIDANCE MEASURES, NOAA FISHERIES SOUTHEAST REGIONAL OFFICE

Background

Vessel strikes can injure or kill species protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). NOAA Fisheries Southeast Regional Office (SERO) Protected Resources Division (PRD) recommends implementing the following identification and avoidance measures to reduce the risk of vessel strikes and disturbance from vessels to protected species under our jurisdiction.¹

Protected Species Sightings

All vessel operators and crews should be informed about the potential presence of species protected under the ESA and the MMPA and any critical habitat in a vessel transit area. All vessels should have personnel onboard responsible for observing for the presence of protected species. All personnel should be advised that there are civil and criminal penalties for harming, harassing, or killing listed species and all marine mammals. To determine which protected species and critical habitat may be found in the transit area, please review the relevant [marine mammal](#) and [ESA-listed species](#) at Find A Species (<https://www.fisheries.noaa.gov/find-species>) and any ESA Section 7 consultation documents if applicable.

Vessel Strike Avoidance

The following measures should be taken when they are consistent with safe navigation to avoid causing injury or death of a protected species:

1. Operate at the minimum safe speed when transiting and maintain a vigilant watch for protected species to avoid striking them. Even with a vigilant watch, most marine protected species are extremely difficult to see from a boat or ship, and you cannot rely on detecting them visually and then taking evasive action. The most effective way to avoid vessel strikes is to travel at a slow, safe speed. Whenever possible, assign a designated individual to observe for protected species and limit vessel operation to only daylight hours.
2. Follow deep-water routes (e.g., marked channels) whenever possible.
3. Operate at “Idle/No Wake” speeds in the following circumstances:
 - a. while in any project construction areas
 - b. while in water depths where the draft of the vessel provides less than four feet of clearance from the bottom, or
 - c. in all depths after a protected species has been observed in and has recently departed the area.

¹ Manatees are managed under the jurisdiction of the U.S. Fish and Wildlife Service.

4. When a protected species is sighted, attempt to maintain a distance of 150 feet or greater between the animal and the vessel. Reduce speed and avoid abrupt changes in direction until the animal(s) has left the area.
5. When dolphins are bow- or wake-riding, maintain course and speed as long as it is safe to do so or until the animal(s) leave the vicinity of the vessel.
6. If a whale is sighted in the vessel's path or within 300 feet from the vessel, reduce speed and shift the engine to neutral. Do not engage the engines until the animals are clear of the area. *Please see below for additional requirements for North Atlantic right whales.*
7. If a whale is sighted farther than 300 feet from the vessel, maintain a distance of 300 feet or greater between the whale and the vessel and reduce speed to 10 knots or less. *Please see below for additional requirements for North Atlantic right whales.*

Injured or Dead Protected Species Reporting

Vessel crews should report sightings of any injured or dead protected species immediately regardless of whether the injury or death is caused by your vessel. Please see [How to Report a Stranded or Injured Marine Animal](https://www.fisheries.noaa.gov/report) (<https://www.fisheries.noaa.gov/report>) for the most up to date information for reporting injured or dead protected species.

If the injury or death is caused by your vessel, also report the interaction to NOAA Fisheries SERO PRD at takereport.nmfsser@noaa.gov. Please include the species involved, the circumstances of the interaction, the fate and disposition of the animal involved, photos (if available), and contact information for the person who can provide additional details if requested. Please include the project's Environmental Consultation Organizer (ECO) number and project title in the subject line of email reports if a consultation has been completed.

Reporting Violations

To report any suspected ESA or MMPA violation, call the NOAA Fisheries Enforcement Hotline. This hotline is available 24 hours a day, 7 days week for anyone in the United States.

NOAA Fisheries Enforcement Hotline: (800) 853-1964

Additional Transit and Reporting Requirements for North Atlantic Right Whales

1. Federal regulation prohibits approaching or remaining within 500 yards of a North Atlantic right whale (50 CFR 224.103 (c)). All whales sighted within North Atlantic right whale critical habitat should be assumed to be right whales. Please be aware and follow restrictions for all Seasonal Management Areas along the U.S. east coast. These areas have vessel speed restrictions to reduce vessel strikes risks to migrating or feeding whales. More information can be found at [Reducing Vessel Strikes to North Atlantic Right Whales](https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales) (<https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>).
2. Ships greater than 300 gross tons entering the WHALESOUTH reporting area are required to report to a shore-based station. For more information on reporting procedures consult 33 CFR Part 169, the Coast Pilot, or at [Reducing Vessel Strikes to North Atlantic](https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales)

[Right Whales](https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales) (<https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>).

3. From November through April, vessels approaching/departing Florida ports of Jacksonville and Fernandina Beach as well as Brunswick Harbor, Georgia are **STRONGLY RECOMMENDED** to use Two-Way Routes displayed on nautical charts. More information on [Compliance with the Right Whale Ship Strike Reduction Rule](https://media.fisheries.noaa.gov/2021-06/compliance_guide_for_right_whale_ship_strike_reduction.pdf) can be found at (https://media.fisheries.noaa.gov/2021-06/compliance_guide_for_right_whale_ship_strike_reduction.pdf)
4. Mariners shall check with various communication media for general information regarding avoiding vessel strikes and specific information regarding North Atlantic right whale sighting locations. These include NOAA weather radio, U.S. Coast Guard Broadcast to Mariners, Local Notice to Mariners, and NAVTEX. Commercial mariners calling on United States ports should view the most recent version of the NOAA/USCG produced training CD entitled “A Prudent Mariner’s Guide to Right Whale Protection” (contact the NOAA Fisheries SERO, Protected Resources Division for more information regarding the CD).
5. Injured, dead, or entangled right whales should be immediately reported to the U.S. Coast Guard via VHF Channel 16 and the NOAA Fisheries Southeast Marine Mammal Stranding Hotline at (877) WHALE HELP (877-942-5343).

For additional information, please contact NOAA Fisheries SERO PRD at:

NOAA Fisheries Service

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701

Visit us on the web at [Protected Marine Life in the Southeast](https://www.fisheries.noaa.gov/region/southeast#protected-marine-life)

(<https://www.fisheries.noaa.gov/region/southeast#protected-marine-life>)

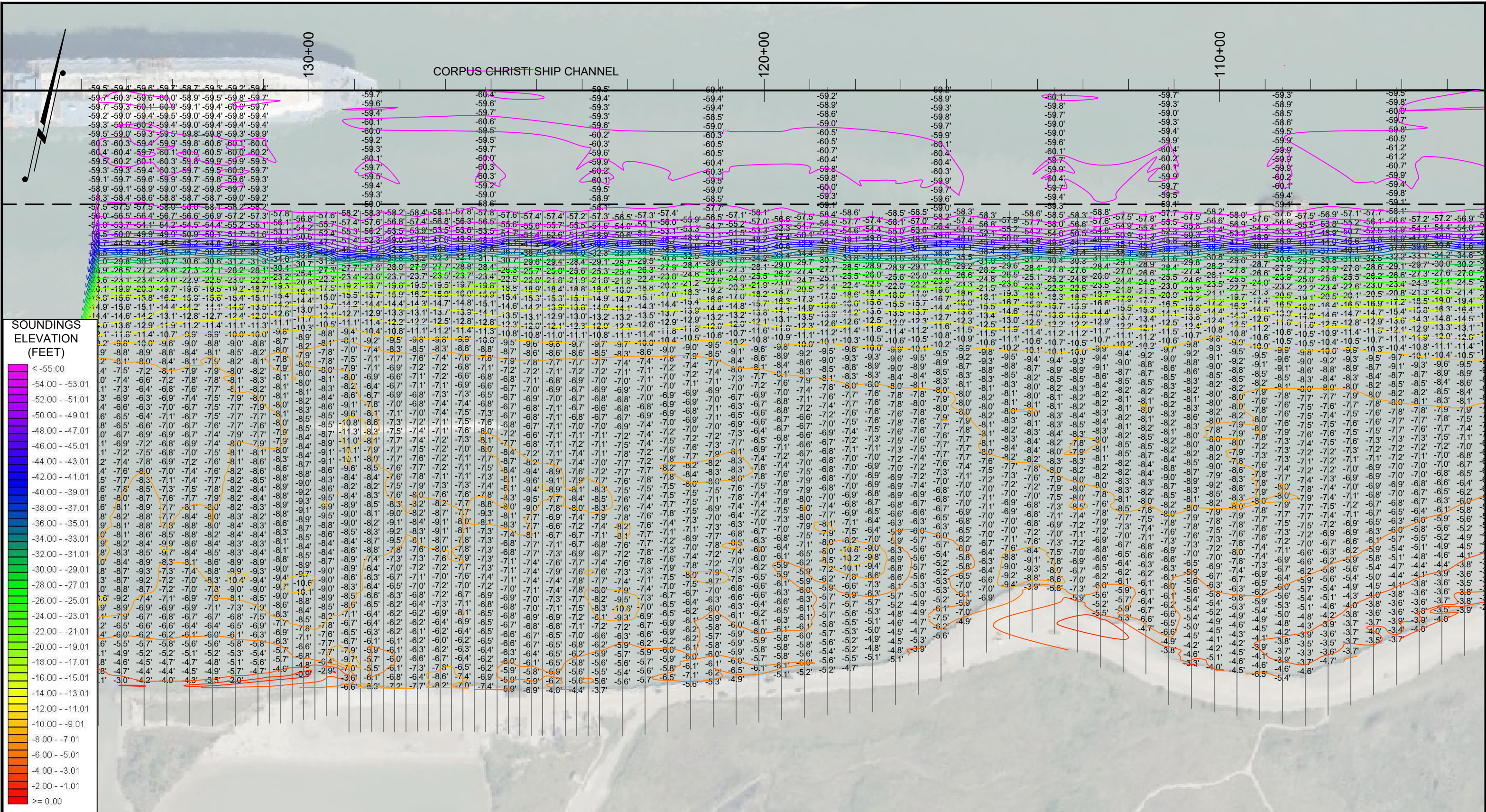
Revised: May 2021

APPENDIX B

Available Surveys

Surveys were furnished by the City of Port Aransas and are included as reference information only. No representation is made regarding the accuracy of these surveys with respect to current site conditions. Conditions at the project site may have changed since the surveys were conducted, and field verification is recommended where necessary.

--- P:\Y-2025\2025.0592\DRAWINGS\URBAN BATHY SURVEY AT CHARLIE PASTURE_11SEPT2025.DWG



NOTES:
1. BATHYMETRIC DATA WAS RECORDED BY T. BAKER SMITH ON 11 SEPTEMBER, 2025. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
2. HORIZONTAL DATUM: NAD83 (2011), TEXAS SOUTH ZONE. ALL DISTANCES ARE U.S. SURVEY FEET (GRID).
3. VERTICAL: NAVD88 (GEOID 18)

"PILOT"
N: 17,196,351.3'
E: 1,452,273.8'
ELEV: 5.9' NAVD88



T. BAKER SMITH
A CENTURY OF SOLUTIONS
3854 FM 1069
Aransas Pass, TX 78336
(361)334-5719 - tbsmith.com
TBPLS #10194575

SCALE: 1" = 200'

200'

100'

0'

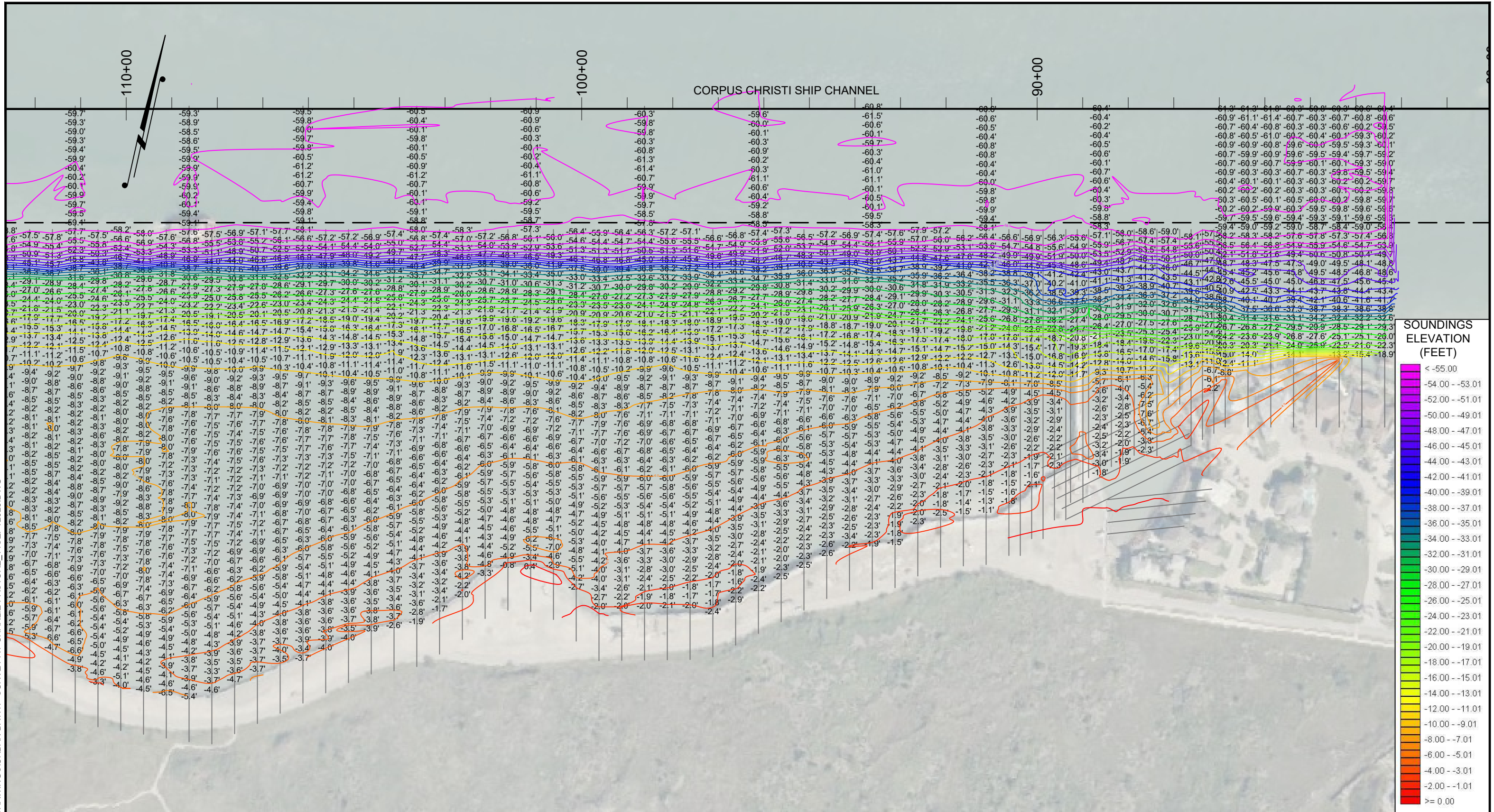
200'

REV. NO:	00	REV. DATE:	--/--	REV. BY:	---
REVISION DESCRIPTION:					
-					

DRAWN BY:	CDW	APPROVED BY:	AWK
DATE:	09/19/2025	JOB NO:	2025.0592
DRAWING NAME:			
URBAN BATHY SURVEY AT CHARLIE PASTURE_11SEPT2025			
PROJECTION: TEXAS STATE PLANE SOUTH ZONE			
GEO. DATUM: NAD83 (2011) VERT. DATUM: NAVD88			
GRID UNITS: US SURVEY FEET			
SHEET NO:	1	OF	3

BATHYMETRIC SURVEY
URBAN ENGINEERING
CHARLIE'S PASTURE
AN EXHIBIT OF A
BATHYMETRIC SURVEY
LOCATED IN
PORT ARANSAS, TEXAS

P:\Y-2025\2025.0592\DRAWINGS\URBAN BATHY SURVEY AT CHARLIE PASTURE_11SEPT2025.DWG



NOTES:
1. BATHYMETRIC DATA WAS RECORDED BY T. BAKER SMITH ON 11 SEPTEMBER, 2025. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
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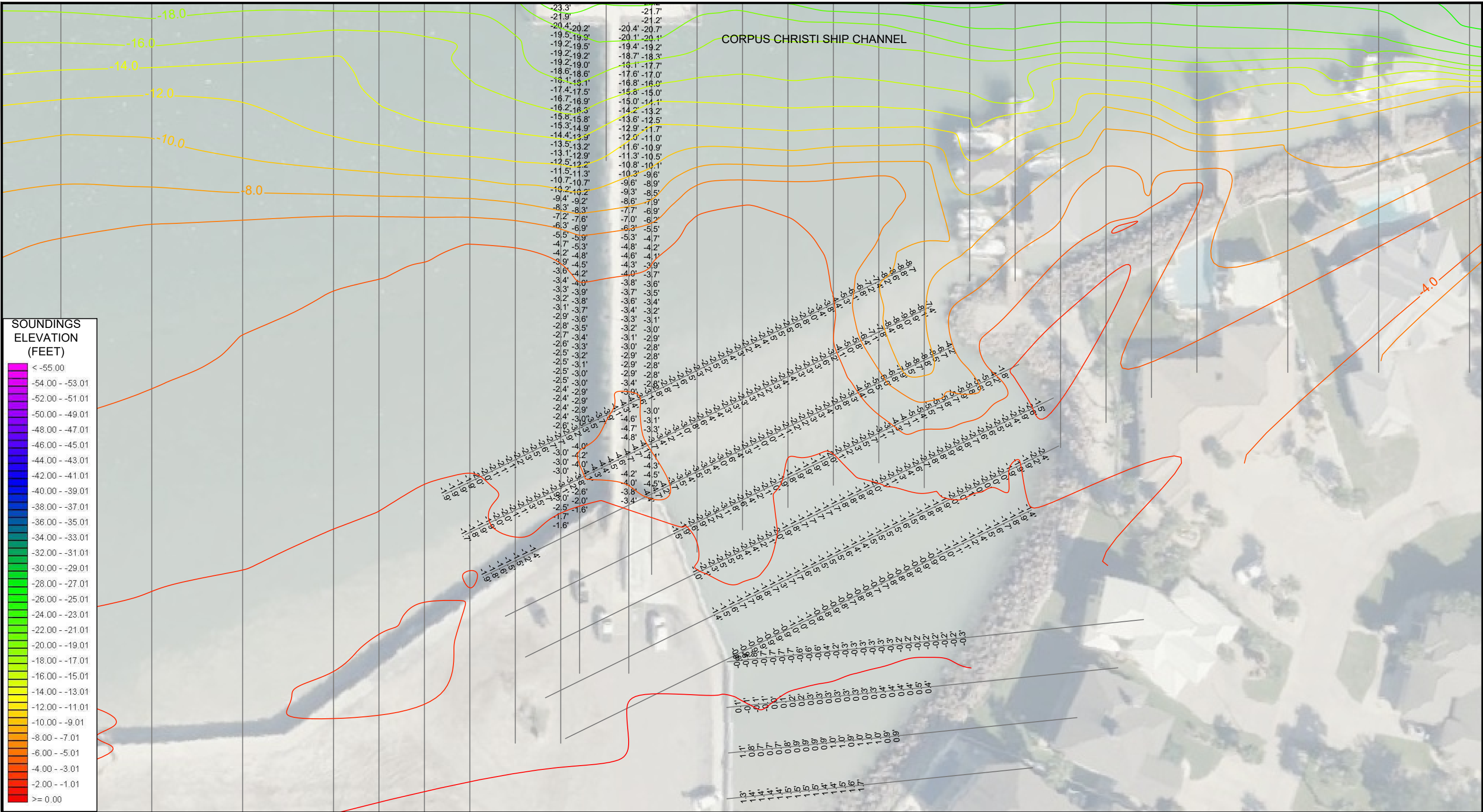
T. BAKER SMITH
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Aransas Pass, TX 78336
(361)334-5719 - tbsmith.com
TBPLS #10194575

SCALE: 1" = 200'		
REV. NO: 00	REV. DATE: --/--	REV. BY: ---
REVISION DESCRIPTION: --		

DRAWN BY: CDW	APPROVED BY: AWK
DATE: 09/19/2025	JOB NO: 2025.0592
DRAWING NAME: URBAN BATHY SURVEY AT CHARLIE PASTURE_11SEPT2025	
PROJECTION: TEXAS STATE PLANE SOUTH ZONE GEO. DATUM: NAD83 (2011) VERT. DATUM: NAVD88 GRID UNITS: US SURVEY FEET	
SHEET NO: 2	OF 3

BATHYMETRIC SURVEY
URBAN ENGINEERING
CHARLIE'S PASTURE
AN EXHIBIT OF A
BATHYMETRIC SURVEY
LOCATED IN
PORT ARANSAS, TEXAS

--- - P:\Y-2025\2025.0592\DRAWINGS\URBAN BATHY SURVEY AT CHARLIE PASTURE_11SEPT2025.DWG



NOTES:
1. BATHYMETRIC DATA WAS RECORDED BY T. BAKER SMITH ON 11 SEPTEMBER, 2025. SEA FLOOR CONDITIONS ARE SUBJECT TO CHANGE.
2. HORIZONTAL DATUM: NAD83 (2011), TEXAS SOUTH ZONE. ALL DISTANCES ARE U.S. SURVEY FEET (GRID).
3. VERTICAL: NAVD88 (GEOID 18)

"PILOT"
N: 17,196,351.3'
E: 1,452,273.8'
ELEV: 5.9' NAVD88



T. BAKER SMITH
A CENTURY OF SOLUTIONS
3854 FM 1069
Aransas Pass, TX 78336
(361)334-5719 - tbsmith.com
TBPLS #10194575

SCALE: 1" = 50'

50' 25' 0' 50'

REV. NO: 00	REV. DATE: --/--/--	REV. BY: ---
REVISION DESCRIPTION: --		

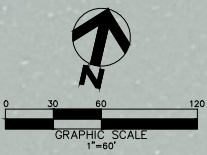
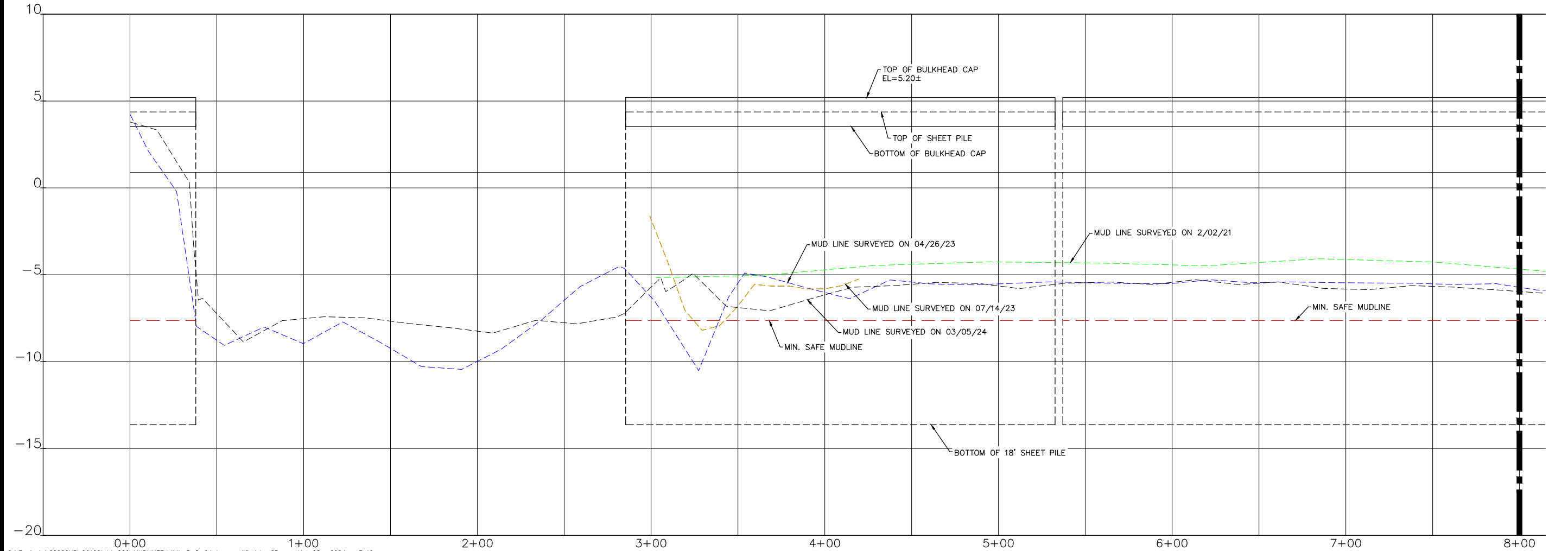
DRAWN BY: CDW	APPROVED BY: AWK
DATE: 09/19/2025	JOB NO: 2025.0592
DRAWING NAME: URBAN BATHY SURVEY AT CHARLIE PASTURE_11SEPT2025	
PROJECTION: TEXAS STATE PLANE SOUTH ZONE GEO. DATUM: NAD83 (2011) VERT. DATUM: NAVD88 GRID UNITS: US SURVEY FEET	
SHEET NO: 3	OF 3

BATHYMETRIC SURVEY
URBAN ENGINEERING
CHARLIE'S PASTURE
AN EXHIBIT OF A
BATHYMETRIC SURVEY
LOCATED IN
PORT ARANSAS, TEXAS



LEGEND

- = CRITICALLY LOW MUDLINE
- = 2/02/21 SURVEY
- = 4/26/23 SURVEY
- = 7/14/23 SURVEY
- = 3/05/24 SURVEY



REV.	BY	DATE	DESCRIPTION

SCALE:	NOTED
DRAWN:	**
CHECKED:	**
DATE:	****, 202*

PLAN & PROFILE
STA. 0+00 TO STA. 8+00

SURVEY OF '21, '23, AND '24
CHARLES PASTURE MUDLINE @ BULKHEAD
CITY OF PORT ARANSAS, TEXAS

URBAN
ENGINEERING

DECCM

SHEET
2
OF **7**

JOB NO.
06100.B9.19

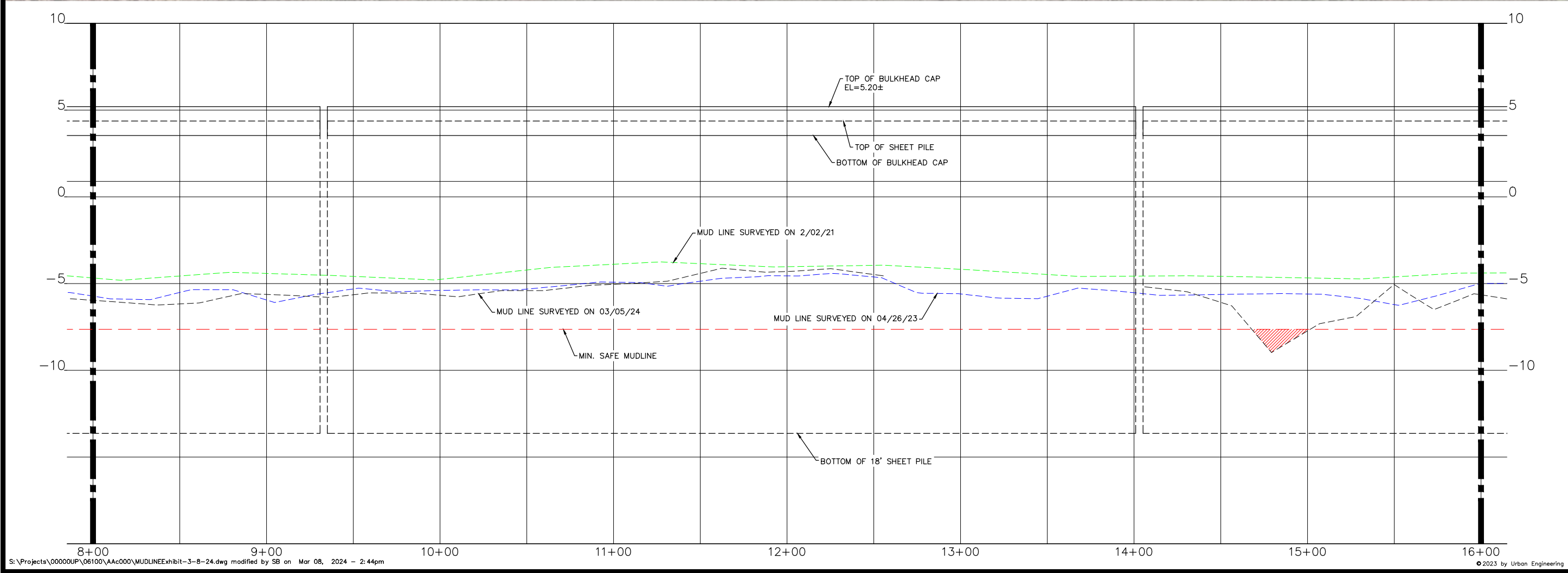
TIBELS PER NUMBERS: 000000UP\06100\AAc000\MUDLINE\Exhibit-3-8-24.dwg modified by SB on Mar 08, 2024 - 3:46pm

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LEGEND

- = CRITICALLY LOW MUDLINE
- = 2/02/21 SURVEY
- = 4/26/23 SURVEY
- = 7/14/23 SURVEY
- = 3/05/24 SURVEY



REV.	BY	DATE	DESCRIPTION

SCALE:	NOTED
DRAWN:	**
CHECKED:	**
DATE:	****, 202*

PLAN & PROFILE

STA. 8+00 TO STA. 16+00

SURVEY OF '21, '23, AND '24

CHARLES PASTURE MUDLINE @ BULKHEAD

CITY OF PORT ARANSAS, TEXAS

URBAN ENGINEERING

DCCM

TRIPLETS FOR URBAN ENGINEERING: 1451 SHREVE BLVD., SUITE 200, DALLAS, TX 75201
2727 SWANNING DRIVE, SUITE 100, DALLAS, TX 75201
PHONE: 361.852.3101 WWW.URBANE6.COM

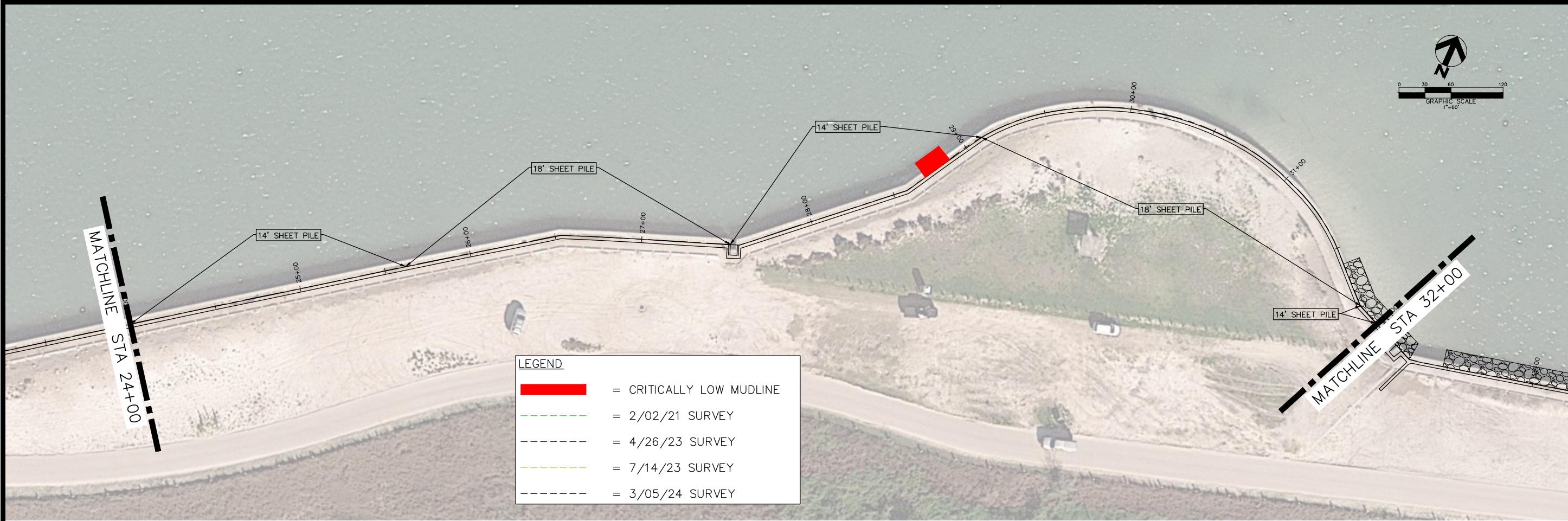
SHEET

3

OF 7

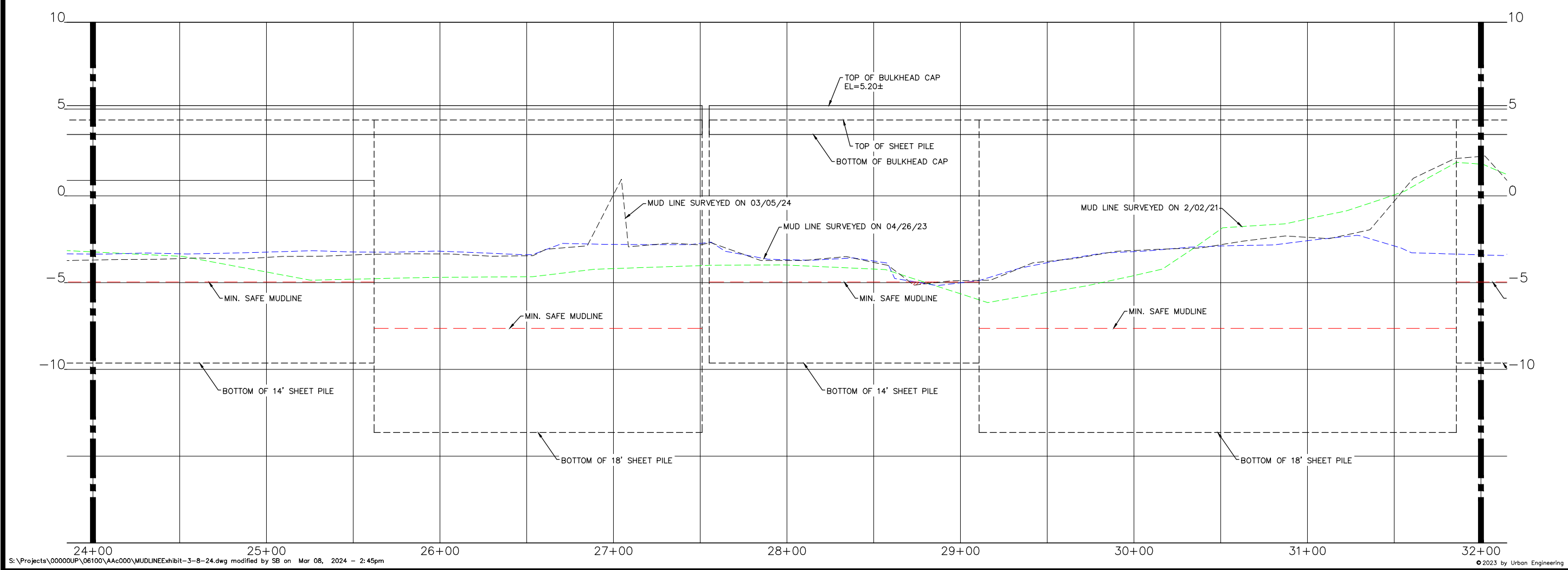
JOB NO.

06100.B9.19



LEGEND

- = CRITICALLY LOW MUDLINE
- = 2/02/21 SURVEY
- = 4/26/23 SURVEY
- = 7/14/23 SURVEY
- = 3/05/24 SURVEY



REV.	BY	DATE	DESCRIPTION

SCALE:	NOTED
DRAWN:	**
CHECKED:	**
DATE:	****, 202*

PLAN & PROFILE
STA. 24+00 TO STA. 32+00

SURVEY OF '21, '23, AND '24
CHARLES PASTURE MUDLINE @ BULKHEAD
CITY OF PORT ARANSAS, TEXAS

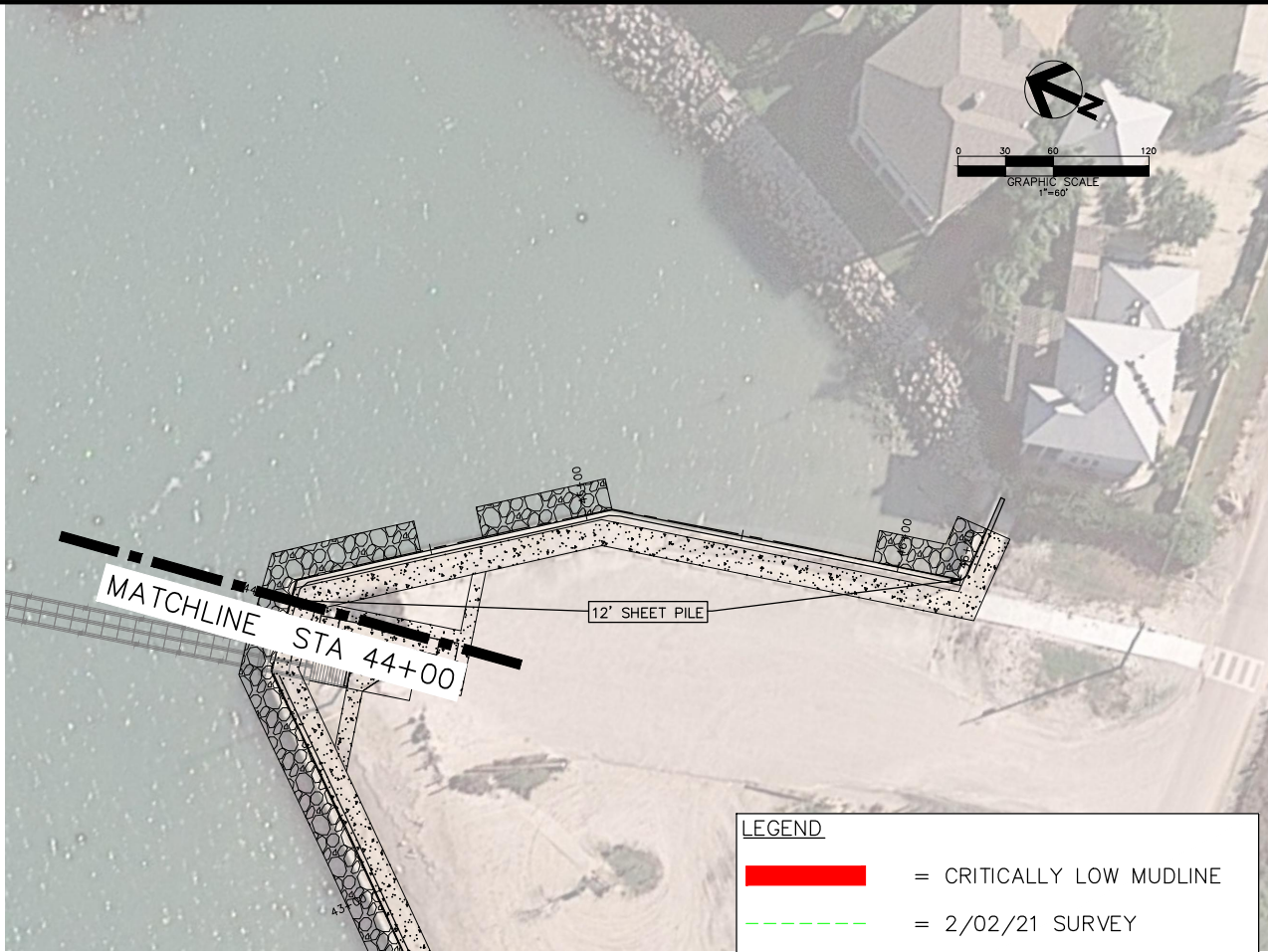
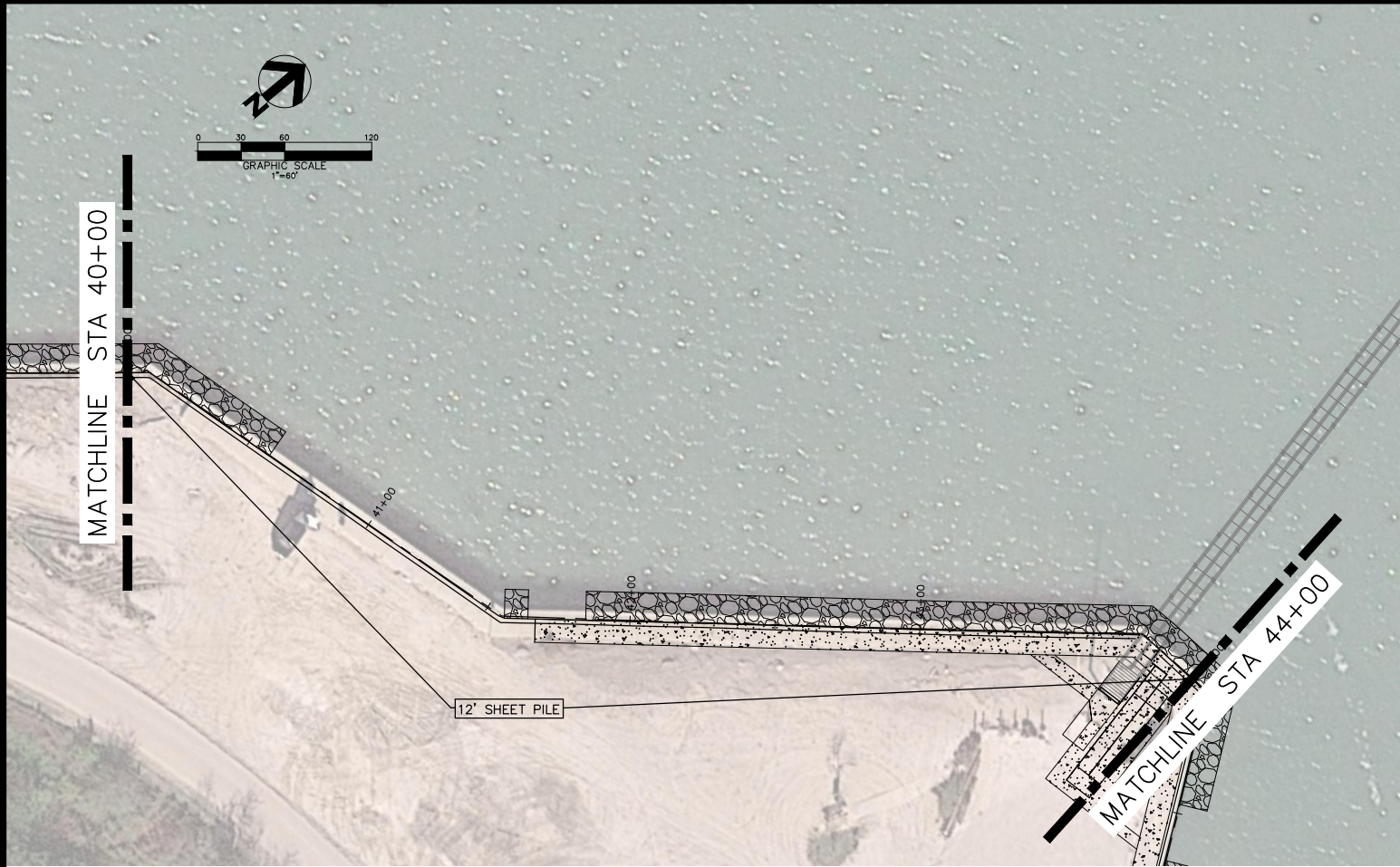
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SHEET
5
OF **7**

JOB NO.
06100.B9.19



LEGEND

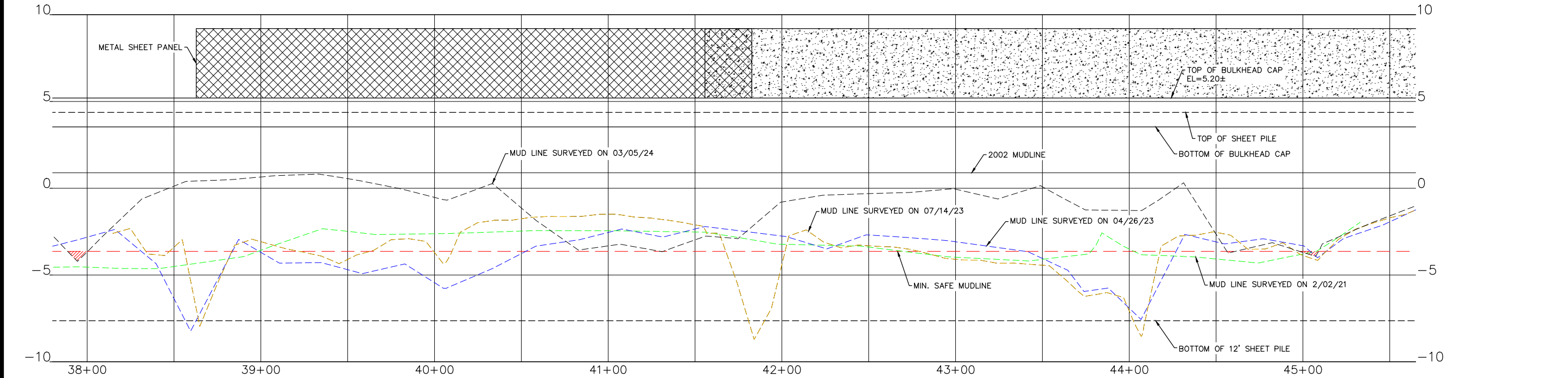
= CRITICALLY LOW MUDLINE

= 2/02/21 SURVEY

= 4/26/23 SURVEY

= 7/14/23 SURVEY

= 3/05/24 SURVEY



REV.	BY	DATE	DESCRIPTION

SCALE:	NOTED
DRAWN:	**
CHECKED:	**
DATE:	****, 202*

PLAN & PROFILE

STA. 38+00 TO STA. 46+00

SURVEY OF '21, '23, AND '24

CHARLES PASTURE MUDLINE @ BULKHEAD

CITY OF PORT ARANSAS, TEXAS

URBAN
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SHEET
7
OF 7

JOB NO.
06100.B9.19