

**STATE OF TEXAS  
COUNTY OF NUECES**

**AGREEMENT BETWEEN  
OWNER AND DESIGN-BUILDER  
COST PLUS FEE  
FOR A GUARANTEED MAXIMUM PRICE**

This AGREEMENT is made as of \_\_\_\_\_, 2014, by and between the following parties, for services in connection with the Project Identified below:

**OWNER:**

City of Corpus Christi, Texas  
P.O. Box 9277  
Corpus Christi, Texas 78469

**DESIGN-BUILDER:**

Jacob White Construction Co.  
2000 W. Parkwood, Suite 100  
Friendswood, Texas 77546

**PROJECT: Pier R Replacement Design-Build**, Corpus Christi, Texas, RFQ No. 2014-05, Project ID No. E13144.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

**ARTICLE 1 – SCOPE OF WORK AND FIXED PROJECT BUDGET**

**1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents. There is a fixed project budget, of \$3,208,065.32 ("Fixed Project Budget") for the Project, including contingencies, as described below. During the preconstruction phase and as the design of the Project progresses, the Owner, based on the information and professional services provided by the Design-Builder, may modify the Fixed Project Budget from time to time based on modifications in the design, the detailed statement of probable construction cost and identification of a source of funds. The Fixed Project Budget, as established by the Owner, will be the amount of funds which Owner, upon approval of City council, will have available for the payment of all costs for the Project, including the Cost of the Work and the Design-Builder's Fee for construction phase services. Following Schematic Design Services, the Owner will review and issue a Notice to

Proceed for the remainder of the Design-Build services. The Guaranteed Maximum Price for all services and work will be \$3,208,065.32. The scope of services upon which the Guaranteed Maximum Price will be based, is attached as **Exhibit A** to this Agreement and made a part hereof. At owner's request, optional/additive Phase II work for the design and construction of 30 boat slips may be administratively authorized under this agreement at any time during the life of the contract at the Guaranteed Maximum Price of \$489,520.00.

**1.2 Phases of Services and the Work.** The services and the Work to be performed by or through the Design-Builder shall be divided into the Preconstruction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. However, no Work shall commence under the Construction Phase until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract.

### **1.3 Preconstruction Phase Services**

1.3.1 As part of the Request for Qualifications documents for this Project, Design-Builder received the Owner's program requirements and objectives for the Project, and which is incorporated by reference herein. Design-Builder has provided to owner preliminary design specifications and an initial project schedule for the design and construction phases of the Project.

1.3.2 Schematic Design Documents. Design-Builder shall prepare Schematic Design Documents. The Design-Builder shall prepare schematic design options to meet architectural design program requirements for Owner's consideration. The Owner will review and approve the schematic design options to be developed for final Schematic Design Documents. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

- .1 As part of the Schematic Design Documents, the Design-Builder shall establish an architectural design program for Owner's review and approval in narrative form, describing major functional elements, space requirements and relationships between the elements, requirements within each space (environmental, acoustical, lighting, electrical, communications, cabinetry, security, etc.), site development requirements, code requirements, aesthetic requirements and other special considerations. Design-Builder shall include programming efforts such as reviewing existing building and site conditions, reviewing existing record documents, making measured drawings of existing construction as necessary, interviewing personnel, reviewing inventories of furniture, equipment and materials, attending meetings and taking other actions as necessary to establish the scope of the Project as dictated by the Owner's needs.

### **1.4 Quality Control Plan (QCP)**

1.4.1 The Design-Builder agrees to perform quality assurance-quality control/constructability reviews in accordance with the Design-Builder's approved Quality

Control Plan (QCP), that is incorporated by reference and which includes any subsequent revisions approved by Owner. The QCP is to be submitted to the Owner for approval prior to the Owner's Issuance of a Notice to Proceed to the Design-Builder. In addition to providing the reports required by the QCP, the Design-Builder agrees to address any QCP comments from the Owner and provide resolution to the Owner's satisfaction. In the event the Owner retains a separate consultant to perform additional QCP services for the Owner, the Design-Builder will comply with the Professional Services Procurement Act to the extent applicable and the City's HUB Ordinance. Design-Builder will provide all necessary information to the Owner, address any comments from the Owner's consultant, and provide resolution to the Owner's satisfaction. The Design-Builder shall include this language in all its subconsultant contracts to ensure subconsultants understand their responsibility for complying with the Owner's or Owner's consultant's QCP requirements.

1.4.2 The QCP reviews will be performed by a staff member of the Design-Builder not involved in day-to-day Project tasks. If the Design-Builder does not have the internal staff capacity to provide for this independent review, the Design-Builder must include a QCP subconsultant on the project team. The person performing the QCP reviews shall certify, seal and attest that the final construction bid documents have been drafted in full compliance with the QCP.

1.4.3 The Design-Builder will perform QCP reviews at intervals during the design phase, specified in the QCP, to ensure plans, specifications, and drawings satisfy accepted quality standards and meet the requirements of the project scope. Based on the findings of the QCP reviews, the Design-Builder must reconcile the project scope and budget as needed. Documentation will be included that verifies interdisciplinary coordination has occurred.

1.4.4 The Design-Builder will perform constructability reviews, using persons with construction experience, at appropriate intervals, during the design phase, specified in the QCP to ensure that the project is buildable, as well as cost-effective, biddable, and maintainable. Based on the findings of the constructability reviews, the Design Builder shall redesign the project, as required, to conform to the Fixed Construction Budget. The Design-Builder will provide interim construction estimates to verify that the project is within the Fixed Construction Budget.

1.4.5 Acceptance and/or approval of the Design-Builder's QCP documentation by the Owner do not constitute a release of the responsibilities and liability of the Design-Builder for the accuracy and competency of its QCP reviews and final construction documents.

## **ARTICLE 2 – CONTRACT DOCUMENTS**

**2.1** The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments and Change Orders to this Agreement issued in accordance with Article 11 of the General Conditions of Contract Between Owner and Design-Builder ("General Conditions of Contract");

2.1.2 Request for Qualifications NO. 2014-05 (including technical proposal and cost proposal submitted by Design-Builder)

2.1.3 This agreement, including all exhibits and attachments;

2.1.4 Written Supplemental General Conditions, if any, to the General Conditions of Contract;

2.1.5 The General Conditions of Contract;

2.1.6 Construction Documents prepared and approved in accordance with this Agreement, the Scope of Work and the General Conditions of Contract;

2.1.7 The following documents, if any:

.1 the documents contained In the Project Manual and not otherwise specifically referenced above.

.2 the Request for Qualifications Documents, specifically including the HUB requirements contained therein.

.3 the Design-Builder's Response submittals to Request for Qualifications of Owner.

### **ARTICLE 3 – INTERPRETATION AND INTENT**

**3.1** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

**3.2** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

**3.3** The Contract Documents form the entire agreement between Owner and Design Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

### **ARTICLE 4 – OWNERSHIP AND USE OF DOCUMENTS**

**4.1** All Project Drawings and Specifications and other work product ("Work Product") produced by the Design-Builder under this Agreement are the property of the Owner. The Design-Builder may not provide copies of the Work Product to third parties or otherwise use the Work Product covered by this subsection without the express prior written approval of the Owner.

**4.2** The Design-Builder agrees that the Work Product, which is to be delivered under this Agreement, and which is to be paid for by the Owner, is subject to the rights of the Owner in effect on the date of this Agreement. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. The Design-Builder shall not copyright or otherwise claim Ownership of the Work Product covered by this subsection. The Design-Builder shall include appropriate provisions in its subconsultant contracts to achieve the purpose of this subsection.

**4.3** All Work Product furnished by the Design-Builder is considered instruments of its services for this Project. It is understood that the Design-Builder does not represent the Work Product to be suitable for reuse on any other project or for any other purpose(s). If the Owner reuses the Work Product for another Project without the Design-Builder's specific written verification or adaptation, such reuse will be at the risk of the Owner, without liability to the Design-Builder.

**4.4** If the Design-Builder is terminated under this Agreement, the Owner may continue the Project and Design-Builder shall deliver a complete set of the Drawings, Specifications, and other Work Product within fourteen (14) calendar days of the notice of termination in the format designated by the Owner. The Owner may have these documents completed, corrected, revised or added to by another design professional in accordance with Title 22, Chapter 137.33(i) of the Texas Administrative Code.

**4.5** Record Documents. Design-Builder shall provide Owner one complete copy of the Work Product in electronic file formats (CD-R). Drawings shall be prepared with computer-aided design and drawing technology utilizing the Owner's CADD Standards, which will be provided to Design-Builder. The record documents shall reflect any changes (Field Order, Change Orders, Work Change Directives, etc.) made subsequent to the Owner's receipt of approved Construction Documents. Copies of the record documents that may be relied upon by Owner are limited to the printed copies that are signed and sealed by the Design-Builder's architect of record. Electronic files of record documents that are furnished by Design-Builder to Owner are only for the convenience of Owner.

**4.6** Records Retention Policy and Access. Design-Builder shall retain copies of all Work Product, Record Documents and other Project records, including but not limited to acceptable accounting records, (the "Records") for a minimum of three (3) years from the date of final acceptance of the Work or such longer period of time as would be reasonably required in the event of any litigation arising out of or connected to the Project or this Agreement or as required by the terms of any applicable grant(s). Owner and any other regulatory entity with jurisdiction over the Project shall have reasonable access at all times to the Records for the purpose of making copies, excerpts, and transcriptions, and conducting audits and examinations.

4.6.1 Owner's Right to Audit. Owner shall have the right to perform audits on the Records and the Records of subcontractors and subconsultants in accordance with the General Conditions of the Contract.

## **ARTICLE 5 - CONTRACT TIME**

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.1.1 Phases of Services and the Work.** The services and the Work to be performed by or through the Design-Builder shall be divided into the Preconstruction Phase and the Construction Phase. The Work to be performed under the Construction Phase may commence before the Preconstruction Phase is completed. However, no Work shall commence under the Construction Phase until a Notice to Proceed with regard to such Work has been issued by the Owner in accordance with the terms of the Contract.

**5.2 Substantial Completion and Final Completion**

**5.2.1 Substantial Completion of the entire Work** shall be accomplished no later than 200 calendar days from written Notice to Proceed with Design Phase Services, which date shall be the "Scheduled Substantial Completion Date".

**5.2.2 Interim milestones and/or Partial Substantial Completion of identified portions of the Work** shall be achieved as follows:

.1 Interim milestones and/or Partial Substantial Completion dates for portions of the Work, if any, are determined and agreed upon as part of the Schematic Design services.

**5.2.3 Final Completion of the Work or identified portions, and resolution of all unresolved Claims of the Work** shall be achieved no later than 7 calendar days following Scheduled Substantial Completion Date.

**5.2.4 The Scheduled Substantial Completion Date set forth in this Article 5 ("Contract Time(s)")** shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.**

**5.4.1 Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify.** Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion (the "LD Date"), Design-Builder shall pay Owner six hundred eighty dollars and zero cents (\$680.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

**5.4.2 In addition, if Final Completion is not attained by 7 calendar days following Scheduled Substantial Completion Date ("Final Completion Liquidated Damages Date"), Design-Builder will pay Owner six hundred eighty dollars and zero cents (\$680.00) as Liquidated Damages for each day Final Completion extends beyond the Final Completion Liquidated Damages Date.**

5.4.3 Owner reserves the right to either liquidated damages provided herein or actual damages. Actual damages include, but are not limited to, any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion.

5.4.4 To the extent that the parties enter into a Work Authorization Amendment for a portion of the Work (a Work Package for less than the entire scope of the Work), the parties may agree therein to a required Substantial Completion Date for such portion of the Work and separate Liquidated Damages for the Design-Builder's failure to achieve Substantial Completion of such portion of the Work within the Contract Time Requirements provided therein. The Liquidated Damages set out in a Work Authorization Agreement for a portion of the Work shall be in an amount which bears the same ratio to the Liquidated Damages for the entire Work's Fixed Construction Budget, as set forth above, as the estimated Cost of the Work of that Work Package (as reflected in the GMP Proposal) bears to the Fixed Construction Budget. The total value of liquidated damages set out in a Work Package will, upon Substantial Completion of that Work Package, proportionately reduce the overall total liquidated damages that could be assessed by the Owner for the entire Work.

5.4.5 Notwithstanding anything to the contrary contained herein, the maximum amount of Liquidated Damages that may be assessed against and paid by Design-Builder shall not exceed in the aggregate the amount of the sum of the Design-Builder's Preconstruction Phase Fee and the Design-Builder's Construction Phase Fee as set forth below, prior to any adjustment as authorized by the Contract Documents. This maximum amount of liquidated damages shall not apply to the amount of delay damages recoverable by the Owner in an action brought against the Design-Builder for delay in achieving Substantial Completion as required herein. In the event that the Liquidated Damages are held by the applicable court or arbitration panel to be unenforceable as a penalty, except where the Liquidated Damages are held to be unenforceable as a result of a legal challenge in such action by the Owner.

**5.5 Warranty Period.** The warranty period will commence on the date of Substantial Completion of the entire Project and continue for one calendar year thereafter. Design-Builder's general warranty and guarantee obligations are set out in the General Conditions of the Contract.

## **ARTICLE 6 – Contract Price**

**6.1** Any additional compensation that may be required by reason of Owner requested changes to previously approved Work Product or Owner requested increases in scope of Project, if allowed, shall be executed as a Change Order to this Agreement in accordance with the applicable provisions of the General Conditions, provided, however, that the correction of previously approved Work Product, which is in error or omission, or to correct deficiencies in Work, will not be eligible for additional compensation.

**6.2** Payments for Schematic Design Phase and Professional Services shall be made monthly in proportion to services performed within each Phase of services, on the basis set forth in Articles 1 and 7, respectively

## **ARTICLE 7 – PROCEDURE FOR PAYMENT**

### **7.1 Progress Payments**

7.1.1 Design-Builder shall submit applications for Progress Payments to Owner no more than once a month and in accordance with Article 15 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 15 of the General Conditions of Contract.

### **7.2 Retainage on Progress Payments**

7.2.1 Owner will retain five percent (5%) of the construction cost component of each Application for Payment until final payment.

7.2.2 If the Work is near completion and delay occurs due to no fault or neglect of Design-Builder, Owner may pay a portion of the retained amount to Design-Builder.

**7.3 Record Keeping and Financial Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work and all other amounts included in the Contract Price. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants and other designees shall be afforded reasonable access from time to time, to audit in accordance with General Conditions of the Contract.

## **ARTICLE 8 – TERMINATION FOR CONVENIENCE**

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants;

8.1.3 The Design-Builder's Fee only on the sum of items .1 and .2 above. No overhead, profit, or Design-Builder's Fee will be paid on unperformed work.



**8.2** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 4.

**8.3** Termination by Owner. Article 16 of the General Conditions includes additional provisions for Termination by Owner, which are incorporated herein by reference.

**ARTICLE 9 – REPRESENTATIVES OF THE DESIGN-BUILDER**

**9.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under the General Conditions of Contract: Identify individual's name, title, address and telephone numbers.

Sean Michler  
2000 W. Ponkwood  
Friendswood, Tx 77546  
(281) 910-8020

**9.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in the General Conditions of Contract: Identify individual's name, title, address and telephone numbers.

Sean Michler  
2000 W. Ponkwood  
Friendswood Tx 77546  
(281) 910-8020

**ARTICLE 10 – BONDS AND INSURANCE**

**10.1** Insurance. Design-Builder shall procure the following insurance coverages:

The specific insurance coverage requirements applicable to this Project are set forth in Exhibit C of RFQ 2014-05.

**10.2** Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

The specific bond coverage requirements applicable to this Project as set forth in the General Conditions and the Supplemental General Conditions. Design-Builder must provide the bonds at the time of contract execution.

Additional requirements regarding such bonds not in conflict herewith are as set forth in the General Conditions and the Supplemental General Conditions. Design-Builder shall keep the Surety Informed of the progress of the Work, and, where necessary, obtain the Surety's consent to and waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material change required by the Surety. Owner may, in its sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect Owner 's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work

#### **ARTICLE 11 – OTHER PROVISIONS**

**11.1** In providing services hereunder, Design-Builder shall comply with the applicable provisions of Chapter 1001 of the Texas Occupations Code: the Texas Engineering Practices Act, and Article 249a of Vernon's Texas Civil Statutes with respect to the practice of architecture, and the purchasing requirements of Section 361.426 of the Texas Health and Safety Code.

**11.2** Nothing in this Agreement is intended to or shall be construed to create any independent legal or contractual relationship between Owner and Design-Builder's Design Consultant.

**11.3** At Owner's sole option, any items of personal property, which have been purchased in connection with the performance of the Work, which still have some use for their intended purpose and which are otherwise transferable, specifically including but not limited to any office equipment, computer hardware and computer software, shall be provided to Owner upon final completion of the Work or, as applicable, completion of the Warranty Period.

**11.4** The Design-Builder covenants with Owner to furnish its best skill and judgment in the management of the Project, to furnish efficient business administration and superintendence, to use its best efforts to furnish at all times an adequate supply of skilled workers and material and to perform the Work in the best way and in the most expeditious and economical manner consistent with the intent of the Project, provided that Design-Builder shall at all times exercise complete control over the means, methods and techniques of construction.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein

**OWNER:**

**CITY OF CORPUS CHRISTI**

**DESIGN-BUILDER:**

**Jacob White Construction Co.**



11/21/2014

\_\_\_\_\_  
Natasha Fudge, P.E                      Date  
Acting Director Capital Programs

\_\_\_\_\_  
Jeff Mickle                                      Date  
President  
2000 West Parkwood  
Friendswood, Texas 77546  
(361) 286-6666  
sean@jacobwhitecc.com

**RECOMMENDED**

\_\_\_\_\_  
Operating Department                      Date

**APPROVED**

\_\_\_\_\_  
Office of Management                      Date  
and Budget

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Assistant City Attorney                      Date

**ATTEST**

\_\_\_\_\_  
Rebecca Huerta, City Secretary

**Project Name (Project No. E14061)**

Fund Name	Accounting Unit	Account No.	Activity No	Amount
Marina Grant	1058-121	550910	E140610011058EXP	\$502,496.00
Marina Grant	1058-121	550910	E140610011058EXP	\$162,770.00
Marina Debt	3234-121	550910	E140610013234EXP	\$2,542,799.32
<b>Total</b>				<b>\$3,208,065.32</b>

Encumbrance No. \_\_\_\_\_

# Jacob White

CONSTRUCTION COMPANY

City of Corpus Christi  
City Secretary's Office  
1<sup>st</sup> Floor City Hall  
1201 Leopard Street  
Corpus Christi, TX 78401

## Project Approach and Management Plan

- We feel our team is in essence a well-oiled machine. We have worked with each other time and time and again and intend on using this same philosophy for the purposes of this project. Knowing a subcontractor's strengths and weaknesses allow us to predict if a schedule is truly attainable and where pitfalls may occur. Most general contractors shop by lowest price. We believe in potentially paying a small amount more to gain a large amount more. They say a chain is only as good as its weakest link and at Jacob White, we believe our subcontractor selection makes up a large part of who we are. On the rare occasion when we are in a crunch for time or money, we can depend on those who we take care of to take care of us, whether that incorporates better pricing or more crews on nights or weekends. This being said, we feel the schedule for this project is more than attainable with proper pre-planning and contractor commitments.
- A portion of our business is the design, development, construction, and management of our own office, industrial, and medical properties. This being the case, our concept is simple. Do it right and do it once. Understanding the impact that warranty calls have on total job cost is critical to being committed to high quality construction and design excellence. We not only hold ourselves in high regard from a very preliminary stage of construction but throughout the project and post-delivery. Simply stated, we believe in the law of primacy when it comes to setting the tone for the remainder of the project. The team we have (and are in the process) of assembling are all committed to design and engineering excellence. These vendors all build institutional quality properties alongside us on a daily basis.
- Our team believes in holding others accountable by meeting on site a minimum of once a week with upper management of subcontractors, owners, and any third parties required. These meetings prove to be extremely productive in holding each and every person accountable. Meeting notes and summaries are conducted, distributed, and placed back into the project schedule as required. It's a simple way of holding everyone accountable throughout the duration of the project.
- Our workload is typically very steady with projects always beginning and ending. This project in particular begins at a great time as our team off of the Sea Scout project would be transitioning straight on to the management of this RFQ. Our subcontract base is comprised of a few union shops which allow us to pull as many dedicated hands as needed. In the event this

project is delayed, we will still be able to transition qualified management personnel to the dock construction.

- Most team members are fluent in AutoCAD, Microsoft products, construction scheduling, and project management software (or a combination of the above at a minimum). All project managers and field superintendents are equipped with iPads and iPhones that are able to log in straight to project folders to look at prints, develop RFI's, issue submittals, or adjust schedules as required.
- As a design build firm, value engineering is an everyday task for us. We enjoy helping owners and owner's reps understand where cost are and more importantly, how cost can be reduced. *Some inherent advantages of Timber Floating docks compared to other dock systems are:*
- *Timber floating docks are lighter than concrete systems and do not require the use of cranes during*
- *Although lighter in weight the strength of the box beam system and the unique connection of the finger pliers to the main walk, allows for up to a 40' finger length without the need of a support pile at the end of the finger.*
- *If damaged by storm or errant boater, the timber system can be repaired more easily than concrete systems and in many cases, the work can be performed by site personnel. There is a wider variety of decking available with the wood system, including concrete deck pans (with a choice of finishes), composite decking, hardwood decking (IPE, Grappa, etc.), and even specially treated timber.*
- *The installation of utilities is for easier on a timber dock. Nearly the entire width of the main walk is available for utilities. The bottom shear panel creates a safe walking surface for utility installers. The utilities can then be easily accessed in the future for inspections or repairs.*
- *Given the project needs, goals, and budget, Jacob White Construction Co. and Atlantic Meeco are recommending Concrete or Steel Piles. At this time we reflect a price for concrete piles in our price.*
- *Our quality control plan boils down to four main principles: We plan, we do, we check, and most importantly, we act. Our team of management professionals understand the importance of small details having a large impact.*



**The Atlantic System  
Design Specifications  
For  
City of Corpus Christi, Texas**

**Materials**

All materials for this construction shall conform to the following specification and shall be from an acceptable source of materials from which tests and service records are available. In the event test and service records are not available, the materials shall be subjected to such tests as are necessary to determine acceptability for use in the work.

**Float Shell**

Shall be a one-piece rotationally molded shell, made from linear low density polyethylene, pigmented black for maximum resistance to ultraviolet degradation. Shell shall have a nominal wall thickness of 0.150" and shall have a minimum of six mounting slots. Material shall conform to ASTM D732, D1822, D638, D1248 and D1043. Floatation units shall be secured to the dock structure by 3/8" x 3" hex-head lag screws.

**Foam Core**

Float shell shall be filled with expanded in place polystyrene of .9 to 1.1 pound per cubic foot density and have a water absorption less than 3% by volume. Material shall conform to ASTM C272.

**Glue Laminated Timber**

Structural Glue Laminated Timber shall be in conformance with Voluntary Product Standard PS 56, *Structural Glue Laminated Timber And The Inspection Manual*, The American Institute of Timber Construction, AITC 200.

All adhesives for structural laminated wood shall be for wood use under exterior (wet use) exposure conditions as per ASTM D2559. Appearance of members shall be *Architectural Grade V8*, rated F25. All members shall

be pressure preservative treated to 0.6 PCF Pentachlorophenol per AWWA standard C28 with no incising for appearance. All cuts and drill holes of treated material shall be field treated by contractor in accordance with AWWA M4.

**Decking**

**Exposed Aggregate Concrete Decking  
Mainwalks, headpiers and fenders**

5/8ths inch exposed aggregate finish with 2' x 3' x 1 1/2" thick removable panels. Natural earth tones, durable allowing ready access to utilities.

28 day strength of 5,000 psi with internal galvanized reinforcement, added strength, added safety  
Decking shall be installed with special pan tape caulking between the support member and the concrete panel.

1501 East Electric Avenue • McAlester, Oklahoma USA 74501 • Phone 918.423.6833 • Sales Fax 918.423.3215

Pan spacers specifically designed by Atlantic Meeco to keep pans aligned and prevent movement over a period of years.

After installation, the height variation between panels shall not exceed 0.25" in accordance to Federal Register Vol. 56, No. 144 figure 7.

#### **Composite Decking**

For patios near marginal walk and 4' x 4' cornerwalks.

Manufactured by Moisture shield

Wood Polymer composite wood, 2" x 6", low maintenance, long life.

Recycled wood and plastics, environmentally sound

Attached with Stainless Steel Screws.

#### **Treated Southern Yellow Pine**

##### **Sidewood Bumpering**

Lumber shall be 2" x 6" (nominal) Southern Pine Graded No. 1 S4S, conforming in all specs to Southern Pine Inspection Bureau as applicable.

All lumber and deck timbers shall be given preservative treatment and shall bear the quality mark of AWP. Preservation retention shall be 0.4# CF minimum. Sidewood shall be attached to the timber structure using 5/16ths

x 2 1/4" flat head, Type , self tapping screws coated with .005 zinc-yellow dichromate and three coats of Mangi 599 or equal.

#### **Plywood**

Plywood shall be 3/4" CCX .60 PCF CCA stamped FDN per AWPB Standard and AWP. All exposed plywood edges shall be sealed with waterproof coating *Shaf-lac* or approved equal. End grain coating to be done according to industry standards.

#### **Aluminum, Steel and Stainless Steel**

Aluminum shall be marine grade series in all cases. All steel shall be minimal thickness of 1/4" to ASTM Standard A36. Steel fasteners other than stainless steel shall be hot-dipped galvanized after fabrication as per ASTM Standard 153. All bolts, and clip angles are per ASTM Standard A307. Deck Fasteners shall be 304 Stainless Steel Screws. All other fasteners shall be hot-dipped galvanized per ASTM Standard 153. Cleats shall be cast Aluminum sized according to the size of the berthed vessel.

#### **Epoxy Resins and Hardeners**

Bottom skin plywood shall be glued to walers, transverse members or transverse nailer boards using a waterproof thermosetting resin adhesive. Additionally, all glue laminated timber splice blocks shall be field glued using the same thermosetting resin adhesive, Epotuf ® or approved equal.

#### **Performance**

Atlantic-Meeco shall submit a complete set of shop drawings and calculations for approval by Buyer.

#### **Dead Load Freeboard**

Freeboard under dead load only shall not be less than 20 inches nor exceed 24 inches. Dead load shall consist of the float system including decking, hardware and utilities.

**Live Load**

The float system shall be capable of supporting a uniformly distributed live load of 30 lbs./sq. ft. with a freeboard of not less than 9 inches.

**Execution**

All work shall be performed in a workmanlike manner and all workmanship shall be of the highest quality.

**Float Spacing**

Flotation units shall be spaced to provide an optimum balance between stability, deck support, and clean water circulation.

**Structure**

Headwalk structures shall be made into prefabricated modules from glue laminated waler beams. Beams shall be secured at external corners and at every transverse timber member with a galvanized steel clip and bolts. A plywood shear panel shall be glued and nailed to the transverse and longitudinal members. Transverse members shall be 3 1/8" x 4 1/2" glu-lam timbers. Supported on top of the transverse members shall be 3 1/8" x 4 1/2" longitudinal glu-lam timbers secured by lag bolts to the transverse members. Structures shall be connected utilizing glue laminated timber splice blocks that are glued in place and through bolted. Finger piers shall be as detailed in the plans.

**Minimum Edge Distances**

Edge distances for bolt holes in steel members shall be in accordance with the *Manual of Steel Construction*, and for bolt holes in timber members, edge distances shall be in accordance with the *Western Wood Use Book*. Edge distances shall apply to the basic structure, not to mooring cleats, on which the primary component of force is vertical, not lateral.

**Rub Strip**

Unless otherwise specified, rub strip shall be continuous throughout the berthing area of the dock. Rub strip shall be fastened with stainless steel staples.

**Pile Guides**

We recommend that pile guides be internal on the finger pier ends, and along the side ties. All pile guides will have a welded steel frame and shall conform to the specified steel piling diameter. Pile guides shall be sized to allow vertical movement of the floating structure. Pile guides shall be designed to protect the system from damage due to movement and changes in water conditions and elevations.

**Mooring Hardware**

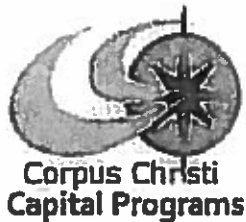
Cleats shall be sized according to size of berthed vessel. They shall be through bolted with malleable washers per hardware standards. Cleats shall not be lagged.



**Corpus Christi Marina  
Wood Dock System Advantages**

**Some inherent advantages of Timber Floating docks compared to other dock systems are:**

- **Timber floating docks are lighter than concrete systems and do not require the use of cranes during the installation process**
- **Although lighter in weight the strength of the box beam system and the unique connection of the finger piers to the mainwalk, allows for up to a 40' finger length without the need of a support pile at the end of the finger.**
- **If damaged by storm or errant boater, the timber system can be repaired more easily than concrete systems and in many cases, the work can be performed by site personnel.**
- **There is a wider variety of decking available with the wood system, including concrete deck pans (with a choice of finishes), composite decking, hardwood decking (IPE, Grappa, etc), and even specially treated timber.**
- **The installation of utilities is far easier on a timber dock. Nearly the entire width of the mainwalk is available for utilities. The bottom shear panel creates a safe walking surface for utility installers. The utilities can then be easily accessed in the future for inspections or repairs.**
- **The system is both flexible and strong, unique in both design and esthetics.**
- **Strong, safe, long life, maintainable, repairable, beautiful. All in all, the best investment for the dollar spent.**



## **MEMORANDUM OF ADDITIONAL ASSESSMENT**

**Request for Qualifications (RFQ) No. 2014-05  
Design-Build Services for the Pler R Replacement  
Corpus Christi Municipal Marina, Corpus Christi, TX**

**TO: Short-Listed Respondents**

**FROM: Valerie H. Gray, P.E. – Interim Executive Director of Public Works**

**DATE: September 12, 2014**

**SUBJECT: REQUEST FOR STEP 3 - TECHNICAL PROPOSAL AND COST PROPOSAL as a part of  
RFQ No. 2014-05 SECTION IV. EVALUATION AND SELECTION OF DESIGN-BUILD FIRMS**

Based on the City's evaluation of the submitted SOQ's requested in RFQ 2014-05, the City has qualified the following Respondents, listed alphabetically, for further assessment:

- Jacob White Construction Company
- LNV, Inc.
- Russell Marine, LLC

Each Respondent listed above is requested to submit a Technical Proposal, specific to the project requirements included herein, and a corresponding Cost Proposal in accordance with the terms and conditions included herein. Detailed instruction for preparing both the Technical Proposal and Cost Proposal is provided herein, including a description of the format and level of completeness. Shortlisted respondents will NOT be paid a fee, reimbursement or allowance for the preparation of the Technical Proposal or Cost Proposal.

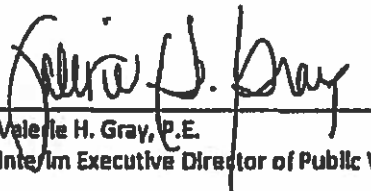
The following special instructions shall apply:

- Interested Respondents shall submit four (4) hardcopies of both their Technical Proposal and Cost Proposal. The Technical Proposal and Cost Proposal will be individually sealed and delivered to the City at the time and place specified herein. In accordance with Sec. 2269.361 of the Government Code, the City shall first open, evaluate and score each responsive Technical Proposal. The City shall

subsequently open, evaluate, and score the Cost Proposal. Points will be assigned equal to the weighting as identified in RFQ NO. 2014-05.

- Respondents shall submit the Technical Proposal and Cost Proposal in individually sealed envelopes/boxes (identified specifically as either the Technical Proposal or the Cost Proposal) and marked "RFQ NO. 2014-05, DESIGN-BUILD SERVICES FOR THE PIER R REPLACEMENT, CORPUS CHRISTI MARINA - DEVELOPMENT OF DOCKS R, S, T & U".
- Technical Proposals and Cost Proposals must be physically received and time-stamped in the City Secretary's Office, 1<sup>st</sup> Floor, City Hall, 1201 Leopard Street, Corpus Christi, Texas 78401 by 2:00 p.m. Wednesday, September 24, 2014. No Technical Proposal or Cost Proposal will be accepted after this date and time.
- No matter which method of delivery a Respondent chooses (United States Postal Service, courier, hand delivery, or other) to submit their proposals, it is the Respondent's responsibility to ensure that each is actually received and time-stamped in the City Secretary's Office, 1st Floor, City Hall by the deadline specified above.
- As per Sec. 2269.364 of the Government Code, the Respondent retains all rights to the work product submitted in the Technical Proposal and Cost Proposal. The City may not release or disclose to any person, including the successful design-build team, the work product contained in an unsuccessful proposal. The City shall return all copies of the proposal and other information submitted to ALL unsuccessful Respondents.
- The City will not be bound under any agreement until the City Manager or designee signs the contract (and, in addition, only unless the person authorized to bind the Respondent actually signs the contract).

Natasha Fudge, P.E., Acting Director of Capital Programs at (361) 826-3500, 1201 Leopard Street, 3<sup>rd</sup> Floor City Hall, Corpus Christi, TX 78401 is the Independent Representative for Procurement for this project.

  
Valerie H. Gray, P.E.  
Interim Executive Director of Public Works

Copy: Natasha Fudge, P.E., Acting Director of Capital Programs, City of Corpus Christi, TX

Attached:

- 1) Request for Technical Proposal and Cost Proposal
- 2) Exhibit 1 - Concept Reference Drawings (3 Sheets)
- 3) Exhibit 2 - Approved United States Corps of Engineers' Letter of Permission

**Request for Technical Proposal and Cost Proposal  
RFQ No. 2014-05 Design-Build Services for the Pier R Replacement  
Corpus Christi Municipal Marina, Corpus Christi, TX**

**GENERAL**

As a continuation of RFQ NO. 2014-05, the City of Corpus Christi (City) is requesting a Technical Proposal and a Cost Proposal from the short-listed design-build teams that were selected for further assessment. The short-listed design-build teams were selected on the basis that each are capable of implementing the activities associated with the removal of the piles for the existing 106 boat slip Pier R, the design and preparation of construction documents, and the replacement construction of a 148 boat slip saltwater floating dock attached to the Cooper's Alley L-Head at the City's Municipal Marina.

The City's purpose for obtaining a Technical Proposal and Cost Proposal is to assist in selecting the most qualified design-build team to prepare construction documents and project specifications; manufacture and procure dock components; remove existing piles; and construct the proposed 148-slip saltwater floating dock system. All construction documents and specifications must be sealed and signed by an engineer licensed in the State of Texas. Additionally, the design-build for the 148 slips will be inclusive of dockside utility services, gangways, walkways, finger piers, observation decks, security fencing and signage. The dockside utilities will include domestic water, shore power, individual slip electrical, fire protection, lighting and sewage pump-out system. The design-build team will also be responsible for all necessary governmental permits including acceptance by the City of Corpus Christi and the Texas Department of Licensing and Regulation (TDLR). See attached, the approved U.S. Corps of Engineers permit. The design-build team will also be responsible for the pre-design testing of any and all systems/sub-systems/utilities and other appurtenances required for the successful design and construction completion.

The Intent of the City is to be under contract by the end of 2014 and construction to be complete such that the dock is fully-operational by late Spring 2015.

The project budget, as approved by the City Council for all design-build costs, geotechnical investigations, contingencies, construction inspection services, construction material testing, contract administration, finance fees and miscellaneous costs is fixed as follows:

Marina Revenue Bonds	\$2,600,000
USFW Transient Grant	\$ 502,496
<u>USFW Sewage Pump Out Grant</u>	<u>\$ 137,000</u>
Total Funds Available	\$3,239,496

Subsequent to receipt of the Technical Proposals and Cost Proposals, a mandatory Presentation and Interview will be scheduled. The Presentation must be led by the proposed Project Manager, with supporting participation by key team members. Each Respondent will have up to twenty-five (25) minutes for a Presentation and the Interview (Q&A) will be no longer than thirty (30) minutes. Five (5) minutes will be allowed at the end for Closing Remarks. The total combined time for the Presentation, Interview and Closing Remarks is sixty (60) minutes. Presentation must address:

- Design-Build Team Qualifications and Experience
- Technical Proposal
- Cost Proposal
- Ability to Complete Tasks On Time
- Advantageous Key Team Differences
- Point Weighting as per RFQ 2014-05

Following the Presentation, the interview shall also be led by the proposed Project Manager, with supporting participation by key team members. Pre-selected questions will be asked, after which the City may ask additional follow-up questions and questions seeking clarification of responses. All questions will be administered and answered orally. The City may ask up to 20 questions subject to the availability of time. Requests for special accommodations must be made in writing a minimum of three (3) days prior to the interview. The City will provide all reasonable accommodations to the extent possible. Questions will not be provided in advance.

**TECHNICAL PROPOSAL CRITERIA**


*Note: The Texas Coastal Bend region (which includes the Corpus Christi Marina) comes into contact with some of the most damaging marine corrosion environment in the United States. "Aqueous Corrosion" describes the majority of the problems encountered through contact with the saltwater but "Atmospheric Corrosion" should also be recognized as challenging. This natural occurrence must be considered and discussed in all aspects of short term and long term constructability and operational maintenance.*

**Technical Proposal (15 Points)**

Each Technical Proposal will address, at a minimum:

- Project approach (work plan)
- Management approach to meet proposed schedule
- Quality Control Plan
- Environmental Management/Protection Plan
- Identification of project risks and a Risk Remediation Plan
- Detailed Project Schedule - CPM-like project schedule for all work tasks
- Warranty period for five (5) years for docks, anchorage systems, subsystems, attachments and ancillary (cabling and piping) equipment
- Engineering design to include of the following:
  - a. Type of structural system for the proposed floating docks with consideration for:
    - i. Steel piles vs.
    - ii. Wood piles vs.
    - iii. Concrete piles vs.
    - iv. Fiberglass/Synthetic/Composite piles
  - b. Type of dock walkway and surface decking
    - i. Wood (Identify specie)
    - ii. Concrete
    - iii. Durability vs. Constructability

- Respondent accepts all of the terms and conditions of the RFQ 2014-05, including those dealing with required Bonds. The costs will remain subject to acceptance for 90 days after the opening of the Cost Proposal.
- Respondent will accept a provision of the Agreement as to liquidated damages (including loss of revenue from the slips not being available for leasing) in the event of its failure to complete the work in accordance with the schedule set forth in the Agreement.
- Respondent acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date	Signature Acknowledging Receipt
1	8-13-14	

**RESPONDENT'S REPRESENTATIONS**

- The Respondent has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress and performance of the Work.
- The Respondent is familiar with Laws and Regulations that may affect cost, progress, and performance of the Work.
- The Respondent has considered the:
  - a. Information known to Respondent;
  - b. Information commonly known to contractors doing business in the locality of the Site;
  - c. Information and observations obtained from visits to the Site.
- The Respondent has considered the items identified in the Technical Proposal with respect to the effect of such information, observations and documents on:
  - a. The cost, progress and performance of the Work;
  - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Respondent; and
  - c. Respondent's safety precautions and programs.
- Based on the information and observations referred to in the preceding paragraphs, Respondent agrees that no further examinations, investigations or data are necessary for the performance of the Work at the price included herein and within the project schedule provided.
- The information provided is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- Respondent's entry into a contract constitutes an incontrovertible representation by Respondent that, without exception, all prices in the BASIS OF BID herein are premised upon performing and furnishing the Work required by the Technical Proposal.

- Sewage pump-out system
- Best practices for a corrosion resistant facility
- Electrical infrastructure needs for the marina slips and common area power
- Conceptual engineering shown on 11"x 17" drawings may be provided to represent both the Technical Proposal and the basis for the Cost Proposal. If provided, these drawings should consider the following:
  - a. Cover Sheet
  - b. General Notes, Legend and Abbreviations
  - c. Existing Conditions – Site Photos
  - d. Overall Dock Plan - 1 (attached)
  - e. Overall Dock Plan – 2 (attached)
  - f. Water Level Elevations (attached)
  - g. Plan view/Side Elevation for typical 10' wide walkway
  - h. Plan View/Side Elevation for typical 6' wide slip-pier
  - i. Plan View/Side Elevation for typical 3' wide finger-pier
  - j. Structural Cross-section for 10' wide main walkway
  - k. Structural Cross-section for 6' wide slip-pier
  - l. Structural Cross-section for 3' wide finger-pier
  - m. Pier Float Cross-sections/Details/Specifications
  - n. Structural Details including, slip-pier connections and finger-pier connections
  - o. Pile Guide Frame and Roller Assembly
  - p. Plan View - Utility Routing
  - q. Cross-section - Utility Routing

The following must accompany the Technical Proposal:

- r. Outline Specifications in CSI format.

[The Outline Specifications should represent the level of quality anticipated by the design-build team. Once again, being resistant to corrosion is paramount for any equipment, fittings, connections, attachments, utilities and any appurtenances. Where possible, the Outline Specifications should address this corrosion effect.]

All costs or pricing information shall be addressed ONLY in the Cost Proposal. Any cost information provided in the Technical Proposal can be the basis for disqualification. Cost trade-off information, work-hour estimates, and material kinds and quantities may be used only as appropriate for presenting rationale for alternative designs.

**COST PROPOSAL**

**RESPONDENT'S ACKNOWLEDGMENTS      CAN**

- Respondent proposes and agrees, if this bid is accepted, to enter into an agreement with the City to perform all Work specified herein for the contract price indicated in the BASIS OF BID herein or as modified by any contract amendment. Bidder agrees to complete the Work within the contract times established in the Agreement and comply with the all other terms and conditions of the contract documents.

**BASIS OF BID**

- Respondent will complete the Work in accordance with the contract documents for:  
Base Bid for Docks S, T and U (118 boat slips)    \$ 3,208,065.32 Lump Sum Bid  
Add Alternate No. 1 for Dock R (30 boat slips)    \$ 489,520.00 Lump Sum Bid  
TOTAL = BASE BID + ADD ALTERNATE NO. 1    \$ 3,697,585.32 Lump Sum Bid
- The City will, at its discretion, award the contract to the Respondent for the Base Bid, plus any combination of Add Alternates. Respondent will complete the Work in accordance with the Lump Sum Pricing as shown in the BASIS OF BID.

**EVALUATION OF BIDDERS**

- The City reserves the right to waive any and all irregularities in determining the Respondents' responsibility, and whether the Respondent has met the minimum specific project requirements and reserves the right to require the submission of additional information.
- The City has the right to accept the lump sum pricing, reject any and all pricing, to waive all irregularities in the pricing, or to reject non-conforming, non-responsive, or conditional pricing. In addition, the City reserves the right to reject any pricing where circumstances and developments have, in the opinion of the City, changed the responsibility of the Respondent.
- Material misstatements in the documentation submitted to determine the Respondent's responsibility may be grounds for rejection of the Respondent on this project. Any such misstatement, if discovered after award of the contract to such Respondent, may be grounds for immediate termination of the contract. Additionally, the Respondent will be liable to the City for any additional costs or damages to the City resulting from such misstatements, including costs and attorney's fees for collecting such costs and damages.

**TIME OF COMPLETION**

- Respondent will complete the Work required to be substantially completed within insert number days after the date when the contract times commence. Respondent will complete the Work required for final payment in accordance within insert number days after the date when project is considered substantially complete. Substantially complete is defined as such a time when all docks are fully-operational such that the 148 boat slips are completed and can be available as a safe individual mooring and the required utilities are accessible to all 148 slips.

**VENUE**

- Bidder agrees that venue shall lie exclusively in Nueces County, Texas for any legal action.

**SIGNATORY REQUIREMENTS FOR BIDDERS**

- Respondents must include their correct legal name, state of residency, and federal tax identification number in the Bid Form.
- The Respondent, or the Respondent's authorized representative, shall sign and date the Cost Proposal to accompany all materials included in the submitted bid. Bids which are not signed



and dated in this manner, or which do not contain the required documentation of signatory authority may be rejected as non-responsive. The individual(s) signing the bid must have the authority to bind the Respondent to a contract, and if required, shall attach documentation of signatory authority to the Bid Form.

- Respondent shall identify in their Bid their charter or Certificate of Authority number issued by the Texas Secretary of State and shall submit with their Bid a copy of a resolution or other documentation approved by the Bidder's governing body authorizing the submission of the Bid and designating the individual(s) authorized to execute documents on behalf of the Bidder. Bidders using an assumed name (an "alias") shall submit a copy of the Certificate of Assumed Name or similar document.
- Respondents that are not residents of the State of Texas must document their legal authority to conduct business in Texas. Nonresident Respondents that have previously registered with the Texas Secretary of State may submit a copy of their Certificate of Authority. Nonresident Respondents that have not previously registered with the Texas Secretary of State shall submit a copy of the Respondent's enabling documents as filed with the state of residency, or as otherwise existing.

**BID SUBMITTAL**

This Bid is submitted under the authority of:

Respondent: Jacob White Construction Co.  
(typed or printed full legal name of Bidder)

By: Sean Mickler  
(Individual's signature)

Name: SEAN MICKLER  
(typed or printed)

Title: Project Manager  
(typed or printed)

Attest: [Signature]  
(Individual's signature)

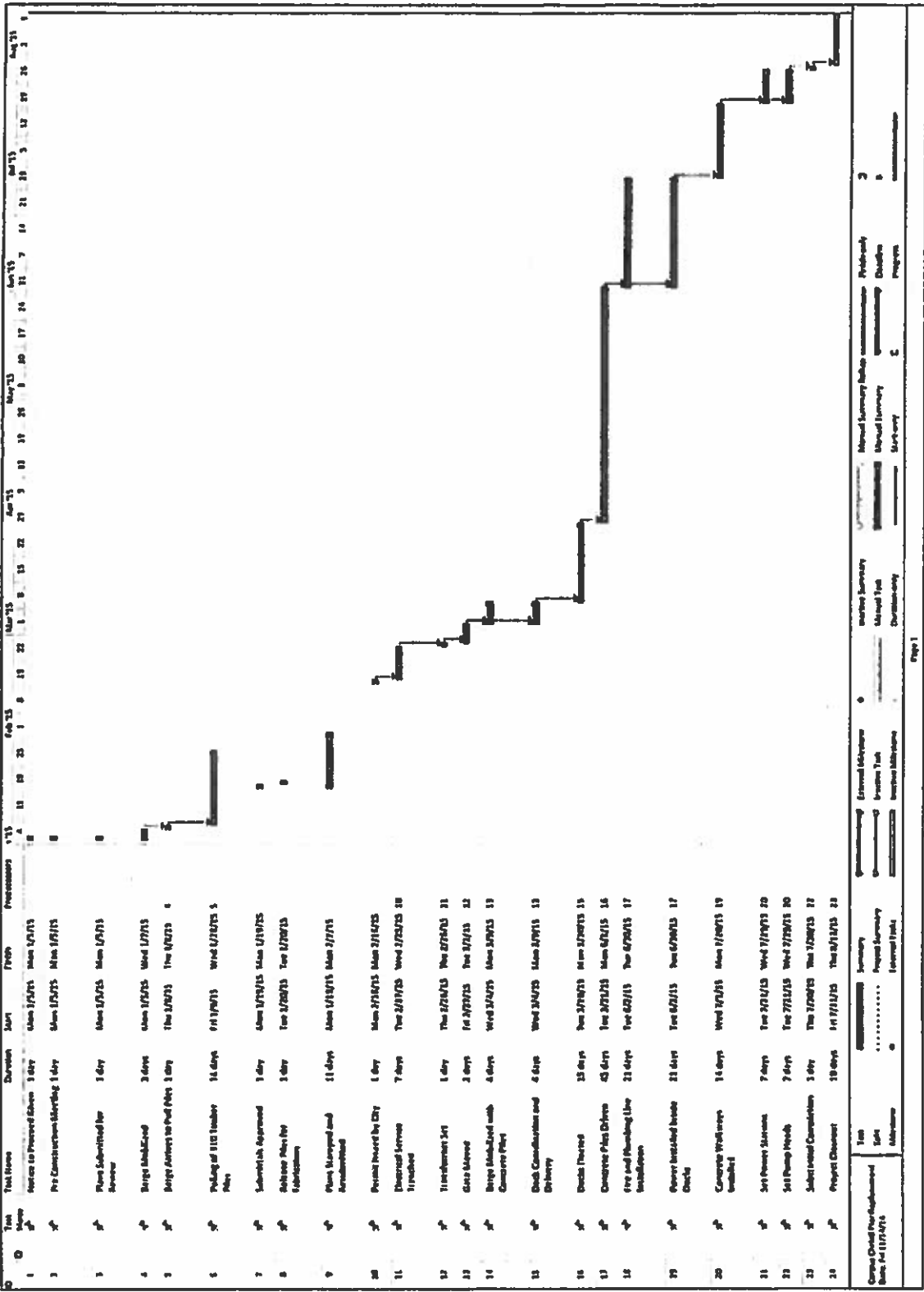
State of Residency: TEXAS

Federal Tax Id. No. 76-0385181

Address for giving notices: 2000 WEST PARKWOOD  
FRIENDSWOOD, TX 77546

Phone: 281-286-6666 Email: SEAN@jacobwhitecc.com

(Attach evidence of authority to sign if the authorized individual is not the Respondent, but an individual signing on behalf of another individual Respondent, or if the authorized individual is a representative of a corporation, partnership or joint venture.)





City of  
Corpus  
Christi

SUPPLIER NUMBER  
TO BE ASSIGNED BY CITY  
PURCHASING DIVISION

# CITY OF CORPUS CHRISTI DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for Filing Requirements, Certifications and definitions.

COMPANY NAME: Jacob White Construction Co

P. O. BOX: \_\_\_\_\_

STREET ADDRESS: 2000 West Parkwood CITY: Friendswood ZIP: 77546

FIRM IS: 1. Corporation  2. Partnership  3. Sole Owner   
4. Association  5. Other

### DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.  
1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
<u>NONE</u>	_____
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
<u>None</u>	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
<u>None</u>	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
<u>None</u>	_____
_____	_____
_____	_____

### FILING REQUIREMENTS

**EXHIBIT "B"**  
Page 1 of 2

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

#### CERTIFICATION

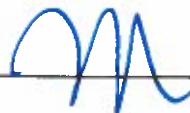
I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

**Certifying Person:** Jeff Mickler

(Type or Print)

**Title:** President

**Signature of Certifying Person:**



**Date:** 11/20/2014

#### DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.

**00 72 01 INSURANCE REQUIREMENTS**

**ARTICLE 1 – INSURANCE REQUIREMENTS**

**1.01 CONTRACTOR’S INSURANCE AMOUNTS**

A. Provide the insurance coverage for at least the following amounts unless greater amounts are required by Laws and Regulations:

Type of Insurance	Minimum Insurance Coverage
30-Day Notice of Cancellation required on all certificates or by policy endorsement(s)	Bodily injury and Property Damage Per Occurrence/Aggregate
Commercial General Liability including 1. Broad Form 2. Premises - Operations 3. Boom Collapse and Overload 4. Underground Hazard 5. Products / Completed Operations Hazard 6. Contractual Liability 7. Broad Form Property Damage 8. Independent Contractors 9. Personal & Advertising Injury	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Business Automobile Liability - Owned, Non-Owned, Rented and Leased	\$1,000,000 Combined Single Limit
Workers’ Compensation	Statutory
Employer’s Liability	\$500,000/ 500,000/ 500,000
Excess Liability/Umbrella Liability	\$1,000,000 Per Occurrence
Professional Liability (E & O) To be carried by Design Team (Engineers, Architects)	\$1,000,000 per claim Must continue for 3 years after project completion.
<b>MARITIME COVERAGES</b>	
U.S. Longshore & Harborworkers’ Compensation (where applicable)	This complies with U.S. Longshore & Harborworkers’ Act.
Jones Act Coverage (where applicable)	This complies with Jones Act.
Protection & Indemnity (P&I) (where applicable)	\$1,000,000 Per Occurrence

## 1.02 GENERAL PROVISIONS

- A. Provide insurance coverages and limits meeting the requirements for insurance in accordance with Article 6 of the General Conditions and this Section.
- B. Provide endorsements to the policies as outlined in this Section.
- C. Obtain insurance from companies that are duly licensed or authorized in the State of Texas to issue insurance policies for the required limits and coverages. Provide insurance from companies that have an A.M. Best rating of A-VIII or better.
- D. Furnish copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles upon request by OPT or any named insured or additional insured. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this Contract.
- E. The name and number of the Project must be referenced on the certificate of insurance.
- F. OPT's failure to demand such certificates or other evidence of the Contractor's full compliance with the insurance requirements or failure to identify a deficiency in compliance from the evidence provided is not a waiver of the Contractor's obligation to obtain and maintain the insurance required by the Contract Documents.
- G. Notify the Owner if the Contractor fails to purchase or maintain the insurance required by the Contract Documents. Contractor shall not be allowed to perform any Work on the Project until the required insurance policies are in effect. A Certificate of Liability Insurance shall be submitted to the OPT.
- H. Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16 of the General Conditions if Contractor fails to obtain or maintain the required insurance.
- I. Owner does not represent that the insurance coverage and limits established in this Contract are adequate to protect Contractor or Contractor's interests.
- J. The required insurance and insurance limits do not limit the Contractor's liability under the indemnities granted to Owner's Indemnitees in the Contract Documents.
- K. Provide for an endorsement that the "other insurance" clause shall not apply to the OPT where the OPT is an additional insured shown on the policy. Contractor's insurance is primary and non-contributory with respect to any insurance or self-insurance carried by the OPT for liability arising out of operations under this Contract.
- L. Include the Owner and list the other members of the OPT and any other individuals or entities identified in the Supplementary Conditions as additional insureds on all policies with the exception of the workers' compensation policy and Contractor's professional liability policy.

## 1.03 CONTRACTOR'S INSURANCE

- A. Purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts. Obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law and written on a policy and endorsements approved by the Texas Department of Insurance. Provide insurance in amounts to

meet all workers' compensation obligations. Provide an "All Other States" endorsement if Contractor is not domiciled in Texas and policy is not written in accordance with Texas Department of Insurance rules.

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees.
  3. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  4. Foreign voluntary worker compensation (if applicable).
- B. Purchase and maintain commercial general liability insurance covering all operations by or on behalf of Contractor. Provide coverage on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  2. Claims for damages insured by reasonably available personal injury liability coverage which are sustained;
  3. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor;
  4. By any other person for any other reason; and
  5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including any resulting loss of use.
- C. Provide Contractor's commercial general liability policy that is written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage as required in this Section. Insurance is to remain in effective for 3 years after final payment. Furnish evidence of the continuation of this insurance at final payment and again each year for 3 years after final payment to Owner and each named insured or additional insured.
    - a. Eliminate the exclusion with respect to property under the care, custody, and control of Contractor. Provide and maintain Installation Floater insurance for property under the care, custody, or control of Contractor in lieu of elimination of the exclusion, or if required by this Section. Provide Installation Floater insurance that is a broad form or "All Peril" policy providing coverage for all materials, supplies, machinery, fixtures, and equipment which will be incorporated into the Work.
      - 1) Provide coverage under the Contractor's Installation Floater that includes:
        - a) Faulty or Defective workmanship, materials, maintenance, or construction;
        - b) Cost to remove Defective or damaged Work from the Site or to protect it from loss or damage;
        - c) Cost to cleanup and remove pollutants;
        - d) Coverage for testing and startup;

- e) Any loss to property while in transit;
  - f) Any loss at the Site;
  - g) Any loss while in storage, both on and off the Site; and
  - h) Any loss to temporary Project Works if their value is included in the Contract Price.
- 2) Coverage cannot be contingent on an external cause or risk or limited to property for which the Contractor is legally liable. Provide limits of insurance adequate to cover the value of the installation. Pay any deductible carried under this coverage and assume responsibility for claims on materials, supplies, machinery, fixture, and equipment which will be incorporated into the Work while in transit or in storage.
- 2. Blanket contractual liability coverage for Contractor's contractual indemnity obligations in Paragraph 7.14 of the General Conditions, and all other contractual indemnity obligations of Contractor in the Contract Documents.
  - 3. Broad form property damage coverage.
  - 4. Severability of interest.
  - 5. Underground explosion and collapse coverage.
  - 6. Personal injury coverage.
  - 7. Endorsement CG 2032, "Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. Purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
- E. Purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Provide coverage that is at least as broad as all underlying policies. Provide a policy that provides first-dollar liability coverage as needed.
- F. Provide Contractor's commercial general liability and automobile liability policies that:
- 1. Are written on an occurrence basis;
  - 2. Include the individuals or entities identified in the Supplementary Conditions as additional insureds;
  - 3. Include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors for each named insured or additional insured;
  - 4. Provide primary coverage for all claims covered by the policies, including those arising from both ongoing and completed operations.
- G. Purchase and maintain insurance coverage for third-party injury and property damage claims, including clean-up costs that result from Hazardous Environmental Conditions which result from Contractor's operations and completed operations. Provide Contractor's pollution liability insurance that includes long-term environmental impacts for the disposal of pollutants/contaminants and is not limited to sudden and accidental discharge. The



completed operations coverage is to remain in effect for 3 years after final payment. The policy must name OPT and any other individuals and entities identified in the Supplementary Conditions as additional insureds.

- H. Purchase and maintain applicable professional liability insurance, or have Subcontractors and Suppliers do so, if Contractor or any Subcontractor or Supplier will provide or furnish professional services under this Contract.
- I. The policies of insurance required by this Section must:
  - 1. Include at least the specific coverages and be written for not less than the limits of liability provided in this Section or required by Laws or Regulations, whichever is greater.
  - 2. Contain a provision that coverage afforded will not be canceled or materially changed until at least 30 days prior written notice has been given to Contractor, Owner, and all named insureds and additional insureds.
  - 3. Remain in effect at all times when Contractor is performing Work or is at the Site to conduct tasks arising from the Contract Documents.
  - 4. Be appropriate for the Work being performed and provide protection from claims resulting from the Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether performed by Contractor, Subcontractor, Supplier, anyone directly or indirectly employed or retained by any of them, or by anyone for whose acts they may be liable.
- J. The coverage requirements for specific policies of insurance must be met directly by those policies and may not by rely on excess or umbrella insurance provided in other policies to meet the coverage requirement.

#### 1.04 OWNER'S PROTECTIVE LIABILITY INSURANCE

- A. Purchase and maintain an Owner's Protective Liability insurance policy with the Owner as the named insured and other members of the OPT as additional insureds. Provide a policy that will protect the OPT from claims which arise from operations under the Contract Documents. Provide this coverage in the same amounts required for the Contractor's liability insurance and from the same company that provides the Contractor's liability insurance.

#### 1.05 PROPERTY INSURANCE

- A. Purchase and maintain builder's risk insurance in the amount of the full replacement cost of the Project. This policy is subject to the deductible amounts requirements in this Section or those required by Laws and Regulations and must comply with the requirements of Paragraph 1.06. This insurance shall:
  - 1. Include the OPT, Contractor, and all Subcontractors, and any other individuals or entities identified in the Supplementary Conditions, as named insureds.
  - 2. Be written on a builder's risk "all risk" policy form that includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and insures against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft;

smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by this Section. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk, by endorsement or otherwise, this insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. Cover expenses incurred in the repair or replacement of any insured property.
  4. Cover materials and equipment in transit or stored prior to being incorporated in the Work.
  5. Cover Owner-furnished or assigned property.
  6. Allow for partial utilization of the Work by Owner.
  7. Allow for the waiver of the insurer's subrogation rights as set forth below.
  8. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  9. Not include a co-insurance clause.
  10. Include a broad exception for ensuing losses from physical damage or loss with respect to any Defective workmanship, design, or materials exclusions.
  11. Include testing and startup.
  12. Be maintained in effect until the Work as a whole is complete, unless otherwise agreed to in writing by Owner and Contractor.
- B. Evidence of insurance provided must contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each named insured.
- C. Pay for costs not covered by the policy deductible.
- D. Notify builder's risk insurance provider 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 of the General Conditions. Maintain the builder's risk insurance in effect during this Partial Occupancy or Use.
- E. Contractor may purchase other special insurance to be included in or to supplement the builder's risk or property insurance policies provided under this Section.
- F. Contractor, Subcontractors, or employees of the Contractor or a Subcontractor owning property items, such as tools, construction equipment, or other personal property not expressly covered in the insurance required by the Contract Documents are responsible for providing their own insurance.

## 1.06 WAIVER OF RIGHTS

- A. Insurance shall include a waiver of subrogation in favor of the additional insureds identified in SECTION 00 73 00 SUPPLEMENTARY CONDITIONS.
- B. All policies purchased in accordance with this Section are to contain provisions to the effect that the insurers have no rights of recovery against OPT, named insureds or additional insureds in the event of a payment for loss or damage. Contractor and insurers waive all rights against the Owner's Indemnities for losses and damages created by or resulting from any of the perils or causes of loss covered by these policies and any other applicable property insurance. None of these waivers extend to the rights Contractor has to the proceeds of insurance as trustee.
- C. Contractor is responsible for assuring that agreements with Subcontractors contains provisions that the Subcontractor waive all rights against Owner's Indemnitees, Contractor, named insureds and additional insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages created by or resulting from any of the perils or causes of loss covered by builder's risk insurance and other property insurance.

## 1.07 OWNER'S INSURANCE FOR THE PROJECT

- A. Owner is not responsible for purchasing and maintaining any insurance to protect the interest of the Contractor, Subcontractors, or others in the Work. The stated limits of insurance required are minimum only. Determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, Contractor is fully responsible for all losses arising out of, resulting from, or connected with operations under this Contract whether or not these losses are covered by insurance. The acceptance of evidence of insurance by the OPT, named insureds, or additional insureds does not release the Contractor from compliance with the insurance requirements of the Contract Documents.

## ARTICLE 2 – EVIDENCE OF INSURANCE

### 2.01 ACCEPTABLE EVIDENCE OF INSURANCE

- A. Provide evidence of insurance acceptable to the Owner with the executed Contract Documents. Provide the following as evidence of insurance:
  - 1. Certificates of Insurance on an acceptable form;
  - 2. Riders or endorsements to policies; and
  - 3. Policy limits and deductibles.
- B. Provide a list of "Additional Insureds" for each policy.
- C. Provide evidence that waivers of subrogation are provided on all applicable policies.
- D. Provide evidence of requirements for 30 days' notice before cancellation or any material change in the policy's terms and conditions, limits of coverage, or change in deductible amount.

### 2.02 CERTIFICATES OF INSURANCE

- A. Submit Certificates of Insurance meeting the following requirements:
  - 1. Form has been filed with and approved by the Texas Department of Insurance under Texas Insurance Code §1811.101; or
  - 2. Form is a standard form deemed approved by the Department under Texas Insurance Code §1811.101.
  - 3. No requirements of this Contract may be interpreted as requiring the issuance of a certificate of insurance on a certificate of insurance form that has not first been filed with and approved by the Texas Department of Insurance.
- B. Include the name of the Project in the description of operations box on the certificate of insurance.

**2.03 INSURANCE POLICIES**

- A. Provide a copy of insurance policies, declaration pages and endorsements, and documentation of applicable self-insured retentions and deductibles if requested by the Owner.
- B. Owner may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by Laws or Regulations binding upon either of the parties hereto or the underwriter of any such policies). Comply with these requests and submit a copy of the replacement certificate of insurance to Owner at the address provided below within 10 days of the requested change.

**2.04 CONTINUING EVIDENCE OF COVERAGE**

- A. Provide updated, revised, or new evidence of insurance in accordance this Section prior to the expiration of existing policies.
- B. Provide evidence of continuation of insurance coverage at final payment and for the following 3 years. This applies to professional liability insurance only.

**2.05 NOTICES REGARDING INSURANCE**

- A. Submit notices regarding insurance are to be sent to the Owner at the following address:
  - City of Corpus Christi – Engineering
  - Attn: Construction Contract Admin.
  - P.O. Box 9277
  - Corpus Christi, TX 78469-9277
- B. Submit questions regarding insurance requirements to the Construction Contract Administrator by calling 361-826-3530.
- C. TEXAS WORKERS' COMPENSATION INSURANCE REQUIRED NOTICE

**2.06 WORKERS' COMPENSATION INSURANCE COVERAGE**

- A. Definitions:
  - 1. 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.

2. 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.
  3. Persons providing services on the Project ("Subcontractor" in §406.096) - 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 service 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 all 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 governmental entity 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 governmental entity showing that coverage has been extended.
  - E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
    1. A certificate of coverage, prior to that person beginning Work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
    2. No later than seven 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 governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change 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 Workers' 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.

- 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 showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  5. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
  6. Notify the governmental entity 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 governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject 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 governmental entity to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity. **END OF SECTION**

<p><b>Contractor as Principal</b>  Name:  Mailing address (<i>principal place of business</i>):</p>	<p><b>Surety</b>  Name:  Mailing address (<i>principal place of business</i>):   Physical address (<i>principal place of business</i>):</p>
<p><b>Owner</b>  Name: City of Corpus Christi, Texas  Mailing address (<i>principal place of business</i>):  Capital Programs  1201 Leopard Street  Corpus Christi, Texas 78401</p>	<p>Surety is a corporation organized and existing under the laws of the state of:   <i>By submitting this Bond, Surety affirms its authority to do business in the State of Texas and its license to execute bonds in the State of Texas.</i></p>
<p><b>Contract</b>  Project name and number:  E14061 Pier R Replacement    Award Date of the Contract:  Contract Price:</p>	<p>Telephone (<i>main number</i>):   Telephone (<i>for notice of claim</i>):</p>
<p><b>Bond</b>  Date of Bond:  <i>(Date of Bond cannot be earlier than Award Date of Contract)</i>  Said Principal and Surety have signed and sealed this instrument in 4 copies, each one of which shall be deemed an original.</p>	<p><b>Local Agent for Surety</b>  Name:  Address:   Telephone:  E-Mail Address:   <i>The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439</i></p>

***Surety and Contractor, intending to be legally bound and obligated to Owner do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Contractor as Principal pays all claimants providing labor or materials to him or to a Subcontractor in the prosecution of the Work required by the Contract then this obligation shall be null and void; otherwise the obligation is to remain in full force and effect. Provisions of the bond shall be pursuant to the terms and provisions of Chapter 2253 and Chapter 2269 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue shall lie exclusively in Nueces County, Texas for any legal action.***

**Contractor as Principal**

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

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

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

Email Address: \_\_\_\_\_

**Surety**

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

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

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

Email Address: \_\_\_\_\_

*(Attach Power of Attorney and place surety seal below)*

**END OF SECTION**



00 61 13

PERFORMANCE BOND

BOND NO. \_\_\_\_\_

**Contractor as Principal**  
 Name:  
 Mailing address (*principal place of business*):

**Owner**  
 Name: City of Corpus Christi, Texas  
 Mailing address (*principal place of business*):  
 Capital Programs  
 1201 Leopard Street  
 Corpus Christi, Texas 78401

**Contract**  
 Project name and number:  
 E14061 Pier R Replacement

Award Date of the Contract:  
 Contract Price:

**Bond**  
 Date of Bond:  
*(Date of Bond cannot be earlier than Award Date of the Contract)*  
*Said Principal and Surety have signed and sealed this instrument in 4 copies, each one of which shall be deemed an original.*

**Surety**  
 Name:  
 Mailing address (*principal place of business*):

Physical address (*principal place of business*):

Surety is a corporation organized and existing under the laws of the state of:

*By submitting this Bond, Surety affirms its authority to do business in the State of Texas and its license to execute bonds in the State of Texas.*

Telephone (*main number*):

Telephone (*for notice of claim*):

**Local Agent for Surety**  
 Name:  
 Address:

Telephone:  
 E-Mail Address:

*The address of the surety company to which any notice of claim should be sent may be obtained from the Texas Dept. of Insurance by calling the following toll-free number: 1-800-252-3439*

***Surety and Contractor, intending to be legally bound and obligated to Owner do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative. The Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally to this bond. The condition of this obligation is such that if the Contractor as Principal faithfully performs the Work required by the Contract then this obligation shall be null and void; otherwise the obligation is to remain in full force and effect. Provisions of the bond shall be pursuant to the terms and provisions of Chapter 2253 and Chapter 2269 of the Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Venue shall lie exclusively in Nueces County, Texas for any legal action.***

**Contractor as Principal**

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

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

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

Email Address: \_\_\_\_\_

**Surety**

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

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

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

Email Address: \_\_\_\_\_

*(Attach Power of Attorney and place surety seal below)*

**END OF SECTION**

**00 72 00      GENERAL CONDITIONS**

**Table of Contents**

	<b>Page</b>
Article 1 – Definitions and Terminology .....	5
1.01 Defined Terms .....	5
1.02 Terminology .....	10
Article 2 – Preliminary Matters .....	11
2.01 Delivery of Bonds and Evidence of Insurance .....	11
2.02 Copies of Documents .....	12
2.03 Before Starting Construction .....	12
2.04 Preconstruction Conference; Designation of Authorized Representatives .....	12
Article 3 – Contract Documents: Intent, Requirements, Reuse .....	12
3.01 Intent .....	12
3.02 Reference Standards .....	14
3.03 Reporting and Resolving Discrepancies .....	14
3.04 Interpretation of the Contract Documents .....	15
3.05 Reuse of Documents .....	15
Article 4 – Commencement and Progress of the Work .....	15
4.01 Commencement of Contract Times; Notice to Proceed .....	15
4.02 Starting the Work .....	15
4.03 Progress Schedule .....	16
4.04 Delays in Contractor’s Progress .....	16
Article 5 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions .....	17
5.01 Availability of Lands .....	17
5.02 Use of Site and Other Areas .....	17
5.03 Subsurface and Physical Conditions .....	18
5.04 Differing Subsurface or Physical Conditions .....	18
5.05 Underground Facilities .....	20
5.06 Hazardous Environmental Conditions at Site .....	21
Article 6 – Bonds and Insurance .....	23
6.01 Performance, Payment, and Other Bonds .....	23
6.02 Licensed Sureties .....	23

6.03	Insurance.....	24
Article 7 – Contractor’s Responsibilities .....		24
7.01	Supervision and Superintendence .....	24
7.02	Labor; Working Hours .....	24
7.03	Services, Materials, and Equipment .....	25
7.04	Concerning Subcontractors, Suppliers, and Others .....	25
7.05	Patent Fees and Royalties .....	26
7.06	Permits .....	27
7.07	Taxes .....	27
7.08	Laws and Regulations.....	27
7.09	Safety and Protection.....	28
7.10	Safety Representative .....	29
7.11	Hazard Communication Programs .....	29
7.12	Emergencies .....	29
7.13	Contractor’s General Warranty and Guarantee .....	29
7.14	Indemnification .....	30
7.15	Delegation of Professional Design Services .....	31
Article 8 – Other Work at the Site.....		32
8.01	Other Work .....	32
8.02	Coordination .....	33
8.03	Legal Relationships.....	33
Article 9 – Owner’s and OPT’s Responsibilities.....		34
9.01	Communications to Contractor .....	34
9.02	Replacement of Owner’s Project Team Members.....	34
9.03	Furnish Data .....	34
9.04	Pay When Due.....	34
9.05	Lands and Easements; Reports and Tests .....	34
9.06	Insurance.....	34
9.07	Modifications .....	34
9.08	Inspections, Tests, and Approvals.....	34
9.09	Limitations on OPT’s Responsibilities .....	34
9.10	Undisclosed Hazardous Environmental Condition.....	34
9.11	Compliance with Safety Program.....	35

Article 10 – OAR’s and Designer’s Status During Construction .....	35
10.01 Owner’s Representative.....	35
10.02 Visits to Site.....	35
10.03 Resident Project Representatives .....	35
10.04 Rejecting Defective Work .....	35
10.05 Shop Drawings, Modifications and Payments .....	35
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work .....	36
10.07 Limitations on OAR’s and Designer’s Authority and Responsibilities .....	36
Article 11 – Amending the Contract Documents; Changes in the Work .....	36
11.01 Amending and Supplementing the Contract Documents .....	36
11.02 Owner-Authorized Changes in the Work.....	37
11.03 Unauthorized Changes in the Work.....	37
11.04 Change of Contract Price .....	38
11.05 Change of Contract Times.....	39
11.06 Change Proposals.....	39
11.07 Execution of Change Orders .....	39
11.08 Notice to Surety .....	40
Article 12 – Claims.....	40
12.01 Claims.....	40
Article 13 – Cost of the Work; Allowances; Unit Price Work .....	42
13.01 Cost of the Work .....	42
13.02 Allowances .....	44
13.03 Unit Price Work.....	45
13.04 Contingencies.....	45
Article 14 – Tests and Inspections; Correction, Removal, or Acceptance of Defective Work .....	46
14.01 Access to Work.....	46
14.02 Tests, Inspections, and Approvals.....	46
14.03 Defective Work .....	47
14.04 Acceptance of Defective Work.....	47
14.05 Uncovering Work .....	48
14.06 Owner May Stop the Work .....	48
14.07 Owner May Correct Defective Work.....	48
Article 15 – Payments to Contractor; Set-Offs; Completion; Correction Period .....	49

15.01	Progress Payments.....	49
15.02	Contractor’s Warranty of Title.....	51
15.03	Substantial Completion.....	51
15.04	Partial Utilization.....	51
15.05	Final Inspection.....	52
15.06	Final Payment.....	52
15.07	Waiver of Claims.....	52
15.08	Correction Period.....	53
Article 16 – Suspension of Work and Termination.....		53
16.01	Owner May Suspend Work.....	53
16.02	Owner May Terminate for Cause.....	54
16.03	Owner May Terminate For Convenience.....	55
16.04	Contractor May Stop Work or Terminate.....	55
Article 17 – Final Resolution of Disputes.....		56
17.01	Methods and Procedures.....	56
Article 18 – Miscellaneous.....		56
18.01	Computation of Times.....	56
18.02	Independent Contractor.....	56
18.03	Cumulative Remedies.....	56
18.04	Limitation of Damages.....	57
18.05	No Waiver.....	57
18.06	Severability.....	57
18.07	Survival of Obligations.....	57
18.08	No Third Party Beneficiaries.....	57
18.09	Assignment of Contract.....	57
18.10	No Waiver of Sovereign Immunity.....	57
18.11	Controlling Law.....	57
18.12	Conditions Precedent to Right to Sue.....	57
18.13	Waiver of Trial by Jury.....	58
18.14	Compliance with Laws.....	58
18.15	Enforcement.....	58
18.16	Subject to Appropriation.....	58
18.17	Contractor’s Guarantee as Additional Remedy.....	58

## **ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

### **1.01 Defined Terms**

- A. A term with initial capital letters, including the term's singular and plural forms, has the meaning indicated in this paragraph wherever used in the Bidding Requirements or Contract Documents. In addition to the terms specifically defined, terms with initial capital letters in the Contract Documents may include references to identified articles and paragraphs, and the titles of other documents or forms.
1. **Addenda** - Documents issued prior to the receipt of Bids which clarify or modify the Bidding Requirements or the proposed Contract Documents.
  2. **Agreement** - The document executed between Owner and Contractor covering the Work.
  3. **Alternative Dispute Resolution** - The process by which a disputed Claim may be settled as an alternative to litigation, if Owner and Contractor cannot reach an agreement between themselves.
  4. **Application for Payment** - The forms used by Contractor to request payments from Owner and the supporting documentation required by the Contract Documents.
  5. **Award Date** – The date the City Council of the City of Corpus Christi (City) authorizes the City Manager or designee to execute the Contract on behalf of the City.
  6. **Bid** - The documents submitted by a Bidder to establish the proposed Contract Price and Contract Times and provide other information and certifications as required by the Bidding Requirements.
  7. **Bidding Documents** - The Bidding Requirements, the proposed Contract Documents, and Addenda.
  8. **Bidder** - An individual or entity that submits a Bid to Owner.
  9. **Bidding Requirements** - The Invitation for Bids, Instructions to Bidders, Bid Security, Bid Form and attachments, and required certifications.
  10. **Bid Security** - The financial security in the form of a bid bond provided by Bidder at the time the Bid is submitted and held by Owner until the Agreement is executed and the evidence of insurance and Bonds required by the Contract Documents are provided. A cashier's check, certified check, money order or bank draft from any State or National Bank will also be acceptable.
  11. **Bonds** - Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
  12. **Change Order** - A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which modifies the Work, Contract Price, Contract Times, or terms and conditions of the Contract.

13. Change Proposal - A document submitted by Contractor in accordance with the requirements of the Contract Documents:
  - a. Requesting an adjustment in Contract Price or Contract Times;
  - b. Contesting an initial decision concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;
  - c. Challenging a set-off against payment due; or
  - d. Seeking a Modification with respect to the terms of the Contract.
14. City Engineer - The Corpus Christi City Engineer and/or his designated representative as identified at the preconstruction conference or in the Notice to Proceed.
15. Claim - A demand or assertion by Owner or Contractor submitted in accordance with the requirements of the Contract Documents. A demand for money or services by an entity other than the Owner or Contractor is not a Claim.
16. Constituent of Concern - Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous wastes, and substances, products, wastes, or other materials that are or become listed, regulated, or addressed pursuant to:
  - a. The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA");
  - b. The Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.;
  - c. The Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA");
  - d. The Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.;
  - e. The Clean Water Act, 33 U.S.C. §§1251 et seq.;
  - f. The Clean Air Act, 42 U.S.C. §§7401 et seq.; or
  - g. Any other Laws or Regulations regulating, relating to, or imposing liability or standards of conduct concerning hazardous, toxic, or dangerous waste, substance, or material.
17. Contract - The entire integrated set of documents concerning the Work and describing the relationship between the Owner and Contractor.
18. Contract Amendment - A document issued on or after the Effective Date of the Contract and signed by Owner and Contractor which:
  - a. Authorizes new phases of the Work and establishes the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work; or
  - b. Modifies the terms and conditions of the Contract, but does not make changes in the Work.
19. Contract Documents - Those items designated as Contract Documents in the Agreement.
20. Contract Price - The monetary amount stated in the Agreement and as adjusted by Modifications, and increases or decreases in unit price quantities, if any, that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.



21. **Contract Times** - The number of days or the dates by which Contractor must:
  - a. Achieve specified Milestones;
  - b. Achieve Substantial Completion; and
  - c. Complete the Work.
22. **Contractor** - The individual or entity with which Owner has contracted for performance of the Work.
23. **Contractor's Team** - Contractor and Subcontractors, Suppliers, individuals, or entities directly or indirectly employed or retained by them to perform part of the Work or anyone for whose acts they may be liable.
24. **Cost of the Work** - The sum of costs incurred for the proper performance of the Work as allowed by Article 13.
25. **Defective** - When applied to Work, refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. Does not conform to the Contract Documents;
  - b. Does not meet the requirements of applicable inspections, reference standards, tests, or approvals referred to in the Contract Documents; or
  - c. Has been damaged or stolen prior to OAR's recommendation of final payment unless responsibility for the protection of the Work has been assumed by Owner at Substantial Completion in accordance with Paragraphs 15.03 or 15.04.
26. **Designer** - The individuals or entity named as Designer in the Agreement and the subconsultants, individuals, or entities directly or indirectly employed or retained by Designer to provide design or other technical services to the Owner. Designer has responsibility for engineering or architectural design and technical issues related to the Contract Documents. Designers are Licensed Professional Engineers or Registered Architects qualified to practice their profession in the State of Texas.
27. **Drawings** - The part of the Contract that graphically shows the scope, extent, and character of the Work. Shop Drawings and other Contractor documents are not Drawings.
28. **Effective Date of the Contract** - The date indicated in the Agreement on which the City Manager or designee has signed the Contract.
29. **Field Order** - A document issued by OAR or Designer requiring changes in the Work that do not change the Contract Price or the Contract Times.
30. **Hazardous Environmental Condition** - The presence of Constituents of Concern at the Site in quantities or circumstances that may present a danger to persons or property exposed to Constituents of Concern. The presence of Constituents of Concern at the Site necessary for the execution of the Work or to be incorporated in the Work is not a Hazardous Environmental Condition provided these Constituents of Concern are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract.

31. **Indemnified Costs** - All costs, losses, damages, and legal or other dispute resolution costs resulting from claims or demands against Owner's Indemnitees. These costs include fees for engineers, architects, attorneys, and other professionals.
32. **Laws and Regulations; Laws or Regulations** - Applicable laws, statutes, rules, regulations, ordinances, codes, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.
33. **Liens** - Charges, security interests, or encumbrances upon Contract related funds, real property, or personal property.
34. **Milestone** - A principal event in the performance of the Work that Contractor is required by Contract to complete by a specified date or within a specified period of time.
35. **Modification** - Change made to the Contract Documents by one of the following methods:
  - a. Contract Amendment;
  - b. Change Order;
  - c. Field Order; or
  - d. Work Change Directive.
36. **Notice of Award** - The notice of Owner's intent to enter into a contract with the Selected Bidder.
37. **Notice to Proceed** - A notice to Contractor of the Contract Times and the date Work is to begin.
38. **Owner** - The City of Corpus Christi (City), a Texas home-rule municipal corporation and political subdivision organized under the laws of the State of Texas, acting by and through its duly authorized City Manager and his designee, the City Engineer (the Director of Engineering Services), and the City's officers, employees, agents, or representatives, authorized to administer design and construction of the Project.
39. **Owner's Authorized Representative or OAR** - The individual or entity named as OAR in the Agreement and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide construction management services to the Owner. The OAR may be an employee of the Owner.
40. **Owner's Indemnitees** - Each member of the OPT and their officers, directors, members, partners, employees, agents, consultants, and subcontractors.
41. **Owner's Project Team or OPT** - The Owner, Owner's Authorized Representative, Resident Project Representative, Designer, and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide services to the Owner.
42. **Partial Occupancy or Use** - Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

43. **Progress Schedule** - A schedule prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
44. **Project** - The total undertaking to be accomplished for Owner under the Contract Documents.
45. **Resident Project Representative or RPR** - The authorized representative of OPT assigned to assist OAR at the Site. As used herein, the term Resident Project Representative includes assistants and field staff of the OAR.
46. **Samples** - Physical examples of materials, equipment, or workmanship representing some portion of the Work that are used to establish the standards for that portion of the Work.
47. **Schedule of Documents** - A schedule of required documents, prepared, and maintained by Contractor.
48. **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 Contractor's Applications for Payment.
49. **Selected Bidder** - The Bidder to which Owner intends to award the Contract.
50. **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled 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.
51. **Site** - Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed. The Site includes rights-of-way, easements, and other lands furnished by Owner which are designated for use by the Contractor.
52. **Specifications** - The part of the Contract that describes the requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
53. **Subcontractor** - An individual or entity having a direct contract with Contractor or with other Subcontractors or Suppliers for the performance of a part of the Work.
54. **Substantial Completion** - The point where the Work or a specified part of the Work is sufficiently complete to be used for its intended purpose in accordance with the Contract Documents.
55. **Supplementary Conditions** - The part of the Contract that amends or supplements the General Conditions.
56. **Supplier** - A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with Subcontractors or other Suppliers to furnish materials or equipment to be incorporated in the Work.
57. **Technical Data** - Those items expressly identified as Technical Data in the Supplementary Conditions with respect to either:
  - a. Subsurface conditions at the Site;

- b. Physical conditions relating to existing surface or subsurface structures at the Site, except Underground Facilities; or
  - c. Hazardous Environmental Conditions at the Site.
58. Underground Facilities - All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, other similar facilities or appurtenances, and encasements containing these facilities which are used to convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
59. Unit Price Work - Work to be paid for on the basis of unit prices.
60. Work - The construction of the Project or its component parts as required by the Contract Documents.
61. Work Change Directive - A directive issued to Contractor on or after the Effective Date of the Contract ordering an addition, deletion, or revision in the Work. The Work Change Directive serves as a memorandum of understanding regarding the directive until a Change Order can be issued.

## 1.02 Terminology

- A. The words and terms discussed in this Paragraph 1.02 are not defined, but when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. It is understood that the cost for performing Work is included in the Contract Price and no additional compensation is to be paid by Owner unless specifically stated otherwise in the Contract Documents. Expressions including or similar to "at no additional cost to Owner," "at Contractor's expense," or similar words mean that the Contractor is to perform or provide specified operation of Work without an increase in the Contract Price.
- C. The terms "day" or "calendar day" mean a calendar day of 24 hours measured from midnight to the next midnight.
- D. The meaning and intent of certain terms or adjectives are described as follows:
  - 1. The terms "as allowed," "as approved," "as ordered," "as directed," or similar terms in the Contract Documents indicate an exercise of professional judgment by the OPT.
  - 2. Adjectives including or similar to "reasonable," "suitable," "acceptable," "proper," "satisfactory," or similar adjectives are used to describe a determination of OPT regarding the Work.
  - 3. Any exercise of professional judgment by the OPT will be made solely to evaluate the Work for general compliance with the Contract Documents unless there is a specific statement in the Contract Documents indicating otherwise.
  - 4. The use of these or similar terms or adjectives does not assign a duty or give OPT authority to supervise or direct the performance of the Work, or assign a duty or give authority to the OPT to undertake responsibilities contrary to the provisions of Articles 9 or 10 or other provisions of the Contract Documents.

- E. The use of the words "furnish," "install," "perform," and "provide" have the following meanings when used in connection with services, materials, or equipment:
  - 1. Furnish means to supply and deliver the specified services, materials, or equipment to the Site or other specified location ready for use or installation.
  - 2. Install means to complete construction or assembly of the specified services, materials, or equipment so they are ready for their intended use.
  - 3. Perform or provide means to furnish and install specified services, materials, or equipment, complete and ready for their intended use.
  - 4. Perform or provide the specified services, materials, or equipment complete and ready for intended use if the Contract Documents require specific services, materials, or equipment, but do not expressly use the words "furnish," "install," "perform," or "provide."
- F. Contract Documents are written in modified brief style:
  - 1. Requirements apply to all Work of the same kind, class, and type even though the word "all" is not stated.
  - 2. Simple imperative sentence structure is used which places a verb as the first word in the sentence. It is understood that the words "furnish," "install," "perform," "provide," or similar words include the meaning of the phrase "The Contractor shall..." before these words.
  - 3. Unless specifically stated that action is to be taken by the OPT or others, it is understood that the action described is a requirement of the Contractor.
- G. Words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with this recognized meaning unless stated otherwise in the Contract Documents.
- H. Written documents are required where reference is made to notices, reports, approvals, consents, documents, statements, instructions, opinions or other types of communications required by the Contract Documents. Approval and consent documents must be received by Contractor prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through the OPT's project management information system or other electronic media as required by the Contract Documents or approved by the OAR.
- I. Giving notice as required by the Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice.

## **ARTICLE 2 – PRELIMINARY MATTERS**

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

- A. Provide required Bonds with the executed Agreement.
- B. Provide evidence of insurance required by the Contract Documents with the executed Agreement.

**2.02 Copies of Documents**

- A. OPT is to furnish one fully executed Agreement and one copy of the executed Contract Documents in electronic portable document format (PDF). This document is the Project Record Copy of the Contract Documents.

**2.03 Before Starting Construction**

- A. Provide the following preliminary documents in accordance with the Contract Documents within 10 days after the Effective Date of the Contract:
  - 1. Progress Schedule;
  - 2. Schedule of Documents; and
  - 3. Schedule of Values and projected cash flow information.

**2.04 Preconstruction Conference; Designation of Authorized Representatives**

- A. Attend the preconstruction conference as required by the Contract Documents.
- B. Designate the specific individuals authorized to act as representatives of the Contractor. These individuals must have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of the Contractor.
- C. Owner is to designate the specific individuals authorized to act as representatives of the Owner and the limits of their authority with regard to acting on behalf of the Owner.

**ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

**3.01 Intent**

- A. Requirements of components of the Contract Documents are as binding as if required by all Contract Documents. It is the intent of the Contract Documents to describe a functionally complete Project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the OPT.
  - 1. The Contract requirements described in the General Conditions, Supplementary Conditions, and General Requirements (Division 01 Sections of the Specifications) apply to Work regardless of where it is described in the Contract Documents, unless specifically noted otherwise.
  - 2. In offering a Bid for this Project and in entering into this Contract, Contractor represents:
    - a. Contractor has studied the Contract Documents, the Work, the Site, local conditions, Laws and Regulations, and other conditions that may affect the Work;
    - b. Contractor has studied the Technical Data and other information referred to in the Contract Documents and has or will make additional surveys and investigations as deemed necessary for the performance of the Work;
    - c. Contractor has correlated these studies and observations with the requirements of the Contract Documents; and

- d. Contractor has taken all of this information into consideration in developing the Contract Price offered and that the Contract Price offered provides full compensation for providing the Work in accordance with the Contract Documents.
- 3. Organization of the Contract Documents is not intended to control or lessen the responsibility of the Contractor when dividing Work among Subcontractors or Suppliers, or to establish the extent of Work to be performed by trades, Subcontractors, or Suppliers. Specifications or details do not need to be indicated or specified in each Specification or Drawing. Items shown in the Contract Documents are applicable regardless of their location in the Contract Documents.
- 4. Standard paragraph titles and other identifications of subject matter in the Specifications are intended to aid in locating and recognizing various requirements of the Specifications. Titles do not define, limit, or otherwise restrict Specification text.
- 5. Provide the labor, documentation, services, materials, or equipment that may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result, whether specifically called for in the Contract Documents or not. Include these related costs in the offered Contract Price.
- B. Provide equipment that is functionally complete as described in the Contract Documents. The Drawings and Specifications do not indicate or describe all of the Work required to complete the installation of products purchased by the Owner or Contractor. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Designer through the OAR.
- C. Comply with the most stringent requirements where compliance with two or more standards is specified and they establish different or conflicting requirements for the Work, unless the Contract Documents indicate otherwise.
- D. Provide materials and equipment comparable in quality to similar materials and equipment incorporated in the Project or as required to meet the minimum requirements of the application if the materials and equipment are shown in the Drawings but are not included in the Specifications.
- E. The Project Record Copy of the Contract Documents governs if there is a discrepancy between the Project Record Copy of the Contract Documents and subsequent electronic or digital versions of the Contract Documents, including printed copies derived from these electronic or digital versions.
- F. The Contract supersedes all prior written or oral negotiations, representations, and agreements. The Contract Documents comprise the entire Agreement between Owner and Contractor. The Contract Documents may be modified only by a Modification.
- G. Request clarification from OAR for a decision before proceeding if Contractor is not clear on the meaning of the Contract Documents. OAR is to issue clarifications and interpretations of the Contract Documents in accordance with the Contract Documents.

### 3.02 Reference Standards

#### A. Standard Specifications, Codes, Laws and Regulations:

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of technical societies, organizations, or associations, or to Laws or Regulations, whether specific or implied, are those in effect at the time Contractor's Bid is submitted or when Contractor negotiates the Contract Price unless specifically stated otherwise in the Contract Documents.
2. No provision of referenced standard specifications, manuals, reference standards, codes, or instructions of a Supplier changes the duties or responsibilities of OPT or Contractor from those described in the Contract Documents or assigns a duty to or gives authority to the OPT to supervise or direct the performance of the Work or undertake responsibilities inconsistent with the Contract Documents.
3. The provisions of the Contract Documents take precedence over standard specifications, manuals, reference standards, codes, or instructions of a Supplier unless specifically stated otherwise in the Contract Documents.

#### B. Comply with applicable construction industry standards, whether referenced or not.

1. Standards referenced in the Contract Documents govern over standards not referenced but recognized as applicable in the construction industry.
2. Comply with the requirements of the Contract Documents if they produce a higher quality of Work than the applicable construction industry standards.
3. Designer determines whether a code or standard is applicable, which of several are applicable, or if the Contract Documents produce a higher quality of Work.

#### C. Make copies of reference standards available if requested by OAR.

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies:

1. Carefully study the Drawings and verify pertinent figures and dimensions with respect to actual field measurements before undertaking the Work. Immediately report conflicts, errors, ambiguities, or discrepancies that Contractor discovers or has actual knowledge of to the OAR. Do not proceed with affected Work until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from the OAR or by a Modification to the Contract Documents issued pursuant to Paragraph 11.01.
2. Immediately notify the OAR of conflicts, errors, ambiguities, or discrepancies in the Contract Documents or discrepancies between the Contract Documents and:
  - a. Applicable Laws or Regulations;
  - b. Actual field conditions;
  - c. Standard specifications, manuals, reference standards, or codes; or
  - d. Instructions of Suppliers.
3. Do not proceed with affected Work until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from the OAR or by a Modification to the



Contract Documents issued pursuant to Paragraph 11.01, except in an emergency as required by Paragraph 7.12.

4. Contractor is liable to the OPT for failure to report conflicts, errors, ambiguities, or discrepancies in the Contract Documents of which Contractor has actual knowledge.
5. Contractor is deemed to have included the most expensive item, system, procedure, etc. in the Contract Price if a conflict, error, ambiguity, or discrepancy in components of the Contract Documents was known, but not reported prior to submitting the Bid or when Contractor negotiates the Contract Price.

#### 3.04 Interpretation of the Contract Documents

- A. Submit questions concerning the non-technical or contractual / administrative requirements of the Contract Documents to the OAR immediately after those questions arise. OAR is to provide an interpretation of the Contract Documents regarding these questions and will coordinate the response of the OPT to Contractor.
- B. Submit questions regarding the design of the Project described in the Contract Documents to the OAR immediately after those questions arise. OAR is to request an interpretation of the Contract Documents from the Designer. Designer is to respond to these questions by providing an interpretation of the Contract Documents. OAR will coordinate the response of the OPT to Contractor.
- C. OPT may initiate a Modification to the Contract Documents through the OAR if a response to the question indicates that a change in the Contract Documents is required. Contractor may appeal Designer's or OAR's interpretation by submitting a Change Proposal.

#### 3.05 Reuse of Documents

- A. Contractor's Team has no rights to the Contract Documents and may not use the Contract Documents, or copies or electronic media editions of the Contract Documents, other than for the construction of this Project. This provision survives final payment or termination of the Contract.
- B. Contractor is allowed to retain a copy of the Contract Documents for record purposes, unless specifically prohibited by the Owner for security reasons. Surrender paper and digital copies of the Contract Documents and other related documents and remove these documents from computer equipment or storage devices as a condition of final payment if the Owner so directs.

### ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

#### 4.01 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times commence to run on the date indicated in the Notice to Proceed.

#### 4.02 Starting the Work

- A. Begin performing the Work on the date indicated in the Notice to Proceed. Do not begin Work prior to having the insurance required in Article 6 in force or before the date indicated in the Notice to Proceed.

#### 4.03 Progress Schedule

- A. Construct the Work in accordance with the Progress Schedule established in accordance with the Contract Documents.
  - 1. Adjust the Progress Schedule as required to accurately reflect actual progress on the Work.
  - 2. Submit proposed adjustments in the Progress Schedule that change the Contract Times in accordance with the requirements of Article 11.
- B. Continue performing Work and adhere to the Progress Schedule during disputes or disagreements with Owner. Do not delay or postpone Work pending resolution of disputes or disagreements, or during an appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree.

#### 4.04 Delays in Contractor's Progress

- A. Contractor is entitled to an equitable adjustment in the Contract Times if OPT directly delays, disrupts, or interferes with the performance or progress of the Work. The Contractor agrees to make no Claim for damages for delay in the performance of the Contract occasioned by an act or omission to act of the OPT and agrees that the extension of time provides an equitable adjustment.
- B. Contractor is not entitled to an adjustment in Contract Price or Contract Times for delays, disruptions, or interference caused by or within the control of Contractor's Team.
- C. No time extensions are allowed for weather conditions, other than those listed in Paragraph 4.04.D.1, for Projects using calendar days or a fixed date to establish the Contract Time. Contractor is to include the cost associated with weather related delays in the Contract Price and assumes the risks associated with delays related to weather conditions.
- D. Contractor is entitled to an equitable adjustment in the Contract Times if Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of OPT or Contractor. These unanticipated causes may include:
  - 1. Severe and unavoidable natural catastrophes e.g. fires, floods, hurricanes, epidemics, and earthquakes;
  - 2. Acts or failures to act of utility owners other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8; and
  - 3. Acts of war or terrorism.
  - 4. Rain days in excess of the number of days allocated for rain as described in the Supplementary Conditions.
- E. Delays, disruption, and interference to the performance or progress of the Work resulting from the following are governed by Article 5:
  - 1. The existence of a differing subsurface or physical condition;
  - 2. An Underground Facility not shown or not indicated with reasonable accuracy by the Contract Documents; and

**3. Hazardous Environmental Conditions.**

These adjustments in Contract Times are the Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph.

- F. Article 8 governs 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.
- G. Notify the OAR immediately of a potential delaying, disrupting, or interfering event. Submit a Change Proposal seeking an adjustment in Contract Price or Contract Times within 30 days of the commencement of the delaying, disrupting, or interfering event.
- H. Contractor is only entitled to an adjustment of the Contract Times for specific delays, disruptions, and interference to the performance or progress of the Work that can be demonstrated to directly impact the ability of the Contractor to complete the Work within the Contract Times. No adjustments in Contract Times are allowed for delays on components of the Work which were or could have been completed without impacting the Contract Times.
- I. Contractor is not entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of the Owner if this delay is concurrent with a delay, disruption, or interference attributable to or within the control of the Contractor's Team.

**ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

**5.01 Availability of Lands**

- A. Owner is to furnish the Site and inform the Contractor of encumbrances or restrictions known to Owner related to use of the Site with which Contractor must comply in performing the Work.
- B. Provide for additional lands and access Contractor requires for temporary construction facilities or storage of materials and equipment, other than those identified in the Contract Documents. Provide documentation of authority to use these additional lands to OAR before using them.

**5.02 Use of Site and Other Areas**

- A. Limitation on Use of Site and Other Areas:
  - 1. Confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Owner or Contractor has arranged to use through construction easements or agreements, and other adjacent areas as permitted by Laws and Regulations. Assume full responsibility for damage or injuries which result from the performance of the Work or from other actions or conduct of the Contractor's Team, including:
    - a. Damage to the Site;
    - b. Damage to adjacent areas used for Contractor's Team's operations;
    - c. Damage to other adjacent land or areas; and

- d. Injuries and losses sustained by the owners or occupants of these lands or areas.
2. Take the following action if a damage or injury claim is made by the owner or occupant of adjacent land or area because of the performance of the Work, or because of other actions or conduct of the Contractor's Team:
  - a. Take immediate corrective or remedial action as required by Paragraph 7.09; and
  - b. Attempt to settle the claim through negotiations with the owner or occupant, or otherwise resolve the claim by mediation or other dispute resolution proceeding or at law.

### S.03 Subsurface and Physical Conditions

- A. The Supplementary Conditions identify:
  1. Those reports known to OPT of explorations and tests of subsurface conditions at or adjacent to the Site;
  2. Those drawings known to OPT of physical conditions related to existing surface or subsurface structures at the Site, except Underground Facilities; and
  3. Technical Data contained in these reports and drawings.
- B. Data contained in boring logs, recorded measurements of subsurface water levels, and the results of tests performed on materials described in geotechnical data reports specifically prepared for the Project and made available to Contractor are defined as Technical Data, unless Technical Data has been defined more specifically in the Supplementary Conditions.
- C. Contractor may rely upon the accuracy of the Technical Data contained in these reports and drawings, but these reports and drawings are not Contract Documents. Except for this reliance on Technical Data, Contractor may not rely upon or make claims against Owner's Indemnitees with respect to:
  1. The completeness of reports and drawings for Contractor's purposes, including aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, or Contractor's safety precautions and programs;
  2. Other data, interpretations, opinions, and information contained in these reports or shown or indicated in the drawings; or
  3. Contractor's interpretation of or conclusions drawn from Technical Data or other data, interpretations, opinions, or information.

### 5.04 Differing Subsurface or Physical Conditions

- A. Notify OAR immediately, but in no event later than 3 days, after becoming aware of a subsurface or physical condition that is uncovered or revealed at the Site, and before further disturbing the subsurface or physical conditions or performing any related Work that:
  1. Establishes that the Technical Data on which Contractor is entitled to rely as provided in Paragraph S.03 is materially inaccurate;
  2. Requires 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.

Do not further disturb or perform Work related to this subsurface or physical condition, except in an emergency as required by Paragraph 7.12, until permission to do so is issued by OAR.

- B. OAR is to notify the OPT after receiving notice of a differing subsurface or physical condition from the Contractor. Designer is to:
  1. Promptly review the subsurface or physical condition;
  2. Determine the necessity of OPT's obtaining additional exploration or tests with respect the subsurface or physical condition;
  3. Determine if the subsurface or physical condition falls within one or more of the differing Site condition categories in Paragraph S.04.A;
  4. Prepare recommendations to OPT regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question;
  5. Determine the need for changes in the Drawings or Specifications; and
  6. Advise OPT of Designer's findings, conclusions, and recommendations.
- C. OAR is to issue a statement to Contractor regarding the subsurface or physical condition in question and recommend action as appropriate after review of Designer's findings, conclusions, and recommendations.
- D. Possible Contract Price and Contract Times Adjustments:
  1. Contractor is entitled to an equitable adjustment in Contract Price or Contract Times to the extent that a differing subsurface or physical condition causes a change in Contractor's cost or time to perform the Work provided the condition falls within one or more of the categories described in Paragraph S.04.A. Any adjustment in Contract Price for Work that is paid for on a unit price basis is subject to the provisions of Paragraph 13.03.
  2. Contractor is not entitled to an adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of the subsurface or physical condition at the time Contractor made an offer to Owner with respect to Contract Price and Contract Times;
    - b. The existence of the subsurface or physical condition could have been discovered or revealed as a result of examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents prior to when Contractor's Bid is submitted or when Contractor negotiates the Contract Price; or
    - c. Contractor failed to give notice as required by Paragraph 5.04.A.
  3. Contractor may submit a Change Proposal no later than 30 days after OAR's issuance of the OPT's statement to Contractor regarding the subsurface or physical condition in question.

4. A Change Order is to be issued by the OAR if Owner and Contractor agree that Contractor is entitled to an adjustment in the Contract Price or Contract Times and agree to the amount or extent of adjustments in the Contract Price or Contract Times.

**S.05 Underground Facilities**

- A. The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to OPT by the owners of these Underground Facilities or by others. OPT is not responsible for the accuracy or completeness of information or data provided by others that OPT makes available to Contractor. The Contractor is responsible for:
  1. Reviewing and checking available information and data regarding existing Underground Facilities at the Site;
  2. Complying with Laws and Regulations related to locating Underground Facilities before beginning Work;
  3. Locating Underground Facilities shown or indicated in the Contract Documents;
  4. Coordinating the Work with the owners, including Owner, of Underground Facilities during construction; and
  5. The safety and protection of existing Underground Facilities at or adjacent to the Site and repairing damage resulting from the Work.
- B. Notify the OAR and the owner of the Underground Facility immediately if an Underground Facility is uncovered or revealed at the Site that was not shown in the Contract Documents, or was not shown with reasonable accuracy in the Contract Documents. Do not further disturb conditions or perform Work affected by this discovery, except in the event of an emergency as required by Paragraph 7.12.
- C. The Designer is to take the following action after receiving notice from the OAR:
  1. Promptly review the Underground Facility and conclude whether the Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy;
  2. Prepare recommendations to OPT regarding the Contractor's resumption of Work in connection with this Underground Facility;
  3. Determine the extent to which a change is required in the Drawings or Specifications to document the consequences of the existence or location of the Underground Facility; and
  4. Advise OAR of Designer's findings, conclusions, and recommendations and provide revised Drawings and Specifications if required.
- D. OAR is to issue a statement to Contractor regarding the Underground Facility in question and recommend action as appropriate after review of Designer's findings, conclusions, and recommendations.
- E. Contractor is entitled to an equitable adjustment in the Contract Price or Contract Times as provided in Paragraphs 11.04 and 11.05 to the extent that the existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown

or indicated with reasonable accuracy. Any adjustment in Contract Price for Work that is paid for on a unit price basis is subject to the provisions of Paragraph 13.03.

- F. Contractor is not entitled an adjustment in the Contract Price or Contract Times with respect to an existing Underground Facility at the Site if:
  - 1. Contractor knew of the existence of the existing Underground Facility at the Site at the time Contractor made an offer to Owner with respect to Contract Price and Contract Times;
  - 2. The existence of the existing Underground Facility at the Site could have been discovered or revealed as a result of examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents prior to when Contractor's Bid is submitted or when Contractor negotiates the Contract Price; or
  - 3. Contractor failed to give notice as required by Paragraph 5.05.B.
- G. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of adjustments in the Contract Price or Contract Times no later than 30 days after OAR's issuance of OPT's statement to Contractor regarding the Underground Facility.

#### S.06 Hazardous Environmental Conditions at Site

- A. The Supplementary Conditions identify:
  - 1. Those reports and drawings known to OPT relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  - 2. Technical Data contained in these reports and drawings.
- B. Contractor may rely upon the accuracy of the Technical Data contained in reports and drawings relating to Hazardous Environmental Conditions identified in the Supplementary Conditions, but these reports and drawings are not Contract Documents. Except for the reliance on expressly identified Technical Data, Contractor may not rely upon or make claims against Owner's Indemnitees with respect to:
  - 1. The completeness of these reports and drawings for Contractor's purposes, including aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor or Contractor's safety precautions and programs related to Hazardous Environmental Conditions;
  - 2. Other data, interpretations, opinions, and information contained in these reports or shown or indicated in the drawings; or
  - 3. Any Contractor interpretation of or conclusion drawn from Technical Data or other data, interpretations, opinions, or information.
- C. The results of tests performed on materials described in environmental reports specifically prepared for the Project and made available to Contractor are defined as Technical Data unless Technical Data has been defined more specifically in the Supplementary Conditions.
- D. Contractor is not responsible for removing or remediating Hazardous Environmental Conditions encountered, uncovered, or revealed at the Site unless this removal or

remediation is expressly identified in the Contract Documents to be within the scope of the Work.

- E. Contractor is responsible for controlling, containing, and duly removing and remediating Constituents of Concern brought to the Site by Contractor's Team and paying associated costs.
  - 1. Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to Contractor for associated costs if Contractor's Team creates a Hazardous Environmental Condition and Contractor does not take acceptable action to remove and remediate the Hazardous Environmental Condition.
  - 2. Contractor's obligation to indemnify Owner's Indemnitees for claims arising out of or related to Hazardous Environmental Conditions are as set forth in Paragraph 7.14.
- F. Immediately notify the OAR and take the following action if Contractor uncovers or reveals a Hazardous Environmental Condition at the Site or adjacent areas used by the Contractor's Team that was not created by the Contractor's Team:
  - 1. Secure or otherwise isolate this condition;
  - 2. Stop Work in affected areas or connected with the condition, except in an emergency as required by Paragraph 7.12; and
  - 3. Do not resume Work in connection with the Hazardous Environmental Condition or in affected areas until after OPT has obtained required permits and OAR sends notice to the Contractor:
    - a. Specifying that this condition and affected areas are or have been rendered safe for the resumption of Work; or
    - b. Specifying special conditions under which Work may be resumed safely.
  - 4. Owner may order the portion of the Work that is in the area affected by the Hazardous Environmental Condition to be deleted from the Work following the procedures in Article 11 if Contractor does not agree to:
    - a. Resume the Work based on a reasonable belief it is unsafe; or
    - b. Resume the Work under the special conditions provided by the OAR.
  - 5. Owner may have this deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- G. Contractor may submit a Change Proposal or Owner may impose a set-off if an agreement is not reached within 10 days of OAR's notice regarding the resumption of Work as to whether Contractor is entitled to an adjustment in Contract Price or Contract Times or on the amount or extent of adjustments resulting from this Work stoppage or special conditions under which Contractor agrees to resume Work.
- H. The provisions of Paragraphs S.03, S.04, and 5.05 do not apply to the presence of Constituents of Concern or a Hazardous Environmental Condition uncovered or revealed at the Site.



## ARTICLE 6 – BONDS AND INSURANCE

### 6.01 Performance, Payment, and Other Bonds

- A. Furnish Performance and Payment Bonds, each in an amount equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract Documents. These Bonds are to remain in effect until 1 year after the date of final payment. Furnish other Bonds as required by the Contract Documents.
- B. Bonds furnished by the Contractor must meet the requirements of Texas Insurance Code Chapter 3503, Texas Government Code Chapter 2253, and all other applicable Laws and Regulations.
- C. Notify OAR immediately if the surety on Bonds furnished by Contractor:
  - 1. Is declared bankrupt, or becomes insolvent;
  - 2. Has its right to do business in Texas terminated; or
  - 3. Ceases to meet the requirements of Paragraph 6.02.

Provide a Bond and surety which comply with the requirements of Paragraph 6.02 within 20 days after the event giving rise to this notification.

- D. Contractor is to use amounts paid by Owner to Contractor under the Contract for the performance of the Contract and to satisfy claims against the Payment Bond.
- E. Notify the OAR of claims filed against the Payment Bond. Notify the claimant and OAR of undisputed amounts and the basis for challenging disputed amounts when a claimant has satisfied the conditions prescribed by Texas Government Code Chapter 2253. Promptly pay undisputed amount.
- F. Owner is not liable for payment of costs or expenses of claimants under the Payment Bond. Owner has no obligations to pay, give notice, or take other action to claimants under the Payment Bond.
- G. Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16 if Contractor fails to obtain or maintain required Bonds.
- H. OPT will provide a copy of the Payment Bond to Subcontractors, Suppliers, or other persons or entities claiming to have furnished labor or materials used in the performance of the Work that request this information in accordance with Texas Government Code Chapter 2253.

### 6.02 Licensed Sureties

- A. Provide Bonds in the form prescribed by the Contract Documents from sureties named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury.
- B. Provide Bonds required by the Contract Documents from surety companies that are duly licensed or authorized to provide bonds in the State of Texas.

6.03 Insurance

- A. Obtain and maintain insurance as required in this Article and in SECTION 00 72 01 INSURANCE REQUIREMENTS.
- B. Deliver evidence of insurance in accordance with SECTION 00 72 01 INSURANCE REQUIREMENTS to the Owner to demonstrate that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Provide copies of these certificates to each named insured and additional insured as identified in the Supplementary Conditions or otherwise.

**ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES**

7.01 Supervision and Superintendence

- A. Supervise, inspect, and direct the performance of the Work in accordance with the Contract Documents. Contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. Provide a competent resident superintendent acceptable to the OPT. The resident superintendent or acceptable qualified assistant is to be present at all times when Work is being done. Do not replace this resident superintendent except under extraordinary circumstances. Provide a replacement resident superintendent equally competent to the previous resident superintendent if replacement is required. Notify the Owner prior to replacing the resident superintendent and obtain Owner’s consent to the change in superintendent.

7.02 Labor; Working Hours

- A. Provide competent, suitably qualified personnel to survey and lay out the Work and perform Work to complete the Project. Maintain good discipline and order at the Site.
- B. Perform Work at the Site during regular working hours except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent to the Site and except as otherwise stated in the Contract Documents.
- C. Do not perform Work on a Saturday, Sunday, or legal holiday without OAR’s consent. The following legal holidays are observed by the Owner:

Holiday	Date Observed
New Year’s Day	January 1
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Day	December 25

- D. If a legal holiday falls on a Saturday, it will be observed the preceding Friday. If a legal holiday falls on a Sunday, it will be observed the following Monday.
- E. Pay additional cost incurred by Owner for services of the OAR or RPR to observe Work constructed outside of regular working hours. OAR will issue a Set-off in the Application for Payment for this cost per Paragraph 15.01.B

#### 7.03 Services, Materials, and Equipment

- A. Provide services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work, whether or not these items are specifically called for in the Contract Documents.
- B. Provide new materials and equipment to be incorporated into the Work. Provide special warranties and guarantees required by the Contract Document. Provide satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment as required by the Contract Documents or as requested by the OAR.
- C. Store, apply, install, connect, erect, protect, use, clean, and condition materials and equipment in accordance with instructions of the applicable Supplier, unless otherwise required by the Contract Documents.

#### 7.04 Concerning Subcontractors, Suppliers, and Others

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. All Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor must retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents.
- C. Submit a list of proposed Subcontractors and Suppliers to OAR prior to entering into binding subcontracts or purchase orders. These proposed Subcontractors or Suppliers are deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 30 days after receiving this list.
- D. Contractor is not required to retain Subcontractors, Suppliers, or other individuals or entities to furnish or perform part of the Work after the Effective Date of the Contract if Contractor has reasonable objection.
- E. Owner may require the replacement of Subcontractors, Suppliers, or other individuals or entities retained by the Contractor. Provide an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. Owner also may require Contractor to retain specific replacements, subject to Contractor's reasonable objections.
- F. Contractor may be entitled to an adjustment in Contract Price or Contract Times with respect to a replacement of Subcontractors, Suppliers, or other entities required by Owner. The Contractor is not entitled to an adjustment in Contract Price or Contract Time with respect to replacement of any individual deemed unsuitable by the OPT. Notify OAR immediately if a replacement of Subcontractors, Suppliers, or other entity increases the Contract Price or Contract Times. Initiate a Change Proposal for the adjustment within 10

days of Owner's notice to replace a Subcontractor, Supplier, or other entity retained by Contractor to perform part of the Work. Do not make the replacement until the change in Contract Price or Contract Times has been accepted by the Owner if Change Proposal is to be submitted.

- G. Owner's initial acceptance of Subcontractors, Suppliers, or other individuals or entities, or their replacements, does not constitute a waiver of the obligation of the Contractor to complete the Work in accordance with the Contract Documents.
- H. Maintain a current and complete list of Subcontractors and Suppliers that are to perform or furnish part of the Work.
- I. Contractor is fully responsible for the acts and omissions of Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work.
- J. Contractor is solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work.
- K. Require Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work to communicate with OPT through Contractor.
- L. Contracts between the Contractor and their Subcontractors or Suppliers may specifically bind the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents. Contractor is responsible for meeting the requirements of the Contract Documents if they choose to not bind the Subcontractors or Suppliers to applicable terms or conditions of the Contract Documents.
  - 1. All Subcontractors employed on this Project must be required to obtain Workers' Compensation Insurance.
  - 2. Proof of this insurance will be required prior to the start of any Work.
- M. OPT may furnish information about amounts paid to Contractor for Work provided by Subcontractors or Suppliers to the entity providing the Work.
- N. Nothing in the Contract Documents:
  - 1. Creates a contractual relationship between members of the OPT and members of the Contractor's Team.
  - 2. Creates an obligation on the part of the Owner to pay or to see to the payment of money due members of the Contractor's Team, except as may be required by Laws and Regulations.

#### 7.05 Patent Fees and Royalties

- A. Pay license fees, royalties, and costs incident to the use of inventions, designs, processes, products, or devices which are patented or copyrighted by others in the performance of the Work, or to incorporate these inventions, designs, processes, products, or devices which are patented or copyrighted by others in the Work. The Contract Documents identify inventions, designs, processes, products, or devices OPT knows are patented or copyrighted by others or that its use is subject to patent rights or copyrights calling for the payment of a license fee or royalty to others. Contractor is to include the cost associated with the use of patented or copyrighted products or processes, whether specified or selected by the Contractor, in the Contract Price.

- B. Contractor's obligation to indemnify Owner's Indemnitees for claims arising out of or related to infringement of patent rights and copyrights are as set forth in Paragraph 7.14.

#### 7.06 Permits

- A. Obtain and pay for construction permits and licenses. OPT is to assist Contractor in obtaining permits and licenses when required to do so by applicable Laws and Regulations. Pay governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time the Contractor's Bid is submitted or when Contractor negotiates the Contract Price.

#### 7.07 Taxes

- A. Contractor is responsible for all taxes and duties arising out of the Work. The Owner generally qualifies as a tax exempt agency as defined by the statutes of the State of Texas and is usually not subject to any city or state sales or use taxes, however certain items such as rented equipment may be taxable even though Owner is a tax-exempt agency. Contractor is responsible for including in the Contract Price any applicable sales and use taxes and is responsible for complying with all applicable statutes and rulings of the State Comptroller. Pay sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations.
- B. The Owner is exempt from the Federal Transportation and Excise Tax. Contractor must comply with all federal regulations governing the exemptions.
- C. Products incorporated into the Work are exempt from state sales tax according to the provisions of Subchapter H, Chapter 151, of the Texas Tax Code.
- D. Contractor may not include any amounts for sales, use, or similar taxes for which the Owner is exempt in the Contract Price or any proposed Change Order or Application for Payment.
- E. Obtain tax exemption certificates or other documentation necessary to establish Owner's exemption from such taxes.

#### 7.08 Laws and Regulations

- A. Give required notices and comply with Laws and Regulations applicable to the performance of the Work. OPT is not responsible for monitoring Contractor's compliance with Laws or Regulations except where expressly required by applicable Laws and Regulations.
- B. Pay costs resulting from actions taken by Contractor that are contrary to Laws or Regulations. Contractor is not responsible for determining that the design aspects of the Work described in the Contract Documents is in accordance with Laws and Regulations. This does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of changes in Laws or Regulations that may affect the cost or time of performance of the Work, including:
  - 1. Changes in Laws or Regulations affecting procurement of permits; and
  - 2. Sales, use, value-added, consumption, and other similar taxes which come into effect after Contractor's Bid is submitted or when Contractor negotiates the Contract Price.

- D. Contractor may submit a Change Proposal or Owner may initiate a Claim within 30 days of this notice if Owner and Contractor are unable to agree on entitlement to or on the amount or extent of adjustments in Contract Price or Contract Times resulting from these changes.

#### 7.09 Safety and Protection

- A. Contractor is solely responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the Work. This 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. Take necessary precautions for the safety of persons on the Site or who may be affected by the Work, and provide the necessary protection to prevent damage, injury, or loss to:
  - 1. Work and materials and equipment to be incorporated in the Work, whether stored on or off Site; and
  - 2. Other property at or adjacent to the Site, 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.
- C. Comply with applicable Laws and Regulations relating to the safety and protection of persons or property. Erect and maintain necessary safeguards for safety and protection. Notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site when prosecution of the Work may affect them. Cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - 1. Comply with requirements of Underground Facility Damage Prevention and Safety Act, Texas Utilities Code Chapter 251.
  - 2. Comply with all applicable safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).
- D. Remedy damage, injury, or loss to property referred to in Paragraph 7.09.B caused by Contractor's Team. Pay remediation costs unless the damage or loss is:
  - 1. Attributable to the fault of the Contract Documents;
  - 2. Attributable to acts or omissions of OPT; or
  - 3. Not attributable to the actions or failure to act of the Contractor's Team.
- E. Contractor's duties and responsibilities for safety and protection of persons or the Work or property at or adjacent to the Site continues until Work is completed and resumes whenever Contractor's Team returns to the Site to fulfill warranty or correction obligations or to conduct other tasks.
- F. Comply with the applicable requirements of the Owner's safety program if required to do so in the Supplementary Conditions. A copy of the Owner's safety program will be provided in the Bidding Documents.

7.10 Safety Representative

- A. Provide a qualified and experienced safety representative at the Site whose duties and responsibilities are the prevention of accidents and maintaining and supervising safety programs.

7.11 Hazard Communication Programs

- A. Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.12 Emergencies

- A. Act to prevent threatened damage, injury, or loss in emergencies affecting the safety or protection of persons or the Work or property at or adjacent to the Site. Notify OAR immediately if Contractor believes that significant changes in the Work or variations from the Contract Documents have been caused or are required as a result of this need to act. A Modification is to be issued by OAR if OPT determines that the incident giving rise to the emergency action was not the responsibility of the Contractor and that a change in the Contract Documents is required because of the action taken by Contractor in response to this emergency.

7.13 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that Work is in accordance with the Contract Documents and is not Defective. Owner is entitled to rely on Contractor's warranty and guarantee. Assume and bear responsibility for costs and time delays associated with variations from the requirements of the Contract Documents.
- B. This Contractor's warranty and guarantee excludes defects or damage caused by improper maintenance or operation, abuse, or modification by OPT; or normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete Work in accordance with the Contract Documents is absolute. None of the following constitute an acceptance of Defective Work or a release of Contractor's obligation to perform Work in accordance with the Contract Documents:
  - 1. Observations by OPT;
  - 2. Recommendation by OAR or payment by Owner of progress or final payments;
  - 3. The issuance of a Certificate of Substantial Completion;
  - 4. Use or occupancy of part of the Work by Owner;
  - 5. Review and approval of a Shop Drawing or Sample;
  - 6. Inspections, tests, or approvals by others; or
  - 7. Correction of Defective Work by Owner.
- D. The Contract Documents may require the Contractor to accept the assignment of a contract between the Owner and a contractor or supplier. The specific warranties, guarantees, and

correction obligations contained in an assigned contract govern with respect to Contractor's performance obligations to Owner for the Work described in an assigned contract.

#### 7.14 Indemnification

- A. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER'S INDEMNITEES FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES OR DISPUTE RESOLUTION COSTS, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, VIOLATIONS OF LAWS OR REGULATIONS, OR BODILY INJURY, DEATH, OR DESTRUCTION OF TANGIBLE PROPERTY CAUSED BY THE ACTS OR OMISSIONS OF THE CONTRACTOR'S TEAM, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED IN PART BY AN OWNER'S INDEMNITEE HEREUNDER, SUBJECT TO THE OWNER'S DEFENSES AND LIABILITY LIMITS UNDER THE TEXAS TORT CLAIMS ACT. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY AN OWNER'S INDEMNITEE AGAINST A CLAIM, LOSS, DAMAGE OR EXPENSE CAUSED BY THE (I) NEGLIGENCE OR FAULT, (II) BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE, OR (III) THE BREACH OF CONTRACT BY AN OWNER'S INDEMNITEE. PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, CONTRACTOR INDEMNIFIES EACH OF OWNER'S INDEMNITEES AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR'S TEAM OF ANY TIER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF AN OWNER'S INDEMNITEE.
- B. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER'S INDEMNITEES FROM AND AGAINST INDEMNIFIED COSTS, ARISING OUT OF OR RELATING TO: (I) THE FAILURE TO CONTROL, CONTAIN, OR REMOVE A CONSTITUENT OF CONCERN BROUGHT TO THE SITE BY CONTRACTOR'S TEAM OR A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR'S TEAM, (II) CONTRACTOR'S TEAM'S ACTION OR INACTION RELATED TO DAMAGES, DELAYS, DISRUPTIONS, OR INTERFERENCE WITH THE WORK OF OWNER'S EMPLOYEES, OTHER CONTRACTORS, OR UTILITY OWNERS PERFORMING OTHER WORK AT OR ADJACENT TO THE SITE, OR (III) THE CORRECTION OF DEFECTIVE WORK. NOTHING IN THIS PARAGRAPH OBLIGATES THE CONTRACTOR TO INDEMNIFY THE OWNER'S INDEMNITEES FROM THE CONSEQUENCES OF THE OWNER'S AND OWNER'S INDEMNITEES OWN NEGLIGENCE. PROVIDED FURTHER HOWEVER, AND IN ADDITION TO THE ABOVE, CONTRACTOR INDEMNIFIES THE OWNER'S INDEMNITEES AGAINST CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR'S TEAM OF ANY TIER EVEN IF CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER'S INDEMNITEES.
- C. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER'S INDEMNITEES FROM AND AGAINST INDEMNIFIED COSTS RESULTING FROM INFRINGEMENT ON PATENT RIGHTS OR COPYRIGHTS BY CONTRACTOR'S TEAM TO THE FULLEST EXTENT PERMITTED BY LAW.
- D. The indemnification obligations under this paragraph are not limited by the amount or type of damages, compensation, or benefits payable by or for members of the Contractor's Team or other individuals or entities under workers' compensation acts, disability benefit acts, or other employee benefit acts in claims against Owner's Indemnitees by an employee or the survivor or personal representative of employee of Contractor's Team.
- E. The indemnification obligations of this Paragraph 7.14 do not extend to the liability of Designer arising out of the preparation of the Contract Documents or giving directions or



instructions, or failing to give them, to the extent they are obligated to do so if that is the primary cause of the injury or damage.

- F. Notify the other party within 10 days if Owner or Contractor receives notice of any claim or circumstances that could give rise to an indemnified loss. The notice must include the following:
1. A description of the indemnification event in reasonable detail;
  2. The basis on which indemnification may be due; and
  3. The anticipated amount of the indemnified loss.

This notice does not stop or prevent Owner's Indemnitees from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. Owner's Indemnitees do not waive any rights to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay if Owner does not provide this notice within the 10-day period.

- G. Defense of Indemnification Claims:
1. Assume the defense of the claim with counsel chosen by the Contractor and pay related costs, unless Owner decides otherwise. Contractor's counsel must be acceptable to Owner. Control the defense and any negotiations to settle the claim. Advise Owner's Indemnitees as to its defense of the claim within 10 days after being notified of the indemnification request. Owner's Indemnitees may assume and control the defense if Contractor does not assume the defense. Pay all defense expenses of the Owner's Indemnitees as an indemnified loss.
  2. Owner's Indemnitees may retain separate counsel to participate in, but not control, the defense and any settlement negotiations if Contractor defends the claim. Contractor may not settle the claim without the consent or agreement of Owner. Contractor may settle the claim with Owner's consent and agreement unless it:
    - a. Would result in injunctive relief or other equitable remedies or otherwise require Owner's Indemnitees to comply with restrictions or limitations that adversely affect Owner's Indemnitees;
    - b. Would require Owner's Indemnitees to pay amounts that Contractor does not fund in full; or
    - c. Would not result in Owner and Owner's Indemnitees' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

#### 7.15 Delegation of Professional Design Services

- A. Contractor is not required to provide professional design services unless these services are specifically required by the Contract Documents for a portion of the Work or unless these services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.
- B. The Contract Documents specify performance and design criteria related to systems, materials, or equipment if professional design services or certifications by a design

professional related to systems, materials, or equipment are specifically required of Contractor. These services or certifications must be provided by the licensed Texas Professional Engineer or Registered Architect who prepares, signs, and seals drawings, calculations, specifications, certifications, Shop Drawings, and other documents.

- C. OPT is entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by Contractor's design professionals, provided OPT has specified to Contractor the performance and design criteria that these services must satisfy.
- D. Pursuant to this Paragraph 7.1S, Designer's review and approval of design calculations and design drawings is only for the limited purpose of checking for conformance with the performance and design criteria given and the design concepts expressed in the Contract Documents. Designer's review and approval of Shop Drawings and other documents is only for the purpose stated in the Contract Documents.
- E. Contractor is not responsible for the adequacy of the performance or design criteria specified by OPT. Advise OPT if the performance or design criteria are known or considered likely to be inadequate or otherwise deficient.

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

##### **8.01 Other Work**

- A. Owner may arrange for other work at or adjacent to the Site which is not part of the Contractor's Work. This other work may be performed by Owner's employees or through other contractors. Utility owners may perform work on their utilities and facilities at or adjacent to the Site. Include costs associated with coordinating with entities performing other work or associated with connecting to this other work in the Contract Price if this other work is shown in the Contract Documents.
- B. OPT is to notify Contractor of other work prior to starting the work and provide any knowledge they have regarding the start of utility work at or adjacent to the Site to Contractor.
- C. Provide other contractors:
  - 1. Proper and safe access to the Site;
  - 2. Reasonable opportunity for the introduction and storage of materials and equipment; and
  - 3. Reasonable opportunity to execute their work.
- D. Provide cutting, fitting, and patching of the Work required to properly connect or integrate with other work. Do not endanger the work of others by cutting, excavating, or otherwise altering the work of others without the consent of OAR and the others whose work will be affected.
- E. Inspect the work of others and immediately notify OAR if the proper execution of part of Contractor's Work depends upon work performed by others and this work has not been performed or is unsuitable for the proper execution of Contractor's Work. Contractor's failure to notify the OAR constitutes an acceptance of this other work as acceptable for

integration with Contractor's Work. This acceptance does not apply to latent defects or deficiencies in the work of others.

- F. Take adequate measures to prevent damages, delays, disruptions, or interference with the work of Owner, other contractors, or utility owners performing other work at or adjacent to the Site.

#### 8.02 Coordination

- A. Owner has sole authority and responsibility for coordination of this other work unless otherwise provided in the Contract Documents. The Owner is to identify the entity with authority and responsibility for coordination of the activities of the various contractors, the limitations of their authority, and the work to be coordinated prior to the start of other work at or adjacent to the Site.

#### 8.03 Legal Relationships

- A. Contractor may be entitled to a change in Contract Price or Contract Times if, while performing other work at or adjacent to the Site for Owner, the OPT, other contractor, or utility owner:
  - 1. Damages the Work or property of Contractor's Team;
  - 2. Delays, disrupts, or interferes with the execution of the Work; or
  - 3. Increases the scope or cost of performing the Work through their actions or inaction.
- B. Notify the OAR immediately of the event leading to a potential Change Proposal so corrective action can be taken. Submit the Change Proposal within 30 days of the event if corrective action has not adequately mitigated the impact of the actions or inactions of others. Information regarding this other work in the Contract Documents is used to determine if the Contractor is entitled to a change in Contract Price or Contract Times. Changes in Contract Price require that Contractor assign rights against the other contractor or utility owner to Owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Changes in Contract Times require that the time extension is essential to Contractor's ability to complete the Work within the Contract Times.
- C. Take prompt corrective action if Contractor's Team damages, delays, disrupts, or interferes with the work of Owner's employees, other contractors, or utility owners performing other work at or adjacent to the Site or agree to compensate other contractors or utility owners for correcting the damage. Promptly attempt to settle claims with other contractors or utility owners if Contractor damages, delays, disrupts, or interferes with the work of other contractors or utility owners performing other work at or adjacent to the Site.
- D. Owner may impose a set-off against payments due to Contractor and assign the Owner's contractual rights against Contractor with respect to the breach of the obligations described in this Paragraph 8.03 to other contractors or utility owners if damages, delays, disruptions, or interference occur.
- E. Contractor's obligation to indemnify Owner's Indemnitees for claims arising out of or related damages, delays, disruptions, and interference with other work at the Site are as set forth in Paragraph 7.14.

**ARTICLE 9 – OWNER’S AND OPT’S RESPONSIBILITIES**

- 9.01 Communications to Contractor
  - A. OPT issues communications to Contractor through OAR except as otherwise provided in the Contract Documents.
- 9.02 Replacement of Owner’s Project Team Members
  - A. Owner may replace members of the OPT at its discretion.
- 9.03 Furnish Data
  - A. OPT is to furnish the data required of OPT under the Contract Documents.
- 9.04 Pay When Due
  - A. Owner is to make payments to Contractor when due as described in Paragraphs 15.01.D and 15.06.D.
- 9.05 Lands and Easements; Reports and Tests
  - A. Owner’s duties with respect to providing lands and easements are described in Paragraph 5.01. OPT will make copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site available to Contractor in accordance with Paragraph 5.03.
- 9.06 Insurance
  - A. Owner’s responsibilities with respect to purchasing and maintaining insurance are described in Article 6.
- 9.07 Modifications
  - A. Owner’s responsibilities with respect to Modifications are described in Article 11.
- 9.08 Inspections, Tests, and Approvals
  - A. OPT’s responsibility with respect to certain inspections, tests, and approvals are described in Paragraph 14.02.
- 9.09 Limitations on OPT’s Responsibilities
  - A. The OPT does not supervise, direct, or have control or authority over, and is not responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or related safety precautions and programs, or for failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. OPT is not responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.
- 9.10 Undisclosed Hazardous Environmental Condition
  - A. OPT’s responsibility for undisclosed Hazardous Environmental Conditions is described in Paragraph 5.06.

**9.11 Compliance with Safety Program**

- A. Contractor is to inform the OPT of its safety programs and OPT is to comply with the specific applicable requirements of this program.

**ARTICLE 10 – OAR’S AND DESIGNER’S STATUS DURING CONSTRUCTION**

**10.01 Owner’s Representative**

- A. OAR is Owner’s representative. The duties and responsibilities and the limitations of authority of OAR as Owner’s representative are described in the Contract Documents.

**10.02 Visits to Site**

- A. Designer is to make periodic visits to the Site to observe the progress and quality of the Work. Designer is to determine, in general, if the Work is proceeding in accordance with the Contract Documents based on observations made during these visits. Designer is not required to make exhaustive or continuous inspections to check the quality or quantity of the Work. Designer is to inform the OPT of issues or concerns and OAR is to work with Contractor to address these issues or concerns. Designer’s visits and observations are subject to the limitations on Designer’s authority and responsibility described in Paragraphs 9.09 and 10.07.
- B. OAR is to observe the Work to check the quality and quantity of Work, implement Owner’s quality assurance program, and administer the Contract as Owner’s representative as described in the Contract Documents. OAR’s visits and observations are subject to the limitations on OAR’s authority and responsibility described in Paragraphs 9.09 and 10.07.

**10.03 Resident Project Representatives**

- A. Resident Project Representatives assist OAR in observing the progress and quality of the Work at the Site. The limitations on Resident Project Representatives’ authority and responsibility are described in Paragraphs 9.09 and 10.07.

**10.04 Rejecting Defective Work**

- A. OPT has the authority to reject Work in accordance with Article 14. OAR is to issue a Defective Work Notice to Contractor and document when Defective Work has been corrected or accepted in accordance with Article 14.

**10.05 Shop Drawings, Modifications and Payments**

- A. Designer’s authority related to Shop Drawings and Samples are described in the Contract Documents.
- B. Designer’s authority related to design calculations and design drawings submitted in response to a delegation of professional design services are described in Paragraph 7.15.
- C. OAR and Designer’s authority related to Modifications is described in Articles 11.
- D. OAR’s authority related to Applications for Payment is described in Articles 13 and 15.

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

- A. OAR is to render decisions regarding non-technical or contractual / administrative requirements of the Contract Documents and will coordinate the response of the OPT to Contractor.
- B. Designer is to render decisions regarding the conformance of the Work to the requirements of the Contract Documents. Designer will render a decision to either correct the Defective Work, or accept the Work under the provisions of Paragraph 14.04, if Work does not conform to the Contract Documents. OAR will coordinate the response of the OPT to Contractor.
- C. OAR will issue a Request for a Change Proposal if a Modification is required. OAR will provide documentation for changes related to the non-technical or contractual / administrative requirements of the Contract Documents. Designer will provide documentation if design related changes are required.
- D. Contractor may appeal Designer's decision by submitting a Change Proposal if Contractor does not agree with the Designer's decision.

**10.07 Limitations on OAR's and Designer's Authority and Responsibilities**

- A. OPT is not responsible for the acts or omissions of Contractor's Team. No actions or failure to act, or decisions made in good faith to exercise or not exercise the authority or responsibility available under the Contract Documents creates a duty in contract, tort, or otherwise of the OPT to the Contractor or members of the Contractor's Team.

**ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

**11.01 Amending and Supplementing the Contract Documents**

- A. The Contract Documents may be modified by a Contract Amendment, Change Order, Work Change Directive, or Field Order.
  - 1. Contract Amendment: Owner and Contractor may modify the terms and conditions of the Contract Documents without the recommendation of the Designer using a Contract Amendment. A Contract Amendment may be used for:
    - a. Changes that do not involve:
      - 1) The performance or acceptability of the Work;
      - 2) The design as described in the Drawings, Specifications, or otherwise; or
      - 3) Other engineering, architectural or technical matters.
    - b. Authorizing new phases of the Work and establishing the Contract Price, Contract Times, or terms and conditions of the Contract for the new phase of Work when using phased construction or purchasing Goods and Special Services to be incorporated into the Project.
  - 2. Change Order: All changes to the Contract Documents that include a change in the Contract Price or the Contract Times for previously authorized Work, or changes to the Work requiring Designer's approval must be made by a Change Order. A Change

Order may also be used to establish modifications of the Contract Documents that do not affect the Contract Price or Contract Times.

3. **Work Change Directive:** A Work Change Directive does not change the Contract Price or the Contract Times, but is evidence that the parties expect that the modifications ordered or documented by a Work Change Directive are to be incorporated in a subsequently issued Change Order following negotiations on the Contract Price and Contract Times. Contractor must submit a Change Proposal seeking an adjustment of the Contract Price or the Contract Times no later than 30 days after the completion of the Work set out in the Work Change Directive if negotiations are unsuccessful under the terms of the Contract Documents governing adjustments, expressly including Paragraphs 11.04 and 11.05.
  4. **Field Order:** Designer may require minor changes in the Work that do not change the Contract Price or Contract Times using a Field Order. OAR may issue a Field Order for non-technical, administrative issues. Submit a Change Proposal if Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times before proceeding with the Work described in the Field Order.
- B. Perform added or revised Work under the applicable provisions of the Contract Documents for the same or similar Work unless different Drawings, Specifications, or directions are provided in the Modification.

#### 11.02 Owner-Authorized Changes in the Work

- A. Owner may order additions, deletions, or revisions in the Work at any time as recommended by the Designer to the extent the change:
1. Involves the design as described in the Contract Documents;
  2. Involves acceptance of the Work; or
  3. Involves other engineering, architectural or technical matters.
- B. These changes may be authorized by a Modification. Proceed with the Work involved or, in the case of a deletion in the Work, immediately cease construction activities with respect to the deleted Work upon receipt of the Modification. Nothing in this paragraph obligates the 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.

#### 11.03 Unauthorized Changes in the Work

- A. Contractor is not entitled to an increase in the Contract Price or an extension of the Contract Times with respect to Work performed that is not required by the Contract Documents, except in the case of an emergency as provided in Paragraph 7.12, or in the case of uncovering Work as provided in Paragraph 14.05.
- B. Contractor is responsible for costs and time delays associated with variations from the requirements of the Contract Documents unless the variations are specifically approved by Change Order.

#### 11.04 Change of Contract Price

- A. The Contract Price can only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price is to be determined as follows:
  - 1. By applying unit prices to the quantities of the items involved, subject to the provisions of Paragraph 13.03, where the Work involved is covered by unit prices in the Contract Documents;
  - 2. By a mutually agreed lump sum where the Work involved is not covered by unit prices in the Contract Documents; or
  - 3. Payment 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 11.04.D when the Work involved is not covered by unit prices in the Contract Documents or the parties do not reach a mutual agreement to a lump sum.
- C. The original Contract Price may not be increased by more than 25 percent or the limit set out in Texas Local Government Code 252.048 or its successor statute. Owner may decrease the Work by up to 25 percent of the Contract Price without adjusting Contractor's fee.
- D. Contractor's Fee: Determine the Contractor's fee for overhead and profit as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. A fee based on the following percentages of the various portions of the Cost of the Work:
    - a. The Contractor's fee is 15 percent for costs incurred under Paragraphs 13.01.C.1 and 13.01.C.2;
    - b. The Contractor's fee is 5 percent for costs incurred under Paragraph 13.01.C.3;
    - c. Fees are to be determined as follows where one or more tiers of subcontracts are used:
      - 1) The Subcontractor's fee is 15 percent for costs incurred under Paragraphs 13.01.C.1 and 13.01.C.2 for the Subcontractor that actually performs the Work at whatever tier; and
      - 2) The Contractor and Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work are to be allowed a fee of 5 percent of the fee plus underlying costs incurred by the next lower tier Subcontractor;
    - d. No fee is payable on the basis of costs itemized under Paragraphs 13.01.C.4, and 13.01.D;
    - e. Five percent of the net decrease in the cost is to be deducted for changes which result in a net decrease in Contract Price; and
  - 3. The adjustment in Contractor's fee is based on the net change in accordance with Paragraphs 11.04.D.2.a through 11.04.D.2.e, inclusive when both additions and credits are involved in any one change.



#### 11.05 Change of Contract Times

- A. The Contract Times can only be changed by Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. An adjustment of the Contract Times is subject to the limitations described in Paragraph 4.04.

#### 11.06 Change Proposals

- A. Submit a Change Proposal to the OAR to:
  - 1. Request an adjustment in the Contract Price or Contract Times;
  - 2. Appeal an initial decision by OPT concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents;
  - 3. Contest a set-off against payment due; or
  - 4. Seek other relief under the Contract Documents.
- B. Notify the OAR immediately if a Change Proposal is to be submitted. Submit each Change Proposal to OAR no later than 30 days after the event initiating the Change Proposal. Submit the following as part of the Change Proposal:
  - 1. Any proposed change in Contract Price, Contract Times, or other relief, accompanied by a statement that the requested Change Order is the entire adjustment to which Contractor believes it is entitled;
  - 2. The reason for the proposed change; and
  - 3. Supporting data, accompanied by a statement that the supporting data is accurate and complete.
- C. OAR is to advise OPT regarding the Change Proposal. OPT is to review each Change Proposal and Contractor's supporting data, and within 30 days after receipt of the documents, direct the OAR to either approve or deny the Change Proposal in whole or in part. OAR is to issue a Change Order for an approved Change Proposal. The Contractor may deem the Change Proposal to be denied if OAR does not take action on the Change Proposal within 30 days and start the time for appeal of the denial under Article 12.

#### 11.07 Execution of Change Orders

- A. Owner and Contractor are to execute Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by Owner and Contractor, including undisputed sums or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from Owner set-offs unless the set-off has been successfully challenged by Contractor;
  - 3. Changes in the Work which are:
    - a. Ordered by Owner pursuant to Paragraph 11.02.A,

- b. Required because Defective Work was accepted under Paragraph 14.04 or Owner's correction of Defective Work under Paragraph 14.07, or
    - c. Agreed to by the Owner and Contractor; and
  - 4. Changes in the Contract Price or Contract Times, or other changes under Paragraph 11.06 or Article 12.
- B. Acceptance of a Change Order by Contractor constitutes a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay, or acceleration damages arising from the subject matter of the Change Order. Each Change Order must be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor constitutes conclusive evidence of Contractor's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.
- C. All Change Orders require approval by either the City Council or Owner by administrative action. The approval process requires a minimum of 45 days after submission in final form with all supporting data. Receipt of Contractor's submission by Owner constitutes neither acceptance nor approval of a Bid, nor a warranty that the Bid will be authorized by City Council or administrative action. The time required for the approval process may not be considered a delay and no extensions to the Contract Times or increase in the Contract Price will be considered or granted as a result of the process. Contractor may proceed with Work if a Work Change Directive is issued.
- D. A Change Order is deemed to be in full force as if executed by Contractor if the Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07.

#### 11.08 Notice to Surety

- A. Notify the surety of Modifications affecting the general scope of the Work, changes in the provisions of the Contract Documents, or changes in Contract Price or Contract Times. Adjust the amount of each Bond when Modifications change the Contract Price.

### ARTICLE 12 – CLAIMS

#### 12.01 Claims

- A. Follow the Claims process described in this Article for the following disputes between Owner and Contractor:
  - 1. A demand or assertion by Owner to Contractor, submitted in accordance with the requirements of the Contract Documents:
    - a. Seeking an adjustment of Contract Price or Contract Times;

- b. Contesting an initial decision by Designer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;
    - c. Contesting Designer's decision regarding a Change Proposal;
    - d. Seeking resolution of a contractual issue that OAR has declined to address; or
    - e. Seeking other relief with respect to the terms of the Contract.
  - 2. A demand or assertion by Contractor to Owner, submitted in accordance with the requirements of the Contract Documents:
    - a. Contesting OPT's decision regarding a Change Proposal; or
    - b. Seeking resolution of a contractual issue that OPT has declined to address.
- B. Notify the OAR no later than 7 days after the start of the event giving rise to the Claim or, in the case of appeals regarding Change Proposals, within 7 days of the decision under appeal. The responsibility to substantiate a Claim rests with the entity making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Price or Contract Times, Contractor must certify that the Claim is made in good faith, that the supporting data is 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. The entity receiving a Claim is to review the Claim giving full consideration to its merits. The Owner and Contractor are to seek to resolve the Claim through the exchange of information and direct negotiations. The Owner and Contractor may extend the time for resolving the Claim by mutual agreement. Notify OAR of actions taken on a Claim.
- D. Owner and Contractor may mutually agree to mediate the underlying dispute at any time after initiation of a Claim.
  - 1. The agreement to mediate suspends the Claim submittal and response process.
  - 2. Owner or Contractor may unilaterally terminate the mediation process after 60 days from the agreement to mediate and resume the Claim submittal and decision process as of the date of the termination. The Claim process resumes as of the date of the conclusion of the mediation, as determined by the mediator, if the mediation is unsuccessful in resolving the dispute.
  - 3. Owner and Contractor are to each pay one-half of the mediator's fees and costs.
- E. If the entity receiving a Claim approves the Claim in part or denies it in part, this action is final and binding unless the other entity invokes the procedure described in Article 17 for final resolution of disputes within 30 days of this action.
- F. Notify the OAR if efforts to resolve the Claim are not successful and the Claim is denied. A denial of the Claim is final and binding unless the other entity invokes the procedure described in Article 17 for the final resolution of disputes within 30 days of the denial.
- G. The results of the agreement or action on the Claim is to be incorporated in a Change Order by the OAR to the extent they affect the Contract Documents, the Contract Price, or the Contract Times if the Owner and Contractor reach a mutual agreement regarding a Claim.

## ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

### 13.01 Cost of the Work

- A. The Cost of the Work is the sum of costs described in this Paragraph 13.01, except those excluded in Paragraph 13.01.D, necessary for the proper performance of the Work. 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, time-and-materials, or other cost-based terms; or
  2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price.
- B. 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 when the value of the adjustment is determined on the basis of the Cost of the Work.
- C. Costs included in the Cost of the Work may not exceed the prevailing costs in the proximate area of the Site for similar work unless agreed to by the Owner. Cost of the Work includes only the following items:
1. Payroll costs for Contractor's employees performing the Work, including one foreman per crew, and other required and agreed upon personnel for the time they are employed on the Work. Employees are to be paid according to wage rates for job classifications as agreed to by Owner. Where the Cost of the Work is being used under provisions of Paragraph 13.01.A.2, rates paid for this Work are to be the same as paid for Contract Work as established by certified payroll. Payroll costs may include:
    - a. Actual costs paid for salaries and wages;
    - b. Actual cost paid for fringe benefits, which may include:
      - 1) Social security contributions,
      - 2) Unemployment,
      - 3) Excise and payroll taxes,
      - 4) Workers' compensation,
      - 5) Health and retirement benefits,
      - 6) Bonuses, and
      - 7) Paid time off for sick leave, vacations, and holidays; and
    - c. Actual cost of additional compensation paid for performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, to the extent authorized by Owner.
  2. Cost of materials and equipment furnished and incorporated in the Work, including transportation and storage costs and required Suppliers' field services. Contractor may retain cash discounts unless Owner provided funds to the Contractor for early payment of these materials and equipment. Cash discounts are to be credited to Owner if the Owner provides funds for early payment. Make provisions for trade

discounts, rebates, refunds, and returns from sale of surplus materials and equipment and reduce the Cost of the Work by these amounts.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. Obtain competitive bids from Subcontractors acceptable to Owner unless Owner agrees to use Subcontractors proposed by the Contractor. Bids are to be opened in the presence of the OAR and other designated members for the OPT. Provide copies of bids to the OAR to use in determining, with the OPT, which bids are acceptable. The Subcontractor's Cost of the Work and fee are determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01 if the subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee.
4. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work;
  - b. Costs of materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site including transportation and maintenance costs;
  - c. Costs of hand tools not owned by the workers consumed in the performance of the Work. Costs of hand tools not owned by the workers which are used but not consumed in the performance of the Work and which remain the property of Contractor, less their market value when Work is completed;
  - d. Rental of construction equipment, including the costs of transporting, loading, unloading, assembling, dismantling, and removing construction equipment, whether rented from Contractor or others, in accordance with rental agreements approved by Owner. Costs for rental of equipment will not be paid when the equipment is no longer necessary for the Work. Justify idle time for equipment by demonstrating that it was necessary to keep equipment on Site for related future Work;
  - e. Applicable sales, consumer, use, and other similar taxes related to the Work for which the Owner is not exempt, and which Contractor pays consistent with Laws and Regulations;
  - f. Deposits lost for causes other than negligence of Contractor's Team;
  - g. Royalty payments and fees for permits and licenses;
  - h. Cost of additional utilities, fuel, and sanitary facilities at the Site;
  - i. Minor expense items directly required by the Work; and
  - j. Premiums for Bonds and insurance required by the Contract Documents.
- D. The Cost of the Work does not include the following items:
  1. Payroll costs and other compensation of Contractor's officers, executives, principals of partnerships and sole proprietorships, general managers, safety managers, superintendents, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, 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.C.1 or specifically covered by Paragraph 13.01.C.4. These administrative costs are covered by the Contractor's fee.

2. Office expenses other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Costs due to the actions of Contractor's Team for the correction of Defective Work, disposal of materials or equipment that do not comply with Specifications, and correcting damage to property.
  5. Losses, damages, and related expenses caused by damage to the Work or sustained by Contractor in connection with the performance of the Work. Contractor is entitled to recover costs if covered by insurance provided in accordance with Article 6. Such losses may include settlements made with the approval of Owner. Do not include these losses, damages, and expenses in the Cost of the Work when determining Contractor's fee.
  6. Any Indemnified Cost paid with regard to Contractor's indemnification of Owner's Indemnitees.
  7. Other overhead or general expense costs and the costs of items not described in Paragraphs 13.01.C.
- E. The Contractor's fee is determined as follows:
1. In accordance with the Agreement when the Work is performed on a cost-plus basis.
  2. In accordance with Paragraph 11.04.C for Work covered by a Modification determined on the basis of Cost of the Work.
- F. Establish and maintain records in accordance with generally accepted accounting practices and submit these records, including an itemized cost breakdown together with supporting data, in a form and at intervals acceptable to OAR whenever the Cost of the Work is to be determined pursuant to this Paragraph 13.01.

## 13.02 Allowances

- A. Include allowances specified in the Contract Documents in the Contract Price and provide Work covered by the allowance as authorized by the Owner through the OAR.
- B. Contractor agrees that:
1. The cash allowance is used to compensate the Contractor for the cost of furnishing materials and equipment for the Work covered by the allowance item in the Contract Documents. Cost may include applicable taxes. Make provisions for trade discounts, rebates, and refunds and reduce the allowance costs by these amounts.
  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
  3. Costs for cash allowances and installation costs as described in Paragraphs 13.02.B.1 and 13.02.B.2 above are included in the Contract Price.

- C. OAR will issue a Change Order to adjust the Contract Price by the difference between the allowance amount and the actual amount paid by Contractor for Work covered by the allowance. The Change Order will be issued at the time costs are incurred by Contractor for Work covered by the allowance and this Work is included on the Application for Payment.

### 13.03 Unit Price Work

- A. The initial Contract Price for Unit Price Work is equal to the sum of the unit price line items in the Agreement. Each unit price line item amount is equal to the product of the unit price for each line item 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 comparing Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work are to be based on actual quantities measured for Work in place.
- C. Each unit price is deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. OAR is to determine the actual quantities and classifications of Unit Price Work performed by Contractor to be incorporated into each Application for Payment. OAR's decision on actual quantities is final and binding, subject to the provisions of Paragraph 13.03.E.
- E. Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price within 30 days of OAR's decision under Paragraph 13.03.D, if:
  - 1. The total cost of a particular item of Unit Price Work amounts to 20 percent or more of the total Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 20 percent from the estimated quantity of an item indicated in the Agreement;
  - 2. There is no corresponding adjustment with respect to other items of Work; and
  - 3. Contractor believes it has incurred additional expense as a result of this condition or if Owner believes that the quantity variation entitles Owner to an adjustment in the Contract Price.

### 13.04 Contingencies

- A. Contingency funds may be included in the Contract Price to pay for Work not defined specifically by the Contract Documents that is essential to the completion of the Project. Contingency funds will be as described in the Agreement.
- B. The contingency funds may be used for costs incurred by the Contractor provided these costs are approved by the Owner. Costs are to be determined and documented in accordance with Paragraph 13.01. The contingency funds are not to be used for the following items:
  - 1. Cost overruns due to changes in material costs after the Contract Price is established, unless specific price escalation provisions are made in the Agreement.
  - 2. Rework required to correct Defective Work.

3. Inefficiencies in completing the Work due to the Contractor's selected means, methods, sequences, or procedures of construction.
  4. Work Contractor failed to include in the Contract Price.
  5. Changes required by changes in Laws and Regulations enacted after the Contract Price is established.
  6. Any Work that does not constitute a change in Scope in the Work included in the Contract Price.
- C. OAR is to issue a Change Order for approved expenditures from contingency funds. When the Change Order is issued, the costs are to be added to the Application for Payment. Contractor is to maintain a tabulation showing the contingency amount, adjustments to the contingency amount, and amounts remaining as the Project progresses.
- D. Any contingency amounts that are not included in a Change Order are retained by the Owner. A Change Order will be issued to deduct unused contingency amounts from the Contract Price prior to Final Payment.

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

**14.01 Access to Work**

- A. Provide safe access to the Site and the Work for the observation, inspection, and testing of the Work in progress. Contractor can require compliance with Contractor's safety procedures and programs as part of providing safe access.

**14.02 Tests, Inspections, and Approvals**

- A. OPT may retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform inspections. Notify OAR when the Work is ready for required inspections and tests. Provide adequate notice to allow for coordination with entities providing inspection or testing as determined by the OAR. Cooperate with inspection and testing personnel and assist with providing access for required inspections, tests, and handling test specimens or Samples.
- B. Arrange for and facilitate inspections, tests, and approvals required by Laws or Regulations of governmental entities having jurisdiction that require Work to be inspected, tested, or approved by an employee or other representative of that entity. Pay associated costs and furnish OAR with the required certificates of inspection or approval.
- C. Arrange, obtain, and pay for inspections and tests required:
1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to OPT;
  2. To attain OPT'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;



5. For acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work;
  6. For re-inspecting or retesting Defective Work, including any associated costs incurred by the testing laboratory for cancelled tests or standby time; and
  7. For retesting due to failed tests.
- D. Provide independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to OPT to provide these inspections and tests.

#### 14.03 Defective Work

- A. It is Contractor's obligation to assure that the Work is not Defective.
- B. OPT has the authority to determine whether Work is Defective and to reject Defective Work.
- C. OAR is to notify Contractor of Defective Work of which OPT has actual knowledge.
- D. Promptly correct Defective Work.
- E. Take no action that would void or otherwise impair Owner's special warranties or guarantees when correcting Defective Work.
- F. Pay claims, costs, losses, and damages arising out of or relating to Defective Work, including:
  1. Costs for correction, removal, and replacement of Defective Work;
  2. Cost of the inspection and testing related to correction of Defective Work;
  3. Fines levied against Owner by governmental authorities because of Defective Work; and
  4. Costs of repair or replacement of work of others resulting from Defective Work.

#### 14.04 Acceptance of Defective Work

- A. Owner may elect to accept Defective Work instead of requiring correction or removal and replacement of Defective Work provided:
  1. This acceptance occurs prior to final payment;
  2. Designer confirms that the Defective Work is in general accordance with the design intent and applicable engineering or architectural principles; and
  3. Designer confirms that acceptance of the Defective Work does not endanger public health or safety.
- B. Owner may impose a reasonable set-off against payments due under Article 15 for costs associated with OPT's evaluation of Defective Work to determine if it can be accepted and to determine the diminished value of the Work. Owner may impose a reasonable set-off against payments due under Article 15 if the parties are unable to agree as to the decrease in the Contract Price to compensate Owner for the diminished value of Defective Work accepted. OAR is to issue a Modification for acceptance of the Defective Work prior to final payment. Pay an appropriate amount to Owner if the acceptance of Defective Work occurs after final payment.

#### 14.05 Uncovering Work

- A. OPT has the authority to require inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. Work that is covered prior to approval of the OAR must be uncovered for OPT's observation if requested by OAR. Pay for uncovering Work and its subsequent restoration unless Contractor has given OAR timely notice of Contractor's intention to cover the Work and OAR fails to act with reasonable promptness in response to this notice.
- C. Provide necessary labor, material, and equipment and uncover, expose, or otherwise make available the portion of the Work suspected of being Defective for observation, inspection, or testing if OPT considers it necessary or advisable that covered Work be observed by Designer or inspected or tested by others as directed by the OAR.
  - 1. Pay for claims, costs, losses, and damages associated with uncovering, exposing, observing, inspecting, and testing if it is found that the uncovered Work is Defective. Pay costs for correction of Defective Work. Pay for reconstruction, repair, or replacement of work of others if it is found that the uncovered Work is Defective.
  - 2. Submit a Change Proposal for an increase in the Contract Price or an extension of the Contract Times directly attributable to this uncovering, exposure, observation, inspection, testing, and reconstruction if the uncovered Work is found to be not Defective.

#### 14.06 Owner May Stop the Work

- A. Owner may order Contractor to stop the Work if:
  - 1. The Work is Defective;
  - 2. Contractor fails to supply sufficient skilled workers or suitable materials or equipment;  
or
  - 3. Contractor performs Work that may fail to conform to the Contract Documents when completed.

This stop work order is to remain in effect until the reason for the stop work order has been eliminated. Owner's right to stop the Work does not create a duty to exercise this right for the benefit of Contractor's Team or surety.

#### 14.07 Owner May Correct Defective Work

- A. Owner may remedy the following deficiencies after 7 days' notice to Contractor if:
  - 1. Contractor fails to correct Defective Work, or to remove and replace rejected Work as required by OPT;
  - 2. Contractor fails to perform the Work in accordance with the Contract Documents; or
  - 3. Contractor fails to comply with other provisions of the Contract Documents.
- B. Owner may:
  - 1. Exclude Contractor from the Site;

2. Take possession of the Work and suspend Contractor's services related to the Work; and
  3. Incorporate stored materials and equipment in the Work.
- C. Allow OPT access to the Site and off Site storage areas to enable Owner to exercise the rights and remedies under this Paragraph 14.07.
  - D. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 are to be charged against Contractor as a set-off against payments due under Article 15. These claims, costs, losses, and damages include costs of repair and the cost of replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's Defective Work.
  - E. Contractor is not allowed an extension of the Contract Times because of delays in the performance of the Work attributable to the exercise of the 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. Progress payments are to be submitted to the OAR on the Application for Payment form provided by the OAR following procedures in the Contract Documents.
  1. Progress payments for lump sum Work are to be paid on the basis of the earned value to date at the amounts shown in the Schedule of Values submitted as required by Paragraph 2.03. Final payment will be for the total lump sum amount.
  2. Progress payments for Unit Price Work are based on the number of units completed as determined under the provisions of Paragraph 13.03.
  3. Progress payments for Work to be paid on the basis of the Cost of the Work per Paragraphs 13.01, 13.02 and 13.04 are to be paid for Work completed by Contractor during the pay period.
- B. Reduction in Payment by Owner:
  1. Owner is entitled to impose a set-off against payment based on the following:
    - a. Claims made against Owner or costs, losses, or damages incurred by Owner related to:
      - 1) Contractor's conduct in the performance of the Work, including, but not limited to, workplace injuries, non-compliance with Laws and Regulations, or patent infringement; or
      - 2) Contractor's failure to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site, including but not limited to, workplace injuries, property damage, and non-compliance with Laws and Regulations.
    - b. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

- c. Work is Defective, or completed Work has been damaged by Contractor's Team, requiring correction or replacement;
  - d. Owner has been required to correct Defective Work or complete Work in accordance with Paragraph 14.07;
  - e. The Contract Price has been reduced by Change Orders;
  - f. Events have occurred that would constitute a default by Contractor justifying a termination for cause;
  - g. Liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or completion of the Work;
  - h. 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 these Liens;
  - i. Owner has been notified of failure to make payments to Subcontractors, Suppliers, or Employees;
  - j. Failure to submit up-to-date record documents as required by the Contract Documents;
  - k. Failure to submit monthly Progress Schedule updates or revised schedules as requested by the OAR;
  - l. Failure to provide Project photographs required by the Contract Documents;
  - m. Failure to provide Certified Payroll required by the Contract Documents;
  - n. Compensation for OPT for overtime charges of OAR or RPR, third review of documents, review of substitutions, re-inspection fees, inspections or designs related to correction of Defective Work, or other services identified as requiring payment by the Contractor;
  - o. Costs for tests performed by the Owner to verify that Work previously tested and found to be Defective has been corrected;
  - p. OPT has actual knowledge of the occurrence of events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents with associated cost impacts;
  - q. Other items entitling Owner to a set-off against the amount recommended; or
  - r. Payment would result in an over-payment of the Contract Price.
2. Compensation for services of OPT staff is to be at the rates established by negotiations between OPT and Contractor.
  3. OAR is to notify Contractor stating the amount and the reasons for an imposed set-off. The Owner is to pay the Contractor amounts remaining after deduction of the set-off. Owner is to pay the set-off amount agreed to by Owner and Contractor if Contractor remedies the reasons for the set-off. Contractor may submit a Change Proposal contesting the set-off.

C. Delayed Payments:

1. No money shall be paid by Owner upon any claim, debt, demand, or account whatsoever, to any person, firm, or corporation who is in arrears to Owner for taxes; and Owner shall be entitled to counterclaim and automatically offset against any such debt, claim, demand, or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand, or account after said taxes are due, shall affect the right of Owner to offset said taxes, and associated penalties and interest if applicable, against the same.
  2. No payment will be made for Work authorized by a Work Change Directive until the Work Change Directive is incorporated into a Change Order. Payment can be included in an Application for payment when the Change Order is approved.
- D. The Owner is to pay the amount of payment recommended by the OAR within 30 days after receipt of the Application for Payment and accompanying documentation from the OAR.

15.02 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to the Work, materials, and equipment furnished under the Contract is to pass to Owner free and clear of Liens, title defects, and patent, licensing, copyright, or royalty obligations no later than 7 days after the time of payment by Owner of the Application for Payment which includes these items.

15.03 Substantial Completion

- A. Notify OAR when Contractor considers the entire Work substantially complete and request a Certificate of Substantial Completion.
- B. OPT is to inspect the Work after Contractor's notification to determine if the Work is substantially complete. OAR is to either issue the Certificate of Substantial Completion which sets the date of Substantial Completion or notify Contractor of the reasons the Project is not considered to be substantially complete.
- C. The OPT and Contractor are to meet to discuss Owner's use or occupancy of the Work following Substantial Completion. Items to be discussed at this meeting include:
1. Review of insurance policies with respect to the end of the Contractor's coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner;
  2. Owner's assumption of responsibility for security, operation, protection of the Work, maintenance, and utilities upon Owner's use or occupancy of the Work;
  3. Contractor's obligations for operations and maintenance during performance and acceptance testing;
  4. Contractor's access to the Site to complete punch list items; and
  5. Procedures for correction of Defective Work during the 1-year correction period.

15.04 Partial Utilization

- A. Owner may use or occupy substantially completed parts of the Work which are specifically identified in the Contract Documents, or which OPT and Contractor agree constitutes a

separately functioning and usable part of the Work prior to Substantial Completion of the Work. Owner must be able to use that part of the Work for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. Contractor and OPT are to follow the procedures of Paragraph 15.03 for this part of the Work.

- B. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Article 6.

#### 15.05 Final Inspection

- A. OPT is to make a final inspection upon notice from Contractor that the entire Work or portion to be accepted under Paragraph 15.04 is complete. OAR is to notify Contractor of Work determined to be incomplete or Defective. Immediately take corrective measures to complete the Work and correct Defective Work.

#### 15.06 Final Payment

- A. Make Application for Final Payment after completing required corrections identified during the final inspection and delivering items and documents required by the Contract Documents. Provide the following with the final Application for Payment:
  - 1. Consent of Surety to Final Payment acknowledging unsettled disputes; and
  - 2. Certification of Payment of Debts and Claims or Certification of Release of Liens or furnish receipts or releases in full from Subcontractors and Suppliers.
- B. OAR is to either recommend payment of the final Application for Payment to Owner if OPT is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled or notify the Contractor of the OPT's reasons for not recommending final payment.
- C. The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the OAR's recommendation of payment of the final Application for Payment to Owner and the issuance of a Certificate of Final Completion.
- D. The Owner is to pay the amount of final payment recommended by the OAR within 30 days after receipt of the final Application for Payment and accompanying documentation from the OAR.

#### 15.07 Waiver of Claims

- A. The making of final payment does not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from:
  - 1. Unsettled Liens or claims for non-payment;
  - 2. Defective Work appearing after final inspection pursuant to Paragraph 15.05;
  - 3. Contractor's failure to comply with the Contract Documents or the terms of specified special guarantees; or
  - 4. Contractor's continuing obligations under the Contract Documents.

- B. Contractor waives claims and rights against Owner by accepting final payment with the exception of those Claims made in accordance with the provisions of Article 17 and specifically noted in the Certificate of Final Completion.

#### 15.08 Correction Period

- A. Promptly correct Defective Work without cost to Owner for 1 year after the date of Substantial Completion or longer periods of time prescribed by the terms of the Contract Documents.
- B. Promptly correct damages to the Site or adjacent areas that Contractor has arranged to use through construction easements or other agreements. Promptly correct damages to Work or the work of others. Make corrections without cost to Owner.
- C. Owner may have the Defective Work and damages described in Paragraphs 15.08.A and 15.08.B corrected if Contractor does not comply with the terms of OAR's instructions, or in an emergency where delay would cause serious risk of loss or damage.
- D. Contractor's obligation to indemnify Owner's Indemnitees for claims arising out of or related to the correction of Defective Work are as set forth in Paragraph 7.14.
- E. The correction period starts to run from the date when a specific item of equipment or systems are placed in continuous beneficial use by Owner before Substantial Completion of Work if so provided in the Specifications or if accepted for beneficial use by the Owner.
- F. The correction period is extended for an additional period of 1 year for Defective Work corrected after the date of Substantial Completion or after the accepted date the correction period starts to run as described in Paragraph 15.08.E. This extended correction period starts to run when Defective Work has been satisfactorily corrected under this Paragraph 15.08.
- G. Contractor's obligations under this Paragraph 15.08 are in addition to other obligations or warranties. The provisions of this Paragraph 15.08 are not a substitute for, or a waiver of, the provisions of applicable statutes of limitation or repose.

### ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

#### 16.01 Owner May Suspend Work

- A. Owner may suspend the Work or a portion of the Work for a period of not more than 90 consecutive days, at any time and without cause, by notice to Contractor. This notice fixes the date on which Contractor is to resume Work. Contractor is entitled to adjustments in the Contract Price and Contract Times directly attributable to this suspension only if efforts are made to mitigate the cost impacts of the suspension. Meet with the Owner within 10 days of the notice of suspension to discuss specific strategies to reduce or eliminate the cost of delays. Submit a Change Proposal seeking an adjustment no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

- A. The occurrence of one or more of the following events constitutes a default by Contractor and justifies termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents, including failure to supply sufficient skilled workers or suitable materials or equipment;
  2. Failure to adhere to the Progress Schedule;
  3. Failure of the Contractor to provide a satisfactory replacement Bond or insurance in the event either is lost or canceled;
  4. Failure of Contractor to maintain financial solvency to adequately complete the Project as indicated by one or more of the following:
    - a. A petition of bankruptcy is filed by or against Contractor,
    - b. Contractor is adjudged as bankrupt or insolvent,
    - c. Contractor or surety makes a general assignment for the benefit of creditors,
    - d. A receiver is appointed for the benefit of Contractor's creditors, or
    - e. A receiver is appointed on account of Contractor's insolvency;
  5. Contractor's disregard of Laws or Regulations of public bodies having jurisdiction; or
  6. Contractor's repeated disregard of the authority of OPT.
- B. Contractor and surety must provide adequate assurance of future performance in accordance with the Contract Documents that is satisfactory to Owner if Contractor is believed to be in financial distress due to the existence of one or more of the indicators listed in Paragraph 16.02.A.4. Owner may terminate this Contract if Contractor and surety fail to provide adequate documentation satisfactory to Owner within 10 days of OAR's request for this information.
- C. Owner may declare Contractor to be in default, give notice to Contractor and surety that the Contract is terminated, and enforce the rights available to Owner under the Performance Bond after giving Contractor and surety 10 days' notice that one or more of the events identified in Paragraph 16.02.A has occurred.
- D. Owner may exclude Contractor from the Site, take possession of the Work, incorporate the materials and equipment stored and complete the Work as Owner may deem expedient if Owner has terminated the Contract for cause.
- E. Owner may elect not to proceed with termination of the Contract under this Paragraph 16.02 if Contractor begins to cure the cause for termination within 7 days of receipt of notice of intent to terminate.
- F. Contractor is not entitled to receive further payments until the Work is completed if Owner proceeds as provided in this Paragraph 16.02. The amount of the Contract Price remaining is to be paid to the Contractor if the unpaid balance exceeds the cost to complete the Work. This cost to complete the Work may include related claims, costs, losses, damages, and the fees and charges of engineers, architects, attorneys, and other professionals retained by Owner. Pay the difference to Owner if the cost to complete the Work including



related claims, costs, losses, and damages exceeds the unpaid balance of the Contract Price. Claims, costs, losses, and damages incurred by Owner are to be reviewed as to their reasonableness and incorporated in a Change Order by OAR. Owner is not required to obtain the lowest price for the Work performed when exercising its rights or remedies under this paragraph.

- G. Termination does not affect the rights or remedies of Owner against Contractor or against surety under the Payment Bond or Performance Bond. Owner does not release Contractor from liability by paying or retaining money due Contractor.

#### 16.03 Owner May Terminate For Convenience

- A. Owner may terminate the Contract without cause after giving 7 days' notice to Contractor of the effective date of termination. Contractor is to be paid for the following if Owner terminates for convenience:
  - 1. Work completed in accordance with the Contract Documents prior to the effective date of termination;
  - 2. Actual costs sustained prior to the effective date of termination for Work in progress, plus a fee calculated in accordance with Paragraph 11.04.D.; and
  - 3. Reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. No payment is payable to Contractor for loss of anticipated overhead, profits or revenue, or other economic loss arising out of or resulting from this termination.

#### 16.04 Contractor May Stop Work or Terminate

- A. Contractor may terminate the Contract and issue a Change Proposal requesting payment from Owner on the same terms as provided in Paragraph 16.03 after 10 days' notice to OAR provided that, through no act or fault of Contractor:
  - 1. The Work is suspended for more than 90 consecutive days by Owner;
  - 2. OAR fails to act on an Application for Payment within 30 days after it is submitted; or
  - 3. Owner fails to pay Contractor sums determined to be due, other than the final payment, within 30 days after payment is recommended by OAR; and
  - 4. OPT does not remedy this suspension or failure within 10 days after receipt of the notice.
- B. Contractor may stop Work, without prejudice to other rights or remedies in lieu of terminating the Contract if OAR has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed to pay Contractor within 30 days after payment is recommended by OAR. 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 for 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. The Owner or Contractor may appeal a Claim, approved or denied in part or in full, by:
  - 1. Electing to invoke the dispute resolution process if one is provided for in the Supplementary Conditions;
  - 2. Agreeing with the other party to submit the dispute to a dispute resolution process; or
  - 3. Notifying the other party of the intent to submit the dispute to a court of competent jurisdiction if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.01 Computation of Times**

- A. Exclude the first day and include the last day when determining dates for a period of time referred to in the Contract Documents by days. The last day of this period is to be omitted from the determination if it falls on a Saturday, Sunday, or a legal holiday.
- B. All references and conditions for a Calendar Day Contract in the Contract Documents apply for a Fixed Date Contract. A Fixed Date Contract is one in which the calendar dates for reaching Substantial Completion and/or final completion are specified in lieu of identifying the number of days involved.

### **18.02 Independent Contractor**

- A. Contractor is to perform its duties under this Contract as an independent contractor. The Contractor's Team and their personnel are not considered to be employees or agents of the Owner. Nothing in this Contract is to be interpreted as granting Contractor's Team the right or authority to make commitments for the Owner. This Contract does not constitute or create a joint venture, partnership, or formal business organization of any kind.

### **18.03 Cumulative Remedies**

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available to the Owner or Contractor by these General Conditions are in addition to, and are not a limitation of, the rights and remedies which are otherwise imposed or available by:
  - 1. Laws or Regulations;
  - 2. Special warranties or guarantees; or
  - 3. Other provisions of the Contract Documents.
- B. The provisions of this Paragraph 18.03 are 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. Owner's Indemnitees are not liable to Contractor for claims, costs, losses, or damages sustained by Contractor's Team associated with other projects or anticipated projects.

**18.05 No Waiver**

- A. The failure of Owner or Contractor to enforce any provision of this Contract does not constitute a waiver of that provision, affect the enforceability of that provision, or the enforceability of the remainder of this Contract.

**18.06 Severability**

- A. If a court of competent jurisdiction renders a part of this Contract invalid or unenforceable, that part is to be severed and the remainder of this Contract continues in full force.

**18.07 Survival of Obligations**

- A. Representations, indemnifications, warranties, guarantees, and continuing obligations required by the Contract Documents survive completion and acceptance of the Work or termination of the Contract.

**18.08 No Third Party Beneficiaries**

- A. Nothing in this Contract can be construed to create rights in any entity other than the Owner and Contractor. Neither the Owner nor Contractor intends to create third party beneficiaries by entering into this Contract.

**18.09 Assignment of Contract**

- A. This Contract may not be assigned in whole or in part by the Contractor without the consent of the Owner.

**18.10 No Waiver of Sovereign Immunity**

- A. The Owner has not waived its sovereign immunity by entering into and performing its obligations under this Contract.

**18.11 Controlling Law**

- A. This Contract is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Nueces County, Texas.

**18.12 Conditions Precedent to Right to Sue**

- A. Notwithstanding anything herein to the contrary, Contractor will have at least 90 days to give notice of a claim for damages as a condition precedent to the right to sue on the Contract, subject to the contractual Claims and Alternative Dispute Resolution processes set forth herein.

**18.13 Waiver of Trial by Jury**

- A. Owner and Contractor agree that they have knowingly waived and do hereby waive the right to trial by jury and have instead agreed, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

**18.14 Compliance with Laws**

- A. Comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.
- B. Comply with all applicable federal, state, and city laws, rules and regulations.

**18.15 Enforcement**

- A. The City Manager or designee and the City Attorney or designee, are fully authorized and will have the right to enforce all legal rights and obligations under the Contract without further authorization from City Council.

**18.16 Subject to Appropriation**

- A. Funds are appropriated by the Owner on a yearly basis. If for any reason funds are not appropriated in any given year, the Owner may direct suspension or termination of the Contract. If the Contractor is terminated or suspended and the Owner requests remobilization at a later date, the Contractor may request payment for demobilization/remobilization costs. Such costs shall be addressed through a Change Order to the Contract. Under no circumstances may a provision or obligation under this Contract be interpreted as contrary to this paragraph.

**18.17 Contractor's Guarantee as Additional Remedy**

- A. The Contractor's guarantee is a separate and additional remedy available to benefit the Owner. Neither the guarantee nor the expiration of the guarantee period will operate to reduce, release, or relinquish any rights or remedies available to the Owner for any claims or causes of action against the Contractor or any other individual or entity.

**END OF SECTION**

**00 72 02      WAGE RATE REQUIREMENTS**

**ARTICLE 1 – PREVAILING WAGE RATE REQUIREMENTS**

**1.01    PAYMENT OF PREVAILING WAGE RATES**

- A. Contractor and any Subcontractors employed on this Project shall pay not less than the rates established by the Owner as required by Texas Government Code Chapter 2258.

**1.02    RECORDS**

- A. In accordance with Tex. Gov't Code §2258.024, the Contractor and its Subcontractors, if any, shall keep a record showing:
  - 1. The name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the Work; and
  - 2. The actual per diem wages paid to each worker.
- B. The record shall be open at all reasonable hours to inspection by the officers and agents of the Owner.

**1.03    LIABILITY; PENALTY; CRIMINAL OFFENSE**

- A. Tex. Gov't Code §2258.003 – Liability: An officer, agent, or employee of the Owner is not liable in a civil action for any act or omission implementing or enforcing Chapter 2258 unless the action was made in bad faith.
- B. Tex. Gov't Code §2258.053(b) – Penalty: Any Contractor or Subcontractor who violates the requirements of Chapter 2258, shall pay to the Owner, on whose behalf the Contract is made, \$60 for each worker employed or each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract.
- C. Tex. Gov't Code §2258.058 – Criminal Offense:
  - 1. An officer, agent, or representative of the Owner commits an offense if the person willfully violates or does not comply with a provision of Chapter 2258.
  - 2. Any Contractor or Subcontractor, or an agent or representative of the Contractor or Subcontractor, commits an offense if the person violates Tex. Gov't Code §2258.024.
  - 3. An offense is punishable by:
    - a. A fine not to exceed \$500;
    - b. Confinement in jail for a term not to exceed 6 months; or
    - c. Both a fine and confinement.

1.04 PREVAILING WAGE RATES

**Note to Specifier: Davis-Bacon Wage Rates can be found at <http://www.wdol.gov/dba.aspx>. Use the Wage Rates for Nueces County. Select the WD Determination that is appropriate for the Project. Copy the Wage Rate directly from the DOL website to this Section or insert the Owner-determined wage rate schedule as required by Texas Government Code Chapter 2258.**

- A. The minimum rates for various labor classifications as established by the Owner are shown below:

Wage Determination (WD) No	Construction Type	Project Type
TX-31	Heavy	Heavy Construction Projects (including Sewer and Water Line Construction and Drainage Projects)
TX-40	Highway	Highway Construction Projects (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).
TX-45	Heavy	Pipeline - On-Shore Pipeline Construction
TX-46	Heavy	Pipeline-Off-Shore Construction
TX-51	Building	Building Construction Projects (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)
TX-75	Heavy	Dredging projects along the Texas gulf coast area including all public channels, harbors, rivers, tributaries and the Gulf Intracoastal Waterways.
TX-81	Heavy	Tunnel Construction Projects (Bored, 48" In Diameter Or More)

**END OF SECTION**

**00 73 00 SUPPLEMENTARY CONDITIONS**

These Supplementary Conditions amend or supplement SECTION 00 72 00 GENERAL CONDITIONS and other provisions of the Contract Documents. All provisions not amended or supplemented in these Supplementary Conditions remain in effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below.

**ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**

**SC-1.01 DEFINED TERMS**

- A. Add the following sentence to the end of Paragraph 1.01.A.22:  
“In a Design-Build Contract, the term Contractor includes the Design-Builder.”
- B. Add the following sentence to the end of Paragraphs 1.01.A.26:  
“In a Design-Build Contract, the term Designer includes the Design-Builder.”
- C. Add the following term as Paragraph 1.01.A.62:  
“Design-Builder – A team that includes a licensed engineer and a construction contractor to provide design and construction services, selected by the Owner under Chapter 2269 of the Texas Government Code.”
- D. Add the following term as Paragraph 1.01.A.63:  
“Project Manual – That portion of the Contract Documents which may include the following: introductory information; solicitation requirements and responses, proposal, Contract forms and General and Supplemental General Conditions; General Requirements; Specifications; Drawings, Project Safety Manual; and Addenda.”

**ARTICLE 2 – PRELIMINARY MATTERS**

**SC-2.03 BEFORE STARTING CONSTRUCTION**

- A. Delete Paragraph 2.03.A. entirely and insert the following:  
“2.03 Design-Builder’s Design Phase Services  
A. Design-Builder’s Representative shall be an employee of the Design-Builder (unless this requirement is waived in writing by the Owner) shall be reasonably available to Owner, and shall have the necessary expertise and experience required to supervise the Work. Design-Builder’s Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder shall replace the Design-Builder’s Representative upon Owner’s request in the event the Design-Builder’s Representative is unable to perform to Owner’s satisfaction.  
B. Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other

items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

- C. Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.03.D hereof, an initial schedule for the execution of the Work for Owner's review and approval. The initial schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised by the preliminary schedule and as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the initial schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Design-Builder's schedules shall identify the critical path for completing the Work.
- D. The parties will meet within seven (7) days after execution of the Agreement, to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents. Design-Builder shall submit the following to Owner's Representative for Owner's review and approval no later than the meeting contemplated in this paragraph:
1. Letter designating Design-Builder's Representative; and
  2. Completed Statement of Non-Inclusion of Asbestos Containing Material (Design Consultant - Prior to Design)."
  3. Preliminary Schedule of Values for all of the Work. The Final Schedule of Values for the Construction Phase services portion of the Work will be approved at the time of Owner's acceptance of the GMP. The approved Initial Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the services of the Work. This Initial Schedule of Values will include but separately itemize the services for the Preliminary Phase Services, and the Professional Services Fee, from the cost of Construction.
  4. Proposed Production Schedule for Preliminary Phase Services and Professional Services Fee in the form and substance required by the Agreement which will be used for determining the amount to be paid for those services over the duration of the Contract.
- E. Design-Builder shall not substitute any Subcontractor, Sub-Subcontractor, person or organization that has been accepted by Owner, unless the substitute has been accepted in writing by Owner.



- F. Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.
- G. The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.
- H. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.
- I. Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit two sets of approved Construction Documents to Owner prior to commencement of construction.
- J. Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

- K. To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.
- L. Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- M. The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.
- N. Except as otherwise provided in the Contract Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.
- O. Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

#### **ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**

##### **SC-4.04 DELAYS IN CONTRACTOR'S PROGRESS**

- A. The allocation for delays in the Contractor's progress for weather days as set forth in General Conditions Paragraph 4.04.D are to be determined as follows:
  - 1. Include weather days in developing the schedule for construction. Schedule construction so that the Work will be completed within the Contract Times assuming that these weather days will occur. Incorporate residual impacts following weather days such as limited access to and within the Site, inability to work due to wet or muddy Site conditions, delays in delivery of equipment and materials, and other impacts related to weather days when developing the schedule for construction. Include all costs associated with these weather days and residual impacts in the Contract Price.
  - 2. A weather day shall be defined at the Preconstruction meeting. An extension of time due to weather must be in writing and agreed to by both parties.

**ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE CONDITIONS AND PHYSICAL CONDITIONS;  
HAZARDOUS ENVIRONMENTAL CONDITIONS**

**SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS**

- A. This Supplementary Condition identifies documents referenced in General Conditions Paragraph 5.03.A which describe subsurface and physical conditions.
  - 1. Geotechnical Reports include the following: Will be made available upon completion.
  - 2. Drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) include the following: Will be made available upon completion.

**SC-5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE**

- B. Delete Paragraph 5.06 entirely and insert the following:
  - “S.06 Hazardous Environmental Conditions at Site
  - A. No reports of explorations or tests for Hazardous Environmental Conditions at or contiguous to the Site are known to Owner.”

**ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

**SC-7.04 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- A. Add the following sentence to the end of Paragraph 7.04.A:
  - “The Contractor must perform at least 10 percent of the Work, measured as a percentage of the Contract Price, using its own employees.”

**SC-7.14**

- A. Delete Paragraph 7.14.A entirely and insert the following:
  - “A. The Contractor shall indemnify, defend by counsel satisfactory to the City Attorney, and hold harmless the Owner’s Indemnitees from and against claims, damages, losses and expenses, including but not limited to attorney’s fees or dispute resolution costs, arising out of or resulting from performance of the Work, violations of laws or regulations, or bodily injury, death or destruction of tangible property caused by the acts or omissions of the Contractor’s Team, regardless of whether such claim, damage, loss or expense is alleged to be caused in part by an Owner’s Indemnitee hereunder. This indemnity expressly includes bodily injury and death of an employee of the Contractor’s Team of any tier unless caused by the sole negligence of Owner’s Indemnitees, as determined by a court of competent jurisdiction.
- B. Delete Paragraph 7.14.B entirely and insert the following:
  - “B. The Contractor shall indemnify, defend by counsel satisfactory to the City Attorney, and hold harmless the Owner’s Indemnitees from and indemnified costs, arising out of or relating to: (I) the failure to control, contain or remove a constituent of concern brought to the site by Contractor’s Team or a hazardous environmental condition created by contractor’s team, (II) Contractor’s Team’s action or inaction related to damages, delays, disruptions or interference with the work at or adjacent to the site, or (III) the correction of

defective work. Nothing in this paragraph obligates the contractor to indemnify the owner's indemnitees from the consequences of the Owner's and Owner's Indemnitees sole negligence, unmixed with the fault of any other party.

**END OF SECTION**

**00 74 00 SPECIAL CONDITIONS FOR TEXAS PARKS AND WILDLIFE GRANT**

Note to Specifier: The City may participate in a grant or loan program. Grants and Loans from governmental entities (Funding Agency) often require that their conditions and reporting requirements be included in the Contract Documents as a conditions of the grant or loan. This Specification Section provides a location for any policies, forms, or other requirements of the Funding Agency to be inserted exactly as required by that entity. Since precedence is given to these documents, they must be reviewed to determine that there are no significant conflicts with the documents prepared for that project. Resolve any conflicts as soon as possible, but unless the conflict represents a significant risk to the Designer or the City, the grant or loan agency provisions will govern.

Note to Specifier: Notice that the Project is being funded by the Funding Agency should be noted in SECTION 00 11 16 INVITATION TO BID. Any forms or other documentation that must be submitted with the Bid should be discussed in SECTION 00 21 13 INSTRUCTIONS TO BIDDERS. Forms required as part of the Application for Payment should be referenced in SECTION 01 29 00 APPLICATION FOR PAYMENT. Limit any other discussion of program changes to keep these conditions contained. Change the title of this Specification Section, and in other locations that reference the program to use the grant or loan agency nomenclature.

**ARTICLE 1 – GENERAL**

**1.01 FUNDING AGENCY REQUIREMENTS**

- A. This Project is funded in whole or in part by Texas Parks and Wildlife (Funding Agency). The Funding Agency requires specific conditions and reporting as a condition for providing this funding. The conditions and reporting forms of the Funding Agency are included in the Contract Documents. The Funding Agency requirements govern in the event of any conflict between the Funding Agency requirements and any other provision of the Contract Documents.

Note to Specifier: Funding Agency documents must have their own number in the Section 00 74 XX series to make sure they are indexed properly in the Table of Contents (and thus made a part of the Contract Documents). This will also put them in proper order when downloaded or stored digitally. Use the Funding Agency document name as the title and reference the Funding Agency document number to make sure documents track properly.

- B. The applicable Funding Agency conditions and reporting forms are as follows:

Specification Section	Title	Funding Agency Document No.
35 Transient Boat Slips	Y-23-D Corpus Christi Coopers Alley Transient Boat Slips	TWPD Y-23-D

**END OF SECTION**

## **01 33 02 SHOP DRAWINGS**

### **1.00 GENERAL**

#### **1.01 WORK INCLUDED**

- A. Shop Drawings are required for those products that cannot adequately be described in the Contract Documents to allow fabrication, erection, or installation of the product without additional detailed information from the Supplier.
- B. Submit Shop Drawings as required by the Contract Documents and as reasonably requested by the OPT to:
  - 1. Record the products incorporated into the Project for the Owner;
  - 2. Provide detailed information for the products proposed for the Project regarding their fabrication, installation, commissioning, and testing; and
  - 3. Allow the Designer to advise the Owner if products proposed for the Project by the Contractor conform, in general, to the design concepts of the Contract Documents.
- C. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the review of Shop Drawings, Samples, or mockups. Contract modifications can only be approved by Change Order or Field Order.

#### **1.02 QUALITY ASSURANCE**

- A. Submit legible, accurate, and complete documents presented in a clear, easily understood manner. Shop Drawings not meeting these criteria will be rejected.
- B. Demonstrate that the proposed products are in full and complete compliance with the design criteria and requirements of the Contract Documents, or will be if deviations requested per Paragraph 1.10 are approved.
- C. Furnish and install products that fully comply with the information included in the document submittal.

#### **1.03 CONTRACTOR'S RESPONSIBILITIES**

- A. Provide Shop Drawings for all dock fabrication components, special fittings, fasteners and equipment required for substantial completion of Pier R Replacement. Refer to Exhibit A-1.
- B. Include Shop Drawings in the Schedule of Documents required by SECTION 01 33 00 DOCUMENT MANAGEMENT to indicate the Shop Drawings to be submitted, the dates on which documents are to be sent to the Designer for review and proposed dates that the product will be incorporated into the Project.
- C. Incorporate the dates for processing Shop Drawings into the Progress Schedule required by SECTION 01 33 04 CONSTRUCTION PROGRESS SCHEDULE.
  - 1. Submit Shop Drawings in accordance with the schedule so construction of the Project is not delayed.
  - 2. Allow a reasonable time for the review of Shop Drawings when preparing the Progress Schedule. Include time for making revisions to the Shop Drawings and resubmitting

the Shop Drawing for a least a second review. Assume a 14 day review cycle for each time a Shop Drawing is submitted for review unless a longer period of time is indicated in the Contract Documents.

3. Schedule document submittals to provide all information for interrelated Work at one time.
  4. Allow adequate time for ordering, fabricating, delivering, and installing product so construction of the Project is not delayed.
- D. Complete the following before submitting a Shop Drawing or Sample:
1. Prepare Shop Drawing 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;
  2. Determine and verify specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to Shop Drawings and Samples;
  3. Determine and verify the suitability of 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
  4. Determine and verify information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- E. Determine and verify:
1. Accurate field measurements, quantities, and dimensions are shown on the Shop Drawing;
  2. Location of existing structures, utilities, and equipment related to the Shop Drawing have been shown and conflicts between the products existing structures, utilities, and equipment have been identified;
  3. Conflicts that impact the installation of the products have been brought to the attention of the OPT through the Designer;
  4. Shop Drawing are complete for their intended purpose; and
  5. Conflicts between the Shop Drawing related to the various Subcontractors and Suppliers have been resolved.
- F. Review Shop Drawings prior to submitting to the Designer. Certify that all Shop Drawings have been reviewed by the Contractor and are in strict conformance with the Contract Documents as modified by Addenda, Change Order, Field Order, or Contract Amendment when submitting Shop Drawings except for deviations specifically brought to the Designer's attention on an attached Shop Drawing Deviation Request form in accordance with Paragraph 1.10.
- G. Fabrication or installation of any products prior to the approval of Shop Drawings is done at the Contractor's risk. Defective products may be rejected at the Owner's option.
- H. Payment will not be made for products for which Shop Drawings or Samples are required until these are approved by the Designer.

#### 1.04 SHOP DRAWING REQUIREMENTS

- A. Provide adequate information in Shop Drawings and Samples so Designer can:
  - 1. Assist the Owner in selecting colors, textures, or other aesthetic features.
  - 2. Compare the proposed features of the product with the specified features and advise Owner that the product does, in general, conform to the Contract Documents.
  - 3. Compare the performance features of the proposed product with those specified and advise the Owner that the product does, in general, conform to the performance criteria specified in the Contract Documents.
  - 4. Review required certifications, guarantees, warranties, and service agreements for compliance with the Contract Documents.
- B. Include a complete description of the product to be furnished, including:
  - 1. Type, dimensions, size, arrangement, and operational characteristics of the product;
  - 2. Weights, gauges, materials of construction, external connections, anchors, and supports required;
  - 3. All applicable standards such as ASTM or Federal specification numbers;
  - 4. Fabrication and installation drawings, setting diagrams, manufacturing instructions, templates, patterns, and coordination drawings;
  - 5. Mix designs for concrete, asphalt, or other materials proportioned for the Project; and
  - 6. Complete and accurate field measurements for products which must fit existing conditions. Indicate on the document submittal that the measurements represent actual dimensions obtained at the Site.
- C. Submit Shop Drawings that require coordination with other Shop Drawings at the same time. Shop Drawings requiring coordination with other Shop Drawings will be rejected until a complete package is submitted.

#### 1.05 SPECIAL CERTIFICATIONS AND REPORTS

- A. Provide all required certifications with the Shop Drawings as specified in the individual Specification Sections:
  - 1. Certified Test Reports (CTR): A report prepared by an approved testing agency giving results of tests performed on products to indicate their compliance with the Specifications. This report is to demonstrate that the product when installed will meet the requirements and is part of the Shop Drawing. Field tests may be performed by the Owner to determine that in place materials or products meet the same quality as indicated in the CTR submitted as part of the Shop Drawing.
  - 2. Certification of Local Field Service (CLS): A certified letter stating that field service is available from a factory or supplier approved service organization located within a 300 mile radius of the Site. List names, addresses, and telephone numbers of approved service organizations on or attach it to the certificate.
  - 3. Certification of Adequacy of Design (CAD): A certified letter from the manufacturer of the equipment stating that they have designed the equipment to be structurally stable



and to withstand all imposed loads without deformation, failure, or adverse effects to the performance and operational requirements of the unit. The letter shall state that mechanical and electrical equipment is adequately sized to be fully operational for the conditions specified or normally encountered by the product's intended use.

#### 1.06 WARRANTIES AND GUARANTEES

- A. Provide all required warranties, guarantees, and related documents with the Shop Drawing. The effective date of warranties and guarantees will be the date of acceptance of the Work by the Owner.
- B. Identify all Extended Warranties, defined as any guarantee of performance for the product or system beyond the 1 year correction period described in the General Conditions. Issue the warranty certificate in the name of the Owner. Provide a Warranty Bond for Extended Warranties if required by Specification Sections.
- C. Provide a copy of all warranties in a separate document in accordance with SECTION 01 70 00 EXECUTION AND CLOSEOUT REQUIREMENTS.

#### 1.07 SHOP DRAWING SUBMITTAL PROCEDURES

- A. Submit Shop Drawings through the Designer. Send all documents in digital format for processing.
  - 1. Provide all information requested in the Shop Drawing submittal form. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided. The Shop Drawing submittal form is to be the first document in the file submitted.
  - 2. Submit all documents in Portable Document Format (PDF).
    - a. Create PDF document using Bluebeam Revu software or other compatible software that will create files that can be opened and annotated using Bluebeam Revu software.
    - b. Create PDF documents from native format files unless files are only available from scanned documents.
    - c. Rotate pages so that the top of each document appears at the top of the monitor screen when opened in PDF viewing software.
    - d. Submit PDF document with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.
    - e. Submit color PDF documents where color is required to interpret the Shop Drawing. Submit Samples and color charts per Paragraph 1.08.A.
    - f. Create or convert documents to allow text to be selected for comments or searched using text search features. Run scanned documents through Optical Character Recognition (OCR) software if necessary.
    - g. Flatten markups in documents to prevent markups made by Contractor from being moved or deleted. Flatten documents to allow markup recovery.

- h. Use Bluebeam Revu software to reduce file size using default settings except the option for "Drop Metadata." Uncheck the "Drop Metadata" box when reducing file size.
      - i. Add footers to each document with the Project name.
    3. Submit each specific product or class of material separately so these can be tracked and processed independently. Do not submit Shop Drawings for more than one product in the same Shop Drawing.
    4. Submit items specified in different Specification Sections separately unless they are part of an integrated system.
    5. Define abbreviations and symbols used in Shop Drawings.
      - a. Use terms and symbols in Shop Drawings consistent with the Contract Drawings.
      - b. Provide a list of abbreviations and their meaning as used in the Shop Drawings.
      - c. Provide a legend for symbols used on Shop Drawings.
    6. Mark Shop Drawings to reference:
      - a. Related Specification Sections,
      - b. Drawing number and detail designation,
      - c. Product designation or name,
      - d. Schedule references,
      - e. System into which the product is incorporated, and
      - f. Location where the product is incorporated into the Project.
  - B. Use the following conventions to markup Shop Drawings for review:
    1. Make comments and corrections in the color blue. Add explanatory comments to the markup.
    2. Highlight items in black that are not being furnished when the Supplier's standard drawings or information sheets are provided so that only the products to be provided are in their original color.
    3. Make comments in the color yellow where selections or decisions by the Designer are required, but such selections do not constitute a deviation from the Contract Documents. Add explanatory comments to the markup to indicate the action to be taken by the Designer.
    4. Make comments in the color orange that are deviation requests. Include the deviation request number on the Shop Drawing that corresponds to the deviation request on the Shop Drawing Deviation Request form. Include explanatory comments in the Shop Drawing Deviation Request form.
    5. Mark dimensions with the prefix FD to indicate field verified dimensions on the Shop Drawings.
  - C. Submit a Change Proposal per SECTION 01 31 14 CHANGE MANAGEMENT to request modifications to the Contract Documents, including those for approval of "or equal"

products when specifically allowed by the Contract Documents or as a substitution for specified products or procedures.

- D. Designate a Shop Drawing as requiring priority treatment in the comment section of the Shop Drawing submittal form to place the review of the Shop Drawing ahead of other Shop Drawings previously delivered. Shop Drawings are typically reviewed in the order received, unless Contractor requests that a different priority be assigned. Priority Shop Drawings will be reviewed before other Shop Drawings for this Project already received but not yet reviewed. Use of this priority designation for Shop Drawings may delay the review of Shop Drawings previously submitted, pushing the processing of Shop Drawings beyond the 14 day target. Contractor is responsible for delays resulting from the use of the priority designation status on Shop Drawings.
- E. Complete the certification required by Paragraph 1.03.

#### 1.08 SAMPLE AND MOCKUP SUBMITTAL PROCEDURES

- A. Submit color charts and Samples for every product requiring color, texture, or finish selection.
  - 1. Submit color charts and Samples only after Shop Drawings for the products have been approved.
  - 2. Deliver all color charts and Samples at one time.
  - 3. Provide Samples of adequate size to clearly illustrate the functional characteristics of the product, with integrally related parts and attachment devices.
  - 4. Indicate the full range of color, texture, and patterns.
  - 5. Deliver color charts and Samples to the field office and store for the duration of the Project
  - 6. Notify the Designer that color charts and Samples have been delivered for approval using the Notification by Contractor form.
  - 7. Submit color charts and Samples not less than 30 days prior to when these products are to be ordered or released for fabrication to comply with the Project schedule.
  - 8. Remove Samples that have been rejected. Submit new Samples following the same process as for the initial Sample until Samples are approved.
  - 9. Dispose of Samples when related Work has been completed and approved and disposal is approved by the Designer. At Owner's option, Samples will become the property of the Owner.
- B. Construct mockups for comparison with the Work being performed.
  - 1. Construct mockups from the actual products to be used in construction per detailed Specification Sections.
  - 2. Construct mockups of the size and in the area indicated in the Contract Documents.
  - 3. Construct mockups complete with texture and finish to represent the finished product.

4. Notify the Designer that mockups have been constructed and are ready for approval using the Notification by Contractor form. Allow 2 weeks for OPT to approve of the mockup before beginning the Work represented by the mockup.
5. Remove mockups that have been rejected. Construct new mockups following the same process as for the initial mockup until mockup is approved.
6. Protect mockups until Work has been completed and accepted by the OPT.
7. Dispose of mockups when related Work has been completed and disposal is approved by the Designer.

#### 1.09 REQUESTS FOR DEVIATION

- A. Submit requests for deviation from the Contract Documents for any product that does not fully comply with the Contract Documents.
- B. Submit requests for deviation using the Shop Drawing Deviation Request form provided. Identify each deviation request as a separate item. Include all requested deviations that must be approved as a group together and identify them as a single item.
- C. Include a description of why the deviation is required and the impact on Contract Price or Contract Times. Include the amount of any cost savings to the Owner for deviations that result in a reduction in cost.
- D. Submit as a Change Proposal prior to submitting the Shop Drawing if the deviation will result in a change in Contract Price or Contract Times.
- E. A Modification must be issued by the Designer for approval of a deviation. Approval of a requested Shop Drawing deviation by the Designer on the Shop Drawings Deviation Request form indicates approval of the requested deviation only on its technical merits as generally conforming to the Contract Documents. Deviations from the Contract Documents can only be approved by a Modification.

#### 1.10 DESIGNER RESPONSIBILITIES

- A. Shop Drawings will be received by the Designer. Designer will log the documents and review per this Section for general conformance with the Contract Documents.
  1. Designer's review and approval will be only to determine if the products described in the Shop Drawing or Sample will, after installation or incorporation into the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Designer'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. Designer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- B. Comments will be made on items called to the attention of the Designer for review and comment. Any marks made by the Designer do not constitute a blanket review of the

document submittal or relieve the Contractor from responsibility for errors or deviations from the Contract requirements.

1. Designer will respond to Contractor's markups by either making markups directly in the Shop Drawings file using the color green or by attaching a Document Review Comments form with review comments.
2. Shop Drawings that are reviewed will be returned with one or more of the following status designations:
  - a. Approved: Shop Drawing is found to be acceptable as submitted.
  - b. Approved as Noted: Shop Drawing is Approved so long as corrections or notations made by Designer are incorporated into the Show Drawing.
  - c. Not Approved: Shop Drawing or products described are not acceptable.
3. Shop Drawing will also be designated for one of the following actions:
  - a. Final distribution: Shop Drawing is acceptable without further action and has been filed as a record document.
  - b. Shop Drawing not required: A Shop Drawing was not required by the Contract Documents. Resubmit the document per SECTION 01 33 03 RECORD DATA.
  - c. Cancelled: This action indicates that for some reason, the Shop Drawing is to be removed from consideration and all efforts regarding the processing of that document are to cease.
  - d. Revise and resubmit: Shop Drawing has deviations from the Contract Documents, significant errors, or is inadequate and must be revised and resubmitted for subsequent review.
  - e. Resubmit with corrections made: Shop Drawing is "Approved as Noted," but has significant markups. Make correction and notations to provide a revised document with markup incorporated into the original document so that no markups are required.
  - f. Returned without review due to excessive deficiencies: Document does not meet the requirement of the Specifications for presentation or content to the point where continuing to review the document would be counterproductive to the review process or clearly does not meet the requirements of the Contract Documents. Revise the Shop Drawing to comply with the requirements of this Section and resubmit.
  - g. Actions a through c will close out the Shop Drawing review process and no further action is required as a Shop Drawing. Actions d through f require follow up action to close out the review process.
4. Drawings with a significant or substantial number of markings by the Contractor may be marked "Approved as Noted" and "Resubmit with corrections made." These drawings are to be revised to provide a clean record of the Shop Drawing. Proceed with ordering products as the documents are revised.
5. Dimensions or other data that does not appear to conform to the Contract Documents will be marked as "At Variance With" (AVW) the Contract Documents or other

information provided. The Contractor is to make revisions as appropriate to comply with the Contract Documents.

- C. Bring deviations to the Shop Drawings to the attention of the Designer for approval by using the Shop Drawing Deviation Request form. Use a single line for each requested deviation so the Status and Action for each deviation can be determined for that requested deviation. If approval or rejection of a requested deviation will impact other requested deviations, then all related deviations should be included in that requested deviation line so the status and action can be determined on the requested deviation as a whole.
- D. Requested deviations will be reviewed as possible Modification to the Contract Documents.
  - 1. A Requested deviation will be rejected as "Not Approved" if the requested deviation is unacceptable. Contractor is to revise and resubmit the Shop Drawing with corrections for approval.
  - 2. A Field Order will be issued by the Designer for deviations approved by the Designer if the requested deviation is acceptable and if the requested deviation will not result in a change in Contract Price or Contract Times. Requested deviations from the Contract Documents may only be approved by Field Order.
  - 3. A requested deviation will be rejected if the requested deviation is acceptable but the requested deviation will or should result in a change in Contract Price or Contract Times. Submit any requested deviation that requires as change in Contract Price or Contract Times as a Change Proposal for approval prior to resubmitting the Shop Drawing.
- E. Contractor is to resubmit the Shop Drawing until it is acceptable and marked Approved or Approved as Noted and is assigned an action per Paragraph 1.10.B that indicates that the Shop Drawing process is closed.
- F. Information that is submitted as a Shop Drawings that should be submitted as Record Data or other type of document, or is not required may be returned without review, or may be deleted. No further action is required and the Shop Drawing process for this document will be closed.

#### 1.11 RESUBMISSION REQUIREMENTS

- A. Make all corrections or changes in the documents required by the Designer and resubmit to the Designer until approved.
  - 1. Revise initial drawings or data and resubmit as specified for the original document.
  - 2. Highlight or cloud in green those revisions which have been made in response to the previous reviews by the Designer. This will include changes previously highlighted or clouded in yellow to direct attention to Designer to items requiring selections or decisions by the Designer or highlighted or clouded in orange for a requested deviation from the Contract Documents.
  - 3. Highlight and cloud new items in yellow where selections or decisions by the Designer are required, but such selections do not constitute a deviation from the Contract Documents. Add explanatory comments to the markup to indicate the action to be taken by the Designer.

4. Highlight and cloud new items in orange that are deviation requests. Include the deviation request number on the Shop Drawing that corresponds to the deviation request on the Shop Drawing Deviation Request form. Numbering for these new items is to start with the next number following the last Shop Drawing deviation requested. Include explanatory comments in the Shop Drawing Deviation Request form.
- B. Pay for excessive review of Shop Drawings.
1. Excessive review of Shop Drawings is defined as any review required after the original review has been made and the first resubmittal has been checked to see that corrections have been made.
  2. Review of Shop Drawings or Samples will be an additional service requiring payment by the Contractor if the Contractor submits a substitution for a product for which a Shop Drawing or Sample has previously been approved, unless the need for such change is beyond the control of Contractor.
  3. Cost for additional review time will be billed to the Owner by the Designer for the actual hours required for the review of Shop Drawings by Designer and in accordance with the rates listed in SECTION 00 73 00 SUPPLEMENTARY CONDITIONS.
  4. A Set-off will be included in each Application for Payment to pay cost for the additional review to the Owner on a monthly basis. The Set-off will be based on invoices submitted to Owner for these services.
  5. Need for more than one resubmission or any other delay of obtaining Designer's review of Shop Drawings will not entitle the Contractor to an adjustment in Contract Price or an extension of Contract Times.

**2.00 PRODUCTS (NOT USED)**

**3.00 EXECUTION (NOT USED)**

**END OF SECTION**

**01 33 03 RECORD DATA**

**1.00 GENERAL**

**1.01 WORK INCLUDED**

- A. Submit Record Data as required by the Contract Documents and as reasonably requested by the OPT. Provide Record Data for all products unless a Shop Drawing is required for the same item.
- B. Submit Record Data to provide documents that allow the Owner to:
  - 1. Record the products incorporated into the Project for the Owner;
  - 2. Review detailed information about the products regarding their fabrication, installation, commissioning, and testing; and
  - 3. Provide replacement or repair of the products at some future date.
- C. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the receipt or cursory review of Record Data. Contract modifications can only be approved by Change Order or Field Order.
- D. Provide various reports or other documents that Contract Documents required be submitted for record purposes.

**1.02 QUALITY ASSURANCE**

- A. Submit legible, accurate, and complete documents presented in a clear, easily understood manner. Record Data not meeting these criteria will be rejected.

**1.03 CONTRACTOR'S RESPONSIBILITIES**

- A. Submit Record Data for all dock fabrication components, special fittings, fasteners and equipment required for substantial completion of Pier R Replacement. Refer to Exhibit A-1.
- B. Include Record Data in the Schedule of Documents required by SECTION 01 33 00 DOCUMENT MANAGEMENT to indicate the Record Data to be submitted, the dates on which documents are to be sent to the Designer for review, and proposed dates that the product will be incorporated into the Project.
- C. Complete the following before submitting Record Data:
  - 1. Prepare Record Data and coordinate with Shop Drawings or Samples, other Record Data, and with the requirements of the Work and the Contract Documents;
  - 2. Determine and verify specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information;
  - 3. Determine and verify the suitability of 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
  - 4. Determine and verify information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.



- D. Determine and verify:
  - 1. Accurate field measurements, quantities, and dimensions are shown on the Record Data;
  - 2. Location of existing structures, utilities, and equipment related to the Record Data have been shown and conflicts between the products existing structures, utilities, and equipment have been identified;
  - 3. Conflicts that impact the installation of the products have been brought to the attention of the OPT through the Designer;
  - 4. Record Data are complete for their intended purpose; and
  - 5. Conflicts between the Record Data related to the various Subcontractors and Suppliers have been resolved.
- E. Review Record Data prior to submitting to the Designer. Certify that all Record Data has been reviewed by the Contractor and is in strict conformance with the Contract Documents as modified by Addenda, Change Order, Field Order, or Contract Amendment when submitting Record Data.

#### 1.04 RECORD DATA REQUIREMENTS

- A. Include a complete description of the material or equipment to be furnished, including:
  - 1. Type, dimensions, size, arrangement, model number, and operational parameters of the components;
  - 2. Weights, gauges, materials of construction, external connections, anchors, and supports required;
  - 3. All applicable standards such as ASTM or Federal specification numbers;
  - 4. Fabrication and installation drawings, setting diagrams, manufacturing instructions, templates, patterns, and coordination drawings;
  - 5. Mix designs for concrete, asphalt, or other materials proportioned for the Project; and
  - 6. Complete and accurate field measurements for products which must fit existing conditions. Indicate on the document submittal that the measurements represent actual dimensions obtained at the Site.

#### 1.05 SPECIAL CERTIFICATIONS AND REPORTS

- A. Provide all required certifications with the Record Data as specified in the individual Specification Sections:
  - 1. Certified Test Reports (CTR): A report prepared by an approved testing agency giving results of tests performed on products to indicate their compliance with the Specifications. This report is to demonstrate that the product when installed will meet the requirements and is part of the Record Data. Field tests may be performed by the Owner to determine that in place materials or products meet the same quality as indicated in the CTR submitted as part of the Record Data.

## 1.06 WARRANTIES AND GUARANTEES

- A. Provide all required warranties, guarantees, and related documents with the Record Data. The effective date of warranties and guarantees will be the date of acceptance of the Work by the Owner.
- B. Identify all Extended Warranties, defined as any guarantee of performance for the product or system beyond the 1 year correction period described in the General Conditions. Issue the warranty certificate in the name of the Owner. Provide a Warranty Bond for Extended Warranties if required by Specification Sections.
- C. Provide a copy of all warranties in a separate document in accordance with SECTION 01 70 00 EXECUTION AND CLOSEOUT REQUIREMENTS.

## 1.07 RECORD DATA SUBMITTAL PROCEDURES

- A. Submit Record Data through the Designer. Send all documents in digital format for processing.
  - 1. Provide all information requested in the Record Data submittal form. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided. The Record Data submittal form is to be the first document in the file.
  - 2. Submit all documents in Portable Document Format (PDF).
    - a. Create PDF document using Bluebeam Revu software or other compatible software that will create files that can be opened and annotated using Bluebeam Revu software.
    - b. Create PDF documents from native format files unless files are only available from scanned documents.
    - c. Rotate pages so that the top of each document appears at the top of the monitor screen when opened in PDF viewing software.
    - d. Submit PDF document with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.
    - e. Submit color PDF documents where color is required to interpret the Record Data.
    - f. Create or convert documents to allow text to be selected for comments or searched using text search features. Run scanned documents through Optical Character Recognition (OCR) software if necessary.
    - g. Flatten markups in documents to prevent markups made by Contractor from being moved or deleted. Flatten documents to allow markup recovery.
    - h. Use Bluebeam Revu software to reduce file size using default settings except the option for "Drop Metadata." Uncheck the "Drop Metadata" box when reducing file size.
    - i. Add footers to each document with the Project name.

3. Submit each specific product, class of material, or product separately so these can be tracked and processed independently. Do not submit Record Data for more than one system in the same Record Data.
  4. Submit items specified in different Specification Sections separately unless they are part of an integrated system.
  5. Define abbreviations and symbols used in Record Data.
    - a. Use terms and symbols in Record Data consistent with the Contract Drawings.
    - b. Provide a list of abbreviations and their meaning as used in the Record Data.
    - c. Provide a legend for symbols used on Record Data.
  6. Mark Record Data to reference:
    - a. Related Specification Sections,
    - b. Drawing number and detail designation,
    - c. Product designation or name,
    - d. Schedule references,
    - e. System into which the product is incorporated, and
    - f. Location where the product is incorporated into the Project.
- B. Submit a Change Proposal per SECTION 01 31 14 CHANGE MANAGEMENT to request modifications to the Contract Documents, including those for approval of "or equal" products when specifically allowed by the Contract Documents or as a substitution for specified products or procedures. Deviations from the Contract Documents can only be approved by a Modification.
- C. Complete the certification required by Paragraph 1.03.

#### 1.08 DESIGNER'S RESPONSIBILITIES

- A. Record Data will be received by the Designer, logged, and provided to Owner as the Project record.
1. Record Data may be reviewed to see that the information provided is adequate for the purpose intended. Record Data not meeting the requirements of Paragraph 1.02 may be rejected as unacceptable.
  2. Record Data is not reviewed for compliance with the Contract Documents. Comments may be returned if deviations from the Contract Documents are noted during the cursory review performed to see that the information is adequate.
  3. Contractor's responsibility for full compliance with the Contract Documents is not relieved by the review of Record Data. Contract modifications can only be approved by a Modification.
- B. Designer may take the following action in processing Record Data:
1. File Record Data as received if the cursory review indicates that the document meets the requirements of Paragraph 1.02. Document will be given the status of "Filed as Received" and no further action is required on that Record Data.

2. Reject the Record Data for one of the following reasons:
  - a. The document submittal requirements of the Contract Documents indicate that the document submitted as Record Data should have been submitted as a Shop Drawing. The Record Data will be marked "Rejected" and "Submit Shop Drawing." No further action is required on this document as Record Data and the Record Data process will be closed. Resubmit the document as a Shop Drawing per SECTION 01 33 02 SHOP DRAWINGS.
  - b. The cursory review indicates that the document does not meet the requirements of Paragraph 1.02. The Record Data will be marked "Rejected" and "Revise and Resubmit." Contractor is to resubmit the Record Data until it is acceptable and marked "Filed as Received." When Record Data is filed, no further action is required and the Record Data process will be closed.
  - c. The Record Data is not required by the Contract Documents nor is applicable to the Project. The Record Data will be marked "Rejected" and "Cancel - Not Required." No further action is required and the Record Data process will be closed.
- C. Contractor is to resubmit the Record Data until it is acceptable and marked "Filed as Received."

**2.00 PRODUCTS (NOT USED)**

**3.00 EXECUTION (NOT USED)**

**END OF SECTION**