

# **CITY OF CORPUS CHRISTI**

## **MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES**

### **E15117 SEAWATER DESALINATION**

This Agreement is between the City of Corpus Christi, a Texas home rule municipal corporation, P.O. Box 9277, Corpus Christi, Nueces County, Texas 78469-9277 (City) acting through its duly authorized City Manager or designee and FREESE AND NICHOLS, INC., a Texas Corporation, 800 N. Shoreline, Suite 1600N, Corpus Christi, Nueces County, Texas 78401 (Consultant).

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## ARTICLE I – PROJECT TASK ORDER

- 1.1 This Agreement shall apply to as many tasks as City and Consultant agree will be performed under the terms and conditions of this Agreement. Each task Consultant performs for City hereunder shall be designated a Task Order. No Task Order shall be binding or enforceable unless and until it has been properly executed by both City and Consultant. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
- 1.2 The Consultant shall provide its Scope of Services, to be included in each Task Order. The Scope of Services shall include all associated services required for Consultant to provide such Services, pursuant to this Agreement, and any and all Services which would normally be required by law or common due diligence in accordance with the standard of care defined in Article XII of this Agreement.
- 1.3 Under this Agreement, Consultant will provide services on a Task Order basis for a range of services related to assisting Engineering Services with professional engineering, architecture and construction services related to execution of Capital Improvements Programs. All work will be subject to authorization from City. A detailed Scope of Services and fee estimate will be developed for each task prior to execution of work.
- 1.4 Consultant must comply with City standards, as specified in the Unified Development Code (UDC) or Code of Ordinances, as applicable, throughout the duration of the Project, unless specifically and explicitly excluded from doing so in the approved Task Order. A request made by either party to deviate from City standards after the contract is executed must be in writing.
- 1.5 Consultant must perform tasks and submit deliverables as detailed in each approved Task Order.
- 1.6 Consultant must provide all labor, equipment and transportation necessary to complete all services agreed to in a timely manner throughout the term of the Agreement. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant. Consultant must provide City with a list of all subconsultants that includes the services performed by the subconsultant and the percentage of work performed by the subconsultant. Changes in Consultant's team that provides services under this Agreement must be agreed to by the City in writing.
- 1.7 Consultant must not begin work on any Task Order authorized under this Agreement until they are briefed on the scope of the Project and are notified in writing to proceed.
- 1.8 For design services, Consultant agrees to render the professional services necessary for the advancement of the Project through Final Completion of the Construction Contract. Consultant acknowledges and accepts its responsibilities, as defined and described in the City's General Conditions for Construction Contracts, an excerpt of which is attached as **Exhibit G**.

## ARTICLE II – COMPENSATION

- 2.1 The Compensation for all Basic Services included in this Agreement and Additional Services Task A, Communications and Public Outreach, shall not exceed \$2,627,000 (Two Million, Six Hundred Twenty-Seven Thousand Dollars).
- 2.2 The Consultant's fee for each Task Order will be on either a Lump Sum (LS) or Time and Materials (T&M) basis with a not-to-exceed amount to be negotiated during project execution. The fees will not exceed those identified and will be full and total compensation for all services outlined in each Task Order, and for all expenses incurred in performing these services.

- 2.3 Consultant shall submit a proposal to the City, which shall be incorporated into this agreement as **Exhibit B**, subject to approval by the City.
- 2.4 Consultant shall submit a Rate Schedule, shown in **Exhibit B-1**, with their proposal. The rate schedule shall remain confidential pursuant to section 552.104 of the Texas Government Code since release of this information would give advantage to a competitor or bidder. In addition, section 552.110 of the TX Govt. Code protects third party commercial and financial information if release of the information would cause the third party substantial competitive harm.
- 2.5 Monthly invoices will be submitted in accordance with the Payment Request (**Exhibit C**). For T&M basis fees, Consultant shall submit documentation with the monthly invoice that shows who worked on the Project, the number of hours that each individual worked on the Project and reimbursables for that individual.
- 2.5.1 Principals may only bill at the hourly rate of Principals when acting in that capacity. Principals acting in the capacity of staff must bill at staff rates. The Consultant shall provide documentation with each payment request that clearly indicates how that individual's time is allocated and the justification for that allocation.
- 2.6 The anticipated fee structure under this agreement is as follows:

TASK	DESCRIPTION	NOT TO EXCEED AMOUNT
	<b>MAXIMUM CONTRACT AMOUNT</b>	<b>\$2,627,000</b>
	<b>BASIC SERVICES TASKS</b>	<b>Estimated Fee</b>
1	Project Procurement Methodology	\$102,000
2	Concentrate Management Strategies	\$168,000
3	Seawater Desalination Project Siting	\$459,000
4	Site Surveys and Studies	\$193,000
5	Source Water Characterization	\$180,000
6	Confirmation of Plant Size, Water Users, Water Demand, and Points of Product Water Delivery	\$40,000
7	Infrastructure Integration Plan	\$281,000
8	Conceptual Design of Intake and Outfall Facilities	\$82,000
9	Power Supply Agreement	\$65,000
10	Project Delivery Technical Strategy	\$190,000
11	Filing of Owner's Permit Applications	\$334,000
12	Supplemental Project Definition Summary Report and Project Procurement Plan	\$144,000
13	TWDB Financial Assistance (SWIFT #1)	\$21,000
14	Project Management, Meetings, and Coordination	\$202,000
	<b>BASIC SERVICES SUBTOTAL</b>	<b>\$2,461,000</b>
	<b>ADDITIONAL SERVICES</b>	
A	Communications and Public Outreach	\$166,000

- 2.7 All services shall be performed and the applicable standard of professional care set forth herein and to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion. City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which previously have not been approved by the Director.
- 2.8 In the event of any dispute(s) between the Parties regarding the amount properly compensable for any Task Order or as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.
- 2.9 Request of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final Payment Request.
- 2.10 Any fee payable under this Agreement is subject to the availability of funds. The Consultant may be directed to suspend work pending receipt and appropriation of funds.

#### ARTICLE III – QUALITY CONTROL PLAN

- 3.1 The Consultant agrees to perform quality assurance-quality control/constructability reviews (QCP Review). The City reserves the right to retain a separate consultant to perform additional QCP services for the City.
- 3.2 The Consultant will perform QCP Reviews at intervals during the project to ensure deliverables satisfy applicable industry quality standards and meet the requirements of the project scope. Based on the findings of the QCP Review, the Consultant must reconcile the project scope and Opinion of Probable Cost (OPC) as needed.
- 3.3 Documents that do not meet City standards may be rejected. Consultant will not be compensated for having to resubmit documents.

#### ARTICLE IV – INSURANCE REQUIREMENTS

- 4.1 Consultant must not commence work under this Agreement until all required insurance has been obtained, and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.
- 4.2 Insurance Requirements are shown in **EXHIBIT D**.

#### ARTICLE V - INDEMNIFICATION

**Consultant shall fully indemnify and hold harmless the City of Corpus Christi and its officials, officers, agents, employees, or other entity, excluding the engineer or architect or that person's agent, employee or subconsultant, over which the City exercises control ("Indemnatee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement or failure to pay a subcontractor or supplier committed by Consultant or its agent, Consultant under contract or another entity over which Consultant exercises control while in the exercise of rights or performance of the duties under this agreement. This indemnification does not apply to any liability resulting from the negligent acts or omissions of the City or its employees, to the extent of such negligence.**

**Consultant shall defend Indemnatee, with counsel satisfactory to the City Attorney, from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, if the claim is not based wholly or partly on the negligence of, fault of or breach of contract by Indemnatee. If a claim is based wholly or partly on the negligence of, fault of or breach of contract by Indemnatee, the Consultant shall reimburse the City's reasonable attorney's fees in proportion to the Consultant's liability.**

**Consultant must advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.**

#### ARTICLE VI – TERM; RENEWALS; TIMES FOR RENDERING SERVICE

- 6.1 This Agreement shall be effective upon the signature of the City Manager or designee (Effective Date).
- 6.2 This Agreement shall be applicable to Task Order issued hereunder from the Effective Date of the Agreement until project is complete.
- 6.3 This service shall be for a period of 2 years beginning on the Effective Date. The Agreement may be renewed for up to 2 one-year renewal options upon mutual agreement of the parties to be evidenced in writing prior to the expiration date of the prior term. Any renewals shall be at the same terms and conditions, plus any approved changes.
- 6.4 The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Consultant will perform services and provide deliverables within a reasonable time.

#### ARTICLE VII - TERMINATION OF AGREEMENT

##### 7.1 By Consultant:

7.1.1 The City reserves the right to suspend this Agreement at the end of any phase for the convenience of the City by issuing a written and signed Notice of Suspension. The Consultant may terminate this Agreement for convenience in the event such suspension extends for a period beyond 120 calendar days by delivering a Notice of Termination to the City.

7.1.2 The Consultant must follow the Termination Procedure outlined in this Agreement.

##### 7.2 By City:

7.2.1 The City may terminate this agreement for convenience upon seven days written notice to the Consultant at the address of record.

7.2.2 The City may terminate this agreement for cause upon ten days written notice to the Consultant. If Consultant begins, within three days of receipt of such notice, to correct its failure and proceeds to diligently cure such failure within the ten days, the agreement will not terminate. If the Consultant again fails to perform under this agreement, the City may terminate the agreement for cause upon seven days written notice to the Consultant with no additional cure period. If the City terminates for cause, the City may reject any and all proposals submitted by Consultant for up to two years.

### 7.3 Termination Procedure

7.3.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant takes action to cure a failure to perform under the cure period, Consultant shall immediately begin the phase-out and discontinuance of all services in connection with the performance of this Agreement. Within 30 calendar days after receipt of the Notice of Termination, unless Consultant has successfully cured a failure to perform, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant an extension to the time period for submittal of such statement.

7.3.2 Consultant shall submit all completed and/or partially completed work under this Agreement, including but not limited to specifications, designs, plans and exhibits.

7.3.3 Upon receipt of documents described in the Termination Procedure and absent any reason why City may be compelled to withhold fees, Consultant will be compensated for its services based upon a Time & Materials calculation or Consultant and City's estimate of the proportion of the total services actually completed at the time of termination. There will be no compensation for anticipated profits on services not completed.

7.3.4 Consultant acknowledges that City is a public entity and has a duty to document the expenditure of public funds. The failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement.

## ARTICLE VIII – RIGHT OF REVIEW AND AUDIT

8.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Work under this Agreement, during the term of this Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under this Agreement, then such retention period shall extend until final resolution of the dispute.

8.2 "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the Work under this Agreement. Examples include billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in questions and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

8.3 City agrees that it shall exercise the right to audit, examine or inspect Consultant's records only during City's regular business hours. Consultant agrees to allow City's designee access to all of Consultant's records, Consultant's facilities and Consultant's current or former employees, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

8.4 Consultant shall include this audit clause in any subcontractor, supplier or vendor contract.

## ARTICLE IX – OWNER REMEDIES

- 9.1 The City and Consultant agree that in the event the City suffers actual damages, the City may elect to pursue its actual damages and any other remedy allowed by law. This includes but is not limited to:
- 9.1.1 Failure of the Consultant to make adequate progress and endanger timely and successful completion of the Project, which includes failure of subconsultants to meet contractual obligations;
- 9.1.2 Failure of the Consultant to design in compliance with the laws of the City, State and/or federal governments, such that subsequent compliance costs exceed expenditures that would have been involved had services been properly executed by the Consultant.
- 9.1.3 Losses are incurred because of defects, errors and omissions in the design, working drawings, specifications or other documents prepared by the Consultant to the extent that the financial losses are greater than the City would have originally paid had there not been defects, errors and omissions in the documents.
- 9.2 The City may assert a claim against the Consultant's professional liability insurance as appropriate when other remedies are not available or offered for design deficiencies discovered during and after Project construction.
- 9.3 When the City incurs non-value added work costs for change orders due to design errors or omissions, the City will send the Consultant a letter that includes:
- (1) Summary of facts with supporting documentation;
  - (2) Instructions for Consultant to revise design documents, if appropriate, at Consultant's expense;
  - (3) Calculation of non-value added work costs incurred by the City; and
  - (4) Deadline for Consultant's response.
- 9.4 The Consultant may be required to revise bid documents and re-advertise the Project at the Consultant's sole cost if, in the City's judgment, the Consultant generates excessive addenda, either in terms of the nature of the revision or the actual number of changes due to the Consultant's errors or omissions.
- 9.5 The City may withhold or nullify the whole or part of any payment as detailed in Article II.

## ARTICLE X – CONSULTANT REMEDIES

- 10.1 If Consultant is delayed due to uncontrollable circumstances, such as strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's and City's reasonable control, an extension of the Project schedule in an amount equal to the time lost due to such delay shall be Consultant's sole and exclusive remedy. The revised schedule should be approved in writing with a documented reason for granting the extension.
- 10.2 If Consultant requests a remedy for a condition not specified above, Consultant must file a Claim as provided in this Agreement.

## ARTICLE XI – CLAIMS AND DISPUTE RESOLUTION

### 11.1 Filing of Claims

- 11.1.1 Claims arising from the circumstances identified in this Agreement or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within twenty-one (21) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general

nature of the Claim.

11.1.2 Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by a person authorized to bind the Consultant by his/her signature, verifying the truth and accuracy of the Claim.

11.1.3 The responsibility to substantiate a claim rests with the party making the Claim.

11.1.4 Within thirty (30) calendar days of receipt of notice and supporting documentation, City will meet to discuss the request, after which an offer of settlement or a notification of no settlement offer will be sent to Consultant. If Consultant is not satisfied with the proposal presented, Consultant will have thirty (30) calendar days in which to (i) submit additional supporting data requested by the City, (ii) modify the initial request for remedy or (iii) request Alternative Dispute Resolution.

11.1.5 Pending final resolution of a claim, except as otherwise agreed in writing, Consultant shall proceed diligently with performance of the Agreement and City shall continue to make payments in accordance with this Agreement.

## 11.2 Alternative Dispute Resolution

11.2.1 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11.2.2 Before invoking mediation or any other alternative dispute resolution (ADR) process set forth herein, the Parties agree that they shall first try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects.

This step shall be a condition precedent to the use of any other ADR process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation ADR process contained herein.

### 11.2.3 Mediation

11.2.3.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the Party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

11.2.3.2 Request for mediation shall be in writing, and shall request that the mediation commence no less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both parties.

11.2.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) calendar days of the request for mediation, all conditions precedent in this Article shall be deemed to have occurred.

11.2.3.4 The parties shall share the mediator's fee. Venue for any mediation or lawsuit arising under this Agreement shall be Nueces County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.



11.3 In case of litigation between the parties, Consultant and City agree that neither party shall be responsible for payment of attorney's fees pursuant to any law or other provision for payment of attorneys' fees. Both Parties expressly waive any claim to attorney's fees should litigation result from any dispute in this Agreement.

11.4 **No Waiver of Governmental Immunity. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

## ARTICLE XII – MISCELLANEOUS PROVISIONS

12.1 Assignability. The Consultant will not assign, transfer or delegate any of its obligations or duties in this Agreement to any other person without the prior written consent of the City, except for routine duties delegated to personnel of the Consultant staff. If the Consultant is a partnership, then in the event of the termination of the partnership, this contract will inure to the individual benefit of such partner or partners as the City may designate. No part of the Consultant fee may be assigned in advance of receipt by the Consultant without written consent of the City.

The City will not pay the fees of expert or technical assistance and consultants unless such employment, including the rate of compensation, has been approved in writing by the City.

12.2 Ownership of Documents. Consultant agrees that upon payment, City shall exclusively own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Agreement, including contract documents (plans and specifications), drawings and submittal data. Consultant may make a copy for its files. Any reuse, without specific written verification or adaptation by Consultant, shall be a City's sole risk and without liability or legal exposure to Consultant. The City agrees that any modification of the plans will be evidenced on the plans and be signed and sealed by a professional engineer prior to re-use of modified plans.

12.3 Standard of Care. Services provided by Consultant under this Agreement shall be performed with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

12.4 Licensing. Consultant shall be represented by personnel with appropriate licensure, registration and/or certification(s) at meetings of any official nature concerning the Project, including scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

12.5 Entire Agreement. This Agreement, including Task Orders, represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the City and Consultant.

12.6 Disclosure of Interest. (**Exhibit E**) Consultant agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form as part of this contract.

12.7 Certificate of Interested Parties. (**Exhibit F**). Consultant agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement. Form 1295 requires disclosure of "interested parties" with respect to entities that enter contracts with cities that exceed \$50,000. These interested parties include:

- (1) persons with a "controlling interest" in the entity, which includes:
  - a. an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent;

- b. membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
  - c. service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers; or
- (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser or attorney for the business entity.

Form 1295 must be electronically filed with the Texas Ethics Commission at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). The form must then be printed, signed, notarized and filed with the City. For more information, please review the Texas Ethics Commission Rules at <https://www.ethics.state.tx.us/legal/ch46.html>.

- 12.8 Conflict of Interest. Consultant agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the City Secretary's Office, if required. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>
- 12.9 Controlling Law. This Agreement 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.
- 12.10 Severability. If, for any reason, any one or more Articles and/or paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles and/or paragraphs of this Agreement but shall be confined in its effect to the specific Article, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.
- 12.11 Conflict Resolution Between Documents. Consultant hereby agrees and acknowledges if anything contained in the Consultant-prepared **Exhibit A**, Scope of Services or in any other document prepared by Consultant and included herein, is in conflict with Articles I - XII of this Agreement (Articles) and/or an approved Task Order, the Articles and/or the Task Order shall take precedence and control to resolve said conflict.

**CITY OF CORPUS CHRISTI**

**FREESE AND NICHOLS, INC.**

\_\_\_\_\_  
Jeff H. Edmonds, P.E.                      Date  
Director of Engineering Services

 9.29.17  
\_\_\_\_\_  
Ron Guzman, P.E.                      Date  
Principal  
800 N. Shoreline Boulevard, Suite 1600N  
Corpus Christi, TX 78401  
(361) 561-6510  
rg@freese.com

**APPROVED AS TO LEGAL FORM**

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

**ATTEST**

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

Project Name Seawater Desalination  
Project Number E15117  
Accounting Unit 4482-068  
Account 550950  
Activity E15117-01-4482-EXP  
Account Category 50950  
Fund Name Series 2017 Utility Rev Bd  
Amount \$2,627,000

EXHIBIT A

SAMPLE TASK ORDER

This Task Order pertains to a Master Services Agreement for Professional Services by and between City of Corpus Christi, Texas (City) and "Company Name" (Consultant) dated \_\_\_\_\_, 2017 (Agreement). Consultant shall perform services on the project described below as provided in this Task Order and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

**TASK ORDER NO.:**

**PROJECT NAME:** \_\_\_\_\_

**1. PROJECT DESCRIPTION**

**2. SCOPE OF SERVICES**

**3. COMPENSATION**

This Task Order is approved and Consultant may proceed. All other terms and conditions of the Agreement remain in full force and effect.

**CITY OF CORPUS CHRISTI**

**ENGINEERING, INC.**

\_\_\_\_\_  
Jeff H. Edmonds, P.E. (Date)  
Director of Engineering Services

\_\_\_\_\_  
(Date)  
Vice President

Corpus Christi, TX 784  
(361) Office

**RECOMMENDED**

\_\_\_\_\_  
Operating Department (Date)

EXHIBIT B  
CONSULTANT PROPOSAL

**PROJECT NAME:**                    **Seawater Desalination**

**1. PROJECT DESCRIPTION**

This effort will consist of supplemental project definition activities resulting from the initial feasibility phase of this project as well as additional site selection and permitting activities.

A collaborative effort was undertaken in Corpus Christi by a diverse stakeholder group (Stakeholders)<sup>1</sup> to evaluate the feasibility of developing a non-curtable seawater desalination water supply. Phase I of the project resulted in the definition and selection of a preferred prospective Seawater Desalination project. The Stakeholders determined thereafter that several fundamental activities remained that needed additional definition and concurrence prior to initiating Phase II: The Project Procurement and Implementation.

The Stakeholders determined that to have greater certainty of the project feasibility and its cost impact, it would be necessary to undertake certain Supplemental Project Definition and Permitting Activities, including conducting various technical and outreach tasks to bring the Seawater Desalination Project to a Project Procurement level of readiness.

Funding for implementing the Supplemental Project Definition Activities has now been secured from the Texas Water Development Board's State Water Infrastructure Fund (SWIFT). SWIFT loan closing is anticipated for November 2017.

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<sup>1</sup> Stakeholders are identified in the original Contract Agreement as follows: The City of Corpus Christi, Corpus Christi Regional Economic Development Corporation, San Patricio Municipal Water District, Port of Corpus Christi, DuPont, OxyChem, Sherwin Alumina Company, Lyondell Bassell, Citgo, Flint Hills Resources, Valero, Topaz Power, AEP Texas, Cheniere Energy, and Voestalpine Texas.

## 2. SCOPE OF SERVICES

This Scope of Services addresses the following tasks as part of its Basic Services:

1. Project Procurement Methodology
2. Concentrate Management Strategies
3. Seawater Desalination Project Siting
4. Site Surveys and Studies
5. Source Water Characterization
6. Confirmation of Plant Size, Water Users, Water Demand, and Points of Product Water Delivery
7. Water Infrastructure Integration Plan
8. Conceptual Design of the Plant Intake and Outfall Facilities
9. Power Supply Agreement
10. Project Delivery Technical Strategy Session
11. Filing of Owner's Permit Applications
12. Supplemental Project Definition Summary Report and Project Procurement Plan
13. TWDB Financial Assistance (SWIFT #1)
14. Project Management

We understand that the City is focused on acquiring the necessary permits for the implementation of a seawater desalination project or projects in the Coastal Bend. The Basic Services proposed for execution through Task Authorizations under this MSA include what are expected to be Owner's Permits:

- Water Rights Permit & New Source Approval - TCEQ
- Texas Pollutant Discharge Elimination System (TPDES) Permit – TCEQ
- Public Water System (PWS) Registration and Compliance with PWS Regulations – TCEQ

We will possibly also require:

- Texas Land Application Permit (TLAP) for sludge disposal

There is a different, more comprehensive, list of permits required for the actual construction of the plant, but we do not consider that list to be specifically Owner's permits. It includes construction permits which will be expected to be obtained by a design-build contractor. This list has been previously provided to the City.

The only Owner's Permit not included in the proposed Basic Services is the US Army Corps of Engineers 10/404 Permit. The 10/404 Permit scope and effort are difficult to estimate prior to the identification of a desalination plant site. Furthermore, some scope items (specifically surveys) included in the Additional Services will be required to support permitting activities. Again, these items cannot be defined until a desalination plant site is selected. If a regulatory agency requests additional supporting evaluations, surveys, data, or documentation, the City will need to approve some Additional Services tasks to complete the permitting processes.

Additional services including Communications and Outreach; optional support for determining a cost allocation and rate strategy; selection of the LGC; and other optional tasks are addressed in the Additional Services Section of the present Scope of Services.

## **BASIC SERVICES**

### **1. PROJECT PROCUREMENT METHODOLOGY**

It is assumed that the Seawater Desalination Project will be procured using a design-build (DB) approach; however, there are multiple DB modalities that could be applied to procuring the project. In Texas, a public entity is required to document the adoption of the Project Procurement Method it will follow to procure a project; the purpose of this task is to document the LGC's selection of a project procurement methodology.

The Consultant will:

- A. In coordination with the LGC, prepare and provide a memorandum discussing up to three Project Procurement Methodology Alternatives including the general impact of the various alternatives on the following project factors:
  - i. Risk allocation;
  - ii. Life-cycle cost;
  - iii. Estimated time line to procure a project;
  - iv. List and description of key agreements;
  - v. Estimated project procurement budget.
- B. Brief the LGC and Stakeholders; solicit their review comments and finalize the Project Procurement Methodology Memorandum
- C. Document selection of the Project Procurement Methodology by obtaining copy of the LGC's minutes and resolution

### **2. CONCENTRATE MANAGEMENT STRATEGIES**

Securing a sustainable concentrate disposal method is critical to the success of the seawater desalination project. The purpose of this task is to examine alternative concentrate management options and develop a framework to address concentrate management issues in the siting and permitting of the Seawater Desalination Project. A memorandum will be prepared identifying one or two concentrate management alternatives that are most viable for the site-specific conditions of potential plant sites. (At this project phase note that no detailed environmental or ecological field studies would be implemented to address potential impacts of concentrate discharges to federally-listed species or other resources pertaining to regulatory compliance, such as tidal wetlands, oysters, and seagrasses).

The Consultant will:

- A. Prepare a Concentrate Management Strategies Memorandum including:
  - i. Key concentrate management decision factors;
  - ii. Concentrate management regulations;
  - iii. Overview of potentially feasible concentrate management options;
  - iv. Discharge modeling strategies; and,
  - v. Concentrate Disposal Modeling Screening Tool
- B. Brief staff of the Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas General Land Office, the US Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and US Fish and Wildlife Service;
- C. Brief the LGC and Stakeholders; solicit their review comments and finalize the Concentrate Management Strategies Memorandum;

### 3. SEAWATER DESALINATION PROJECT SITING

The purpose of this task is to select the site(s) for a potable water Seawater Desalination Project and document the selection process for regulatory purposes. The Site Selection Recommendation will consist of three steps: First, developing a Site Screening and Site Selection Strategy; second, screening and ranking of Potential Sites to select up to four (4) Candidate Sites; and, third, evaluation of Candidate Sites to select the Preferred Site(s).

Site Screening and Candidate Site Selection will include desktop environmental surveys to evaluate the potential direct effects of the proposed project to various ecological resources that pertain to regulatory compliance. Ecological resources to be evaluated generally include seagrasses, oysters, tidal wetlands, and federally-listed species, for example. Due to the scope and potential effects of the proposed project, there exists the possibility that US Army Corps of Engineers (USACE), in consultation with other state and federal agencies, may require an Individual Permit (IP) review process. Part of that IP review process requires that an applicant demonstrate that the preferred site is the “Least Environmentally Damaging Practical Alternative (LEDPA)” when compared to alternative sites. During this phase of the project, only desktop surveys would be implemented to identify the LEDPA.

The Consultant will:

- A. Prepare a Site Screening/Selection Strategy Memorandum.
  - i. Preparing a draft Site Screening/Selection Strategy Memorandum including:
    - a. Seawater Desalination Siting Selection Factors;
    - b. List of Potential Sites;
    - c. Potential Sites Screening Matrix;
    - d. Develop Concentrate Disposal Modelling Screening Tool.
  - ii. Briefing relevant state and federal regulatory agencies to discuss site selection strategy;
  - iii. Incorporating any necessary changes to the draft Site Screening/Selection Strategy Memorandum to address regulatory agencies’ feedback;
  - iv. Submitting draft Site Screening/Selection Strategy Memorandum to LGC and Stakeholders for review and comment;
  - v. Addressing review comments and finalizing the Site Screening/Selection Strategy Memorandum.
- B. Conduct Site Screening and Candidate Site Selection.

This task consists of implementing the Site Screening/Selection Strategy to screen, review and rank Potential Sites to select up to four (4) Candidate Sites -two in the Ingleside area and two in the City of Corpus Christi area- and includes the following:

- i. Screening and ranking Potential Sites: for each potential site, a site description including applicable intake and concentrate management strategies, results of applying the Concentrate Disposal Modelling Screening Tool, risk and environmental sensitivity issues will be included;
- ii. Preparing a draft Candidate Site Selection Recommendation;
- iii. Presenting the draft Candidate Site Selection Recommendation to LGC and Stakeholders;
- iv. Incorporating any necessary changes to the Candidate Site Selection



- Memorandum to address feedback provided by LGC and Stakeholders;
- v. Finalizing the Candidate Site Selection Memorandum;
- vi. Document LGC authorization to conduct evaluation of the selected Candidate Sites.

C. Conduct Candidate Site Evaluation and Recommend Preferred Site

- i. Obtain site access authorizations and conduct Candidate Sites visits;
- ii. Conduct necessary desktop surveys for seagrass, oysters, tidal wetlands;
- iii. Conduct desktop habitat assessments for federally-listed species;
- iv. Prepare draft Candidate Sites Evaluation and Siting Recommendation Memorandum including:
  - a. Candidate Site Description and Evaluation;
  - b. Assessment of intake strategies and intake recommendation for each site;
  - c. Assessment of concentrate management strategies and discharge recommendation for each site;
  - d. Run Concentrate Modelling Screening Tool;
  - e. Site Permitting Overview;
- v. Conduct briefing meetings with state and federal regulatory agencies to discuss results of candidate sites evaluations;
- vi. Prepare draft template Site Land Use Agreement;
- vii. Submit Candidate Sites Evaluation and Siting Recommendation Memorandum and draft template Site Land Use Agreement to LGC, and Stakeholders for review;
- viii. Address review comments and revise Candidate Sites Evaluation and Siting Recommendation Memorandum and draft template Site Land Use Agreement as needed;
- ix. Conduct Workshop to Present and approve Site Selection Report and Draft Land Use Agreement;
- x. Provide draft workshop minutes for comments, address comments and finalize minutes documenting site selection decision;
- xi. Assist in negotiation and execution of Land Use Agreement/Option.

4. SITE SURVEYS AND STUDIES

The purpose of this task is to conduct necessary site surveys and complete studies required for preliminary design and permitting of the desalination project.

- A. Complete Site Surveys, including:
  - i. Brine dispersion modeling
  - ii. Traffic and access survey for the Preferred Site/s
  - iii. Assessment of site risks (erosion, siltation, flooding, major storms) for the Preferred Site
  - iv. Power supply study to identify potential sources of power for the desalination plant and facilities (conduits, transformers, etc.) needed to deliver this power to the desalination plant site.

## 5. SOURCE WATER CHARACTERIZATION

The purpose of this task is to prepare and begin implementation of a Source Water Characterization Plan.

The Consultant will:

- A. Prepare and Implement Source Water Quality Characterization Plan; this task includes the following:
  - i. Preparing a draft Source Water Quality Characterization Plan;
  - ii. Briefing TCEQ on the draft Source Water Quality Characterization Plan;
  - iii. Incorporating any necessary changes to the Source Water Quality Characterization Plan to address TCEQ's feedback;
- B. Completing a Source Water Sampling and Laboratory Analysis and data collection and reporting as per the Source Water Quality Characterization Plan. Conduct watershed sanitary survey for selected site; this task includes:
  - i. Preparing a Watershed Sanitary Survey;
  - ii. Briefing TCEQ on the results of the Watershed Sanitary Survey and Source Water Quality Characterization;
  - iii. Incorporating any necessary changes to the Watershed Sanitary Survey to address TCEQ's feedback;
  - iv. Providing a final Watershed Sanitary Survey Report for the Selected Site to the City and the LGC.
- C. Implement Data Collection Plan

## 6. CONFIRMATION OF PLANT SIZE, WATER USERS, WATER DEMAND, & POINTS OF PRODUCT WATER DELIVERY

The purpose of this task is to confirm the plant size, the water users, water demand and points of product water delivery.

The Consultant will:

- A. Prepare a memorandum confirming:
  - i. Plant(s) size,
  - ii. water users,
  - iii. water demand, and
  - iv. points of product water delivery
- B. Present the memorandum to the LGC and Stakeholders for comment
- C. Address comments and finalize memorandum;
- D. Document LGC and Stakeholders approval of memorandum

## 7. INFRASTRUCTURE INTEGRATION PLAN

The purpose of the Infrastructure Integration Plan is to examine water quality compatibility and desalinated water delivery alternatives to select a desalinated water conveyance and integration strategy to incorporate the desalination plant into the regional water supply system.

The Consultant will:

- A. Prepare a Water Quality Integration Report. This task includes,
  - i. Preparing a Water Quality Integration Report (WQ Report) assessing potential impacts and mitigating measures associated with the delivery of desalinated seawater into the regional drinking water system;
  - ii. Submitting WQ Report to City, LGC, and Stakeholders for review;
  - iii. Addressing review comments and finalizing WQ Report;
- B. Conveyance Infrastructure. This task includes the following:
  - i. Preparing a draft Alternative Water Delivery Routes and Preferred Route Memorandum including:
    - a. Mapping of alternative delivery routes;
    - b. Rights-of-way issues;
    - c. Condition and capacity of existing conveyance infrastructure;
    - d. Pressure and volume delivery requirements;
    - e. Onsite/offsite storage requirements;
    - f. Type and size of structures at the points of interconnection with the water delivery infrastructure;
    - g. Initial subsurface survey along proposed routes;
    - h. Environmental, traffic and noise sensitivity assessments;
    - i. Rights of way acquisition requirements;
    - j. Cost estimates
  - ii. Submitting draft Alternative Water Delivery Routes and Preferred Route Memorandum to City, LGC, and Stakeholders for review;
  - iii. Addressing review comments and finalizing the Alternative Water Delivery Routes and Preferred Route Memorandum;
  - iv. Prepare Water Delivery Infrastructure Report and Draft Existing Infrastructure Use Agreements for the Preferred Delivery Route;
  - v. Assist in negotiation and execution of Existing Infrastructure Use Agreements of the LGC with the Infrastructure Owners;
  - vi. Assist in negotiation and execution of Right of Way/Land Acquisition Agreements of the LGC with the Land Owners.

## 8. CONCEPTUAL DESIGN OF INTAKE AND OUTFALL FACILITIES

The purpose of this task is to prepare a conceptual design of the intake and outfall facilities in preparation for permit applications.

The Consultant will:

- A. Prepare Conceptual Design of the Plant Intake and Outfall Facilities
  - i. Prepare and Hold Technical Team Coordination Call
  - ii. Analyze options and select most viable type, location and configuration of intake and outfall facilities for the Preferred Site/s
  - iii. Consider environmental or ecological constraints in design to avoid or minimize impacts to resources (in case the project requires an IP review process and LEDPA must be demonstrated)
  - iv. Prepare Intake/Outfall Selection Memo
  - v. Conduct Technical Team Review
  - vi. Revise, finalize and deliver Intake/Outfall Selection Memo

## 9. POWER SUPPLY AGREEMENT

The purpose of this task is to develop a power supply agreement for the seawater desalination project.

The Consultant will:

- A. Develop a high-voltage power supply specification;
- B. Meet with Power Supplier(s) to define size and location of high voltage power supply facilities for the seawater desalination project;
- C. Prepare preliminary design of the high voltage power supply system;
- D. Prepare Draft Power Supply Term Sheet;
- E. Discuss Draft Power Supply Term Sheet with power supplier and determine conditions and costs for power supply;
- F. Present proposed High Voltage Power Supply System and Term Sheet to the LGC;
- G. Develop Draft Power Supply Agreement;
- H. Assist the LGC with the negotiation of the Power Supply Agreement with the Supplier

## 10. PROJECT DELIVERY TECHNICAL STRATEGY

The purpose of this task is to summarize relevant project information and prepare a strategy to guide Project Delivery activities.

The Consultant will:

- A. Develop agenda for the Technical Strategy Session;
- B. Develop Technical Strategy Session Workbook & Presentations;
- C. Confirm project size, desalinated water users and points of water delivery;
- D. Seawater quality, modeling requirements, and data requirements;
- E. Regulatory and Construction Permits, Permitting Strategy;
- F. Site access, land use rights and rights of way issues;
- G. Pilot Test Requirements;
- H. Concentrate Management;
- I. Project and Program Critical Path;
- J. Design Criteria Package Development;
- K. Design Criteria Outline;
- L. Coordination with Contract Development and/or Development of Term Sheet for Water Purchase Agreement;
- M. Project Risk Allocation;
- N. Going forward - Issue Resolution Activities;
- O. Facilitate two-day workshop;
- P. Prepare Technical Memorandum summarizing the outcomes of the Project Delivery Technical Strategy Session.

## 11. FILING OF OWNER'S PERMIT APPLICATIONS

The purpose of this task is to prepare and file water-rights and relevant permits required for the seawater desalination project.

The Consultant will:

- A. File Owner's Permits Applications. This task includes:
  - i. Coordinate with US Army Corps of Engineers to identify required Section 10 and 404 permit authorizations (i.e., Pre-Application Meeting or Joint Evaluation Meeting).
  - ii. Attend meetings with other applicable resource agencies to confirm and/or define other permitting requirements
  - iii. Preparing and filing TPDES permit application
  - iv. Prepare and filing land application for water treatment sludge permit application
  - v. Preparing water rights and new source approval application
    - a. Environmental tasks to address Texas Water Code §§11.147, 11.1491, 11.150, and 11.152 and Title 30 Texas Administrative Code §§297.53, 297.54, 297.55, and 297.56
      - Attend two pre-application meetings with TCEQ WR Permit Staff to identify permit application requirements and to obtain

concurrency on the desktop studies to be performed to support the WR Permit application

- Perform desktop evaluation of project effects on bay/estuary inflows based on TCEQ eFlow Rule
- Perform desktop evaluation of project effects on fish and wildlife habitat
- Perform desktop analysis of project effects on water quality
- Perform desktop analysis of project effects on instream uses
- Prepare technical memorandum summarizing desktop studies for inclusion with the TCEQ water right permit application
- This scope assumes that environmental studies will be prepared based on desktop analysis of available information for effects on bay/estuary inflow, fish and wildlife habitat, water quality and instream uses. Field studies, if required and authorized, can be provided as additional services.

- vi. Preparing and filing application for public water system registration
- vii.

## 12. SUPPLEMENTAL PROJECT DEFINITION SUMMARY REPORT AND PROJECT PROCUREMENT PLAN

The purpose of this task is to summarize the results of the Supplemental Project Definition Phase and identify key next steps associated with permitting and project implementation.

The Consultant will:

- A. Prepare a Supplemental Project Definition Summary Report and Project Procurement Plan;
- B. Conduct a workshop to present and discuss the Supplemental Project Definition Summary Report and Project Procurement Plan;
- C. Revise and finalize the Supplemental Project Definition Summary Report and Project Procurement Plan as needed to address workshop comments;

## 13. TWDB FINANCIAL ASSISTANCE (SWIFT #1)

This task has been ongoing since January 1, 2017 and will conclude with the execution of a loan agreement with the TWDB. The purpose of this task is to assist the City in securing SWIFT funding in the 2017 cycle to implement the Supplemental Project Definition and permitting Activities.

The Consultant will:

- A. Assist the City with preparation and filing of a SWIFT Abridged application;
- B. Upon issuance of a Texas Water Development Board (TWDB) invitation to file a full SWIFT application, assist the City in preparing a financial assistance application package for funding of the Supplemental Project Definition and Permitting activities (Draft SWIFT Application);
- C. Monitor TWDB's SWIFT financial assistance review process through financial close of application; attend up to three (3) coordination meetings with TWDB and City staff as needed.

14. PROJECT MANAGEMENT, MEETINGS, AND COORDINATION

The purpose of this task is to provide oversight for an orderly and timely execution of the Scope of Services.

- A. Meetings
  - i. One (1) Kick-off Meeting;
  - ii. Coordination meetings every two months with City staff and Stakeholders Representatives;
  - iii. All meetings associated with the contract administration, project management, and outreach will be approved by the City Project Manager(s) before they are scheduled.
- B. Status Reports
  - i. Provide monthly status reports including:
    - a. progress in the last month;
    - b. anticipated progress for the upcoming month;
    - c. upcoming submittals/milestones;
    - d. upcoming meetings/workshops, data requests/project needs; and
    - e. list of milestones denoting completion or notes for pending completion.
  - ii. If needed, hold a monthly conference call with City and Stakeholders Representatives to discuss the monthly status report.

**ADDITIONAL SERVICES**

This section defines the scope of additional services that may only be included as part of this contract if authorized by City. The Consultant may not begin work on any services under this section without specific written authorization by City. Fees for Additional Services are an allowance for potential services to be provided and will be negotiated by City as required. The Consultant shall, with written authorization by City, perform the following:

- A. Communications and Public Outreach
  - i. Develop an Outreach Plan and Protocol with objectives, milestones, target stakeholders and partners, and logistics for Local, State, and (optional) Federal outreach. This plan will need to be updated throughout the project;
  - ii. On an on-going basis, identify potential outreach opportunities and action items;
  - iii. Monitor state and relevant stakeholders' desalination-related legislative initiatives;
  - iv. (Optional) Monitor federal stakeholders' desalination related initiatives;
  - v. Schedule and participate in up to four (4) legislative briefings with TWDB, Legislators, Texas Desal Association;
  - vi. (Optional) Hold Strategy or Educational Workshop(s) for stakeholders, public officials, and public;
  - vii. Prepare briefing materials for key stakeholders which could include federal, state, and local entities or individuals;
  - viii. Prepare presentations and provide general support to the City, the LGC and Stakeholders;
  - ix. Public Outreach efforts:
    - a. Provide technical information to support communication and outreach efforts by the City, the LGC and Stakeholders;

- b. Provide logistical support for planning, coordinating, and implementing the Outreach Plan and Protocol;
  - c. As needed, assist with media outreach through preparation of project briefing materials or media releases;
  - d. Provide up to two (2) project update presentations to the Corpus Christi City Council and the San Patricio Municipal Water District.
- x. Attend and assist with updates to the Stakeholders Group.
- B. Preparation and submission of a Section 10/404 permit application with US Army Corps of Engineers
- C. Preparation of any National Environmental Policy Act (NEPA) documents, including those that may be needed to support a US Army Corps of Engineers Individual Permit, or for TWDB funding assistance.
- D. Geotechnical study for the Preferred Site/s
- E. Bathymetric Survey of the Intake and Discharge Areas of the Preferred Plant Site
- F. Detailed Ecological Surveys or Impact Assessments of the Intake and Discharge Areas of the Preferred Plant Site (e.g., federally-listed species, Essential Fish Habitat, etc.).
- G. Coordination with TCEQ, other agencies, project opponents and interested parties in water right permitting process after submission of application.
- H. Providing expert testimony in contested case water right hearing, if needed.
- I. Sediment Transport Study
- J. Survey topography, existing utilities, and structures (above and underground) of the Preferred Site
- K. Survey Large-Volume Water Customers;
- L. Assist in cost allocation and rate structure strategy development;
- M. Assist in the evaluation of organizational options for the Seawater Desalination Project;
- N. Conduct detailed Concentrate Discharge Modelling for permitting of facilities;
- O. Develop methodology to value contributed assets such as land, power, and other project-related infrastructure;
- P. Conduct a workshop to assist the LGC with the selection of a Seawater Desalination Project Procurement Methodology;
- Q. Develop requisite documents for a Design-Build Seawater Desalination Project Procurement Phase;
- R. Prepare agreements necessary to support implementation of the Seawater Desalination Project;
- S. Assist in securing financial assistance for permitting, pre-design and project procurement activities;
- T. Specific, additional spatial data analyses beyond what is described herein;



## EXHIBIT B-1

### CONFIDENTIAL RATE SCHEDULE

Rate sheets are confidential pursuant to **section 552.104 of the Texas Government Code** since release of this information would give advantage to a competitor or bidder. In addition, **section 552.110 of the TX Govt. Code** protects third party commercial and financial information if release of the information would cause the third party substantial competitive harm.

DOCUMENTATION OF PROVISIONAL / OVERHEAD RATES: Overhead rate documentation has been provided to the City of Corpus Christi and was utilized in reviewing and approving the loaded hourly rates below.

PRINCIPAL(S):	HOURLY RATE (\$/hr)	TX REGISTRATION #:
<b>Project Consultant:</b>		
<b>CAD Technician:</b>		
<b>Clerical:</b>		
<b>Other – specify:</b>		
<b>SUBCONSULTANT(S):</b>		
(firm)		
<b>Principal(s):</b>		
<b>Project Consultant:</b>		
<b>CAD Technician:</b>		
<b>Clerical</b>		
<b>Other – specify:</b>		

Add additional subconsultants as needed.

**COMPLETE PROJECT NAME****Project No. XXXX****Invoice No. 12345****Invoice Date 01/01/2017**

Sample form for:  
 Payment Request  
 AE Contract  
 Revised 02/01/17

	Contract	Amd No. 1	Amd No. 2	Total Contract	Current Invoice	Previous Invoice	Total Invoice	Remaining Balance	Percent Complete
<b>Basic Services:</b>									
Preliminary Phase	\$1,000.00	\$0.00	\$0.00	<b>\$1,000.00</b>	\$0.00	\$1,000.00	\$1,000.00	\$0.00	100.0%
Design Phase	\$2,000.00	\$1,000.00	\$0.00	<b>\$3,000.00</b>	\$1,000.00	\$500.00	\$1,500.00	\$1,500.00	50.0%
Bid Phase	\$500.00	\$0.00	\$250.00	<b>\$750.00</b>	\$0.00	\$0.00	\$0.00	\$750.00	0.0%
Construction Phase	\$2,500.00	\$0.00	\$1,000.00	<b>\$3,500.00</b>	\$0.00	\$0.00	\$0.00	\$3,500.00	0.0%
Subtotal Basic Services	\$6,000.00	\$1,000.00	\$1,250.00	<b>\$8,250.00</b>	\$1,000.00	\$1,500.00	\$2,500.00	\$5,750.00	30.3%
<b>Additional Services:</b>									
Permitting	\$2,000.00	\$0.00	\$0.00	<b>\$2,000.00</b>	\$500.00	\$0.00	\$500.00	\$1,500.00	25.0%
Warranty Phase	\$0.00	\$1,120.00	\$0.00	<b>\$1,120.00</b>	\$0.00	\$0.00	\$0.00	\$1,120.00	0.0%
Inspection	\$0.00	\$0.00	\$1,627.00	<b>\$1,627.00</b>	\$0.00	\$0.00	\$0.00	\$1,627.00	0.0%
Platting Survey	TBD	TBD	TBD	<b>TBD</b>	TBD	TBD	TBD	TBD	TBD
O & M Manuals	TBD	TBD	TBD	<b>TBD</b>	TBD	TBD	TBD	TBD	TBD
SCADA	TBD	TBD	TBD	<b>TBD</b>	TBD	TBD	TBD	TBD	TBD
Subtotal Additional Services	\$2,000.00	\$1,120.00	\$1,627.00	<b>\$4,747.00</b>	\$500.00	\$0.00	\$500.00	\$4,247.00	10.5%
<b>Summary of Fees:</b>									
Basic Services Fees	\$6,000.00	\$1,000.00	\$1,250.00	<b>\$8,250.00</b>	\$1,000.00	\$1,500.00	\$2,500.00	\$5,750.00	30.3%
Additional Services Fees	\$2,000.00	\$1,120.00	\$1,627.00	<b>\$4,747.00</b>	\$500.00	\$0.00	\$500.00	\$4,247.00	10.5%
<b>Total of Fees</b>	<b>\$8,000.00</b>	<b>\$2,120.00</b>	<b>\$2,877.00</b>	<b>\$12,997.00</b>	<b>\$1,500.00</b>	<b>\$1,500.00</b>	<b>\$3,000.00</b>	<b>\$9,997.00</b>	<b>23.1%</b>

**Notes:**

If needed, update this sample form based on the contract requirements.

If applicable, refer to the contract for information on what to include with time and materials (T&M).

## EXHIBIT D

### Insurance Requirements

#### Pre-Design, Design and General Consulting Contracts

1.1 Consultant must not commence work under this agreement until all required insurance has been obtained and such insurance has been approved by the City. Consultant must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.

1.2 Consultant must furnish to the Director of Engineering Services with the signed agreement a copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **A waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
<b>30-written day notice of cancellation, required on all certificates or by applicable policy endorsements</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
PROFESSIONAL LIABILITY (Errors and Omissions)	\$1,000,000 Per Claim  If claims made policy, retro date must be prior to inception of agreement, have extended reporting period provisions and identify any limitations regarding who is insured.

1.3 In the event of accidents of any kind related to this agreement, Consultant must furnish the City with copies of all reports of any accidents within 10 days of the accident.

1.4 Consultant shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII. **Consultant is required to provide City with renewal Certificates.**

1.5 In the event of a change in insurance coverage, Consultant shall be required to

submit a copy of the replacement certificate of insurance to City at the address provided below within 10 business days of said change. Consultant shall pay any costs resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi  
Attn: Engineering Services  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

**1.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

1.6.1 If the policy is cancelled, other than for nonpayment of premium, notice of such cancellation will be provided at least 30 days in advance of the cancellation effective date to the certificate holder;

1.6.2 If the policy is cancelled for nonpayment of premium, notice of such cancellation will be provided within 10 days of the cancellation effective date to the certificate holder.

1.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall notify City of such lapse in coverage and provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

1.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to withhold any payment(s) if any, which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

1.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractor's performance of the work covered under this agreement.

1.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

1.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.



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:** Freese and Nichols, Inc.

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

**STREET ADDRESS:** 800 N. Shoreline Blvd.,  
Suite 1600N **CITY:** Corpus Christi **ZIP:** 78401

**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)
N/A	
_____	_____
_____	_____
_____	_____

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
N/A	
_____	_____
_____	_____
_____	_____

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
N/A	
_____	_____
_____	_____
_____	_____

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
N/A	
_____	_____
_____	_____
_____	_____

### FILING REQUIREMENTS

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

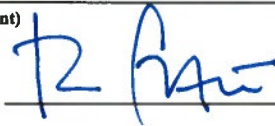
I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Ron Guzman, P.E.

Title: Principal

(Type or Print)

Signature of Certifying  
Person:



Date: 2.28.17

### 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.

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2017-261151

Date Filed:  
09/15/2017

Date Acknowledged:

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

Freese and Nichols, Inc.  
Corpus Christi, TX United States

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

City of Corpus Christi

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

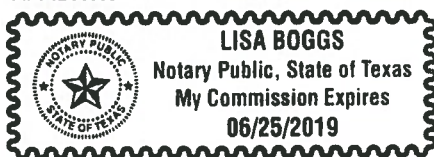
Seawater Desalination

Provide professional engineering services relating to Seawater Desalination as requested by Client including initial feasibility phase of the project and additional site selection and permitting act.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Hatley, Tricia	Oklahoma City, OK United States	X	
	Cole, Scott	Fort Worth, TX United States	X	
	Coltharp, Brian	Fort Worth, TX United States	X	
	New, John	San Antonio, TX United States	X	
	Taylor, Jeff	Houston, TX United States	X	
	Milrany, Cindy	Fort Worth, TX United States	X	
	Nichols, Michael	Fort Worth, TX United States	X	
	Pence, Robert	Fort Worth, TX United States	X	
	Gooch, Thomas	Fort Worth, TX United States	X	

5 Check only if there is NO Interested Party. ☐

### 6 AFFIDAVIT



I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

*R. Guzman*

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Ron Guzman, this the 18th day of September, 2017, to certify which, witness my hand and seal of office.

*Lisa Boggs*

Signature of officer administering oath

Lisa Boggs

Printed name of officer administering oath

Notary Public

Title of officer administering oath

**Excerpt from FORM 00 72 00 GENERAL CONDITIONS for Construction Projects related to design services**

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## **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**

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

### **3.01 Intent**

- 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.

3.02 Reference Standards

- 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.

3.03 Reporting and Resolving Discrepancies

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.

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

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

5.01 Availability of Lands

5.02 Use of Site and Other Areas

5.03 Subsurface and Physical Conditions

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 5.03 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 5.04.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.

#### 5.05 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.

#### **ARTICLE 6 – BONDS AND INSURANCE**

#### **ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES**

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

#### **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**

**ARTICLE 12 – CLAIMS**

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

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

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

**ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION**

**ARTICLE 17 – FINAL RESOLUTION OF DISPUTES**

**ARTICLE 18 – MISCELLANEOUS**

**END OF SECTION**