

**00 72 00      GENERAL CONDITIONS**

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

- A. Terms with initial capital letters, including the term’s singular and plural forms, have the meanings 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 Documents.
  7. Bidding Documents – The solicitation documents, the proposed Contract Documents and Addenda.
  8. Bidder – An individual or entity that submits a Bid to Owner.
  9. Bonds - Performance Bond, Payment Bond, Maintenance Bond, and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.
  10. Change Order - A document issued on or after the Effective Date of the Contract, which modifies the Work, Contract Price, Contract Times, or terms and conditions of the Contract.
  11. 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.
  12. City Engineer - The Corpus Christi City Engineer and/or designee as identified at the preconstruction conference or in the Notice to Proceed.

13. 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. Claims must be initiated by written notice, signed and sworn to be an authorized corporate officer, verifying the truth and accuracy of the Claim.
14. 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. §§5101 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.
15. Contract - The entire integrated set of documents concerning the Work and describing the relationship between the Owner and Contractor.
16. 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.
17. Contract Documents - Those items designated as Contract Documents in the Agreement.
18. 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.
19. 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.
20. Contractor - The individual or entity with which Owner has contracted for performance of the Work.

21. 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.
22. Cost of the Work - The sum of costs incurred for the proper performance of the Work as allowed by Article 15.
23. 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
24. 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, Registered Architects or Registered Landscape Architects qualified to practice their profession in the State of Texas.
25. 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.
26. Effective Date of the Contract - The date indicated in the Agreement on which the City Manager or designee has signed the Contract.
27. 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.
28. 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.
29. Indemnified Costs - All costs, losses, damages, and legal or other dispute resolution costs resulting from claims or demands against Owner. These costs include fees for engineers, architects, attorneys, and other professionals.
30. 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.
31. Liens - Charges, security interests, or encumbrances upon Contract related funds, real property, or personal property.

32. 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.
33. 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.
34. Notice of Award - The notice of Owner's intent to enter into a contract with the Selected Bidder.
35. Notice to Proceed - A notice to Contractor of the Contract Times and the date Work is to begin.
36. 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 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.
37. 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.
38. 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.
39. 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.
40. 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. The Progress Schedule must be a Critical Path Method (CPM) Schedule.
41. Project - The total undertaking to be accomplished for Owner under the Contract Documents.
42. Project Manual - That portion of the Contract Documents that may include the following: introductory information, solicitation requirements and responses, proposal, Contract forms and General and Supplementary Conditions, General Requirements, Specification, Drawings, Project Safety Manual and Addenda.
43. 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.

44. 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.
45. Schedule of Documents - A schedule of required documents, prepared and maintained by Contractor.
46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. Supplementary Conditions - The part of the Contract that amends or supplements the General Conditions.
53. 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.
54. 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.
55. 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.
56. Unit Price Work - Work to be paid for on the basis of unit prices.

- 57. Work - The construction of the Project or its component parts as required by the Contract Documents.
- 58. Work Change Directive - A directive issued to Contractor on or after the Effective Date of the Contract ordering an addition, deletion, or revision in the Work. The Work Change Directive serves as a memorandum of understanding regarding the directive until a Change Order can be issued.

## 1.02 Terminology

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

equipment, but do not expressly use the words “furnish,” “install,” “perform,” or “provide.”

- F. Contract Documents are written in modified brief style:
  - 1. Requirements apply to all Work of the same kind, class, and type even though the word “all” is not stated.
  - 2. Simple imperative sentence structure is used which places a verb as the first word in the sentence. It is understood that the words “furnish,” “install,” “perform,” “provide,” or similar words include the meaning of the phrase “The Contractor shall...” before these words.
  - 3. Unless specifically stated that action is to be taken by the OPT or others, it is understood that the action described is a requirement of the Contractor.
- G. Words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with this recognized meaning unless stated otherwise in the Contract Documents.
- H. Written documents are required where reference is made to notices, reports, approvals, consents, documents, statements, instructions, opinions or other types of communications required by the Contract Documents. Approval and consent documents must be received by Contractor prior to the action or decision for which approval or consent is given. These may be made in printed or electronic format through the OPT’s project management information system or other electronic media as required by the Contract Documents or approved by the OAR.
- I. Giving notice as required by the Contract Documents may be by printed or electronic media using a method that requires acknowledgment of the receipt of that notice.

## **ARTICLE 2 – PRELIMINARY MATTERS**

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

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

### **2.02 Copies of Documents**

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

### **2.03 Project Management System**

- A. Owner shall administer its design and construction management through an internet-based project management system known as e-Builder.
- B. Contractor shall conduct all communication through and perform all project-related functions utilizing this project management system. This includes all correspondence,



submittals, requests for information, payment requests and processing, contract amendments, change orders, delivery orders and other administrative activities.

C. Owner shall administer the software and provide training to Contractor's Team.

#### 2.04 Before Starting Construction

A. Provide the following preliminary documents in accordance with the Contract Documents within 10 days after the Effective Date of the Contract:

1. Progress Schedule, which must be a Critical Path Method (CPM) Schedule;
2. Schedule of Documents; and
3. Schedule of Values and projected cash flow information.

#### 2.05 Preconstruction Conference; Designation of Authorized Representatives

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

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

#### 3.01 Intent

A. Requirements of components of the Contract Documents are as binding as if required by all Contract Documents. It is the intent of the Contract Documents to describe a functionally complete Project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the OPT.

1. The Contract requirements described in the General Conditions and Supplementary Conditions apply to Work regardless of where it is described in the Contract Documents, unless specifically noted otherwise.
2. In offering a Bid for this Project and in entering into this Contract, Contractor represents:
  - a. Contractor has studied the Contract Documents, the Work, the Site, local conditions, Laws and Regulations, and other conditions that may affect the Work;
  - b. Contractor has studied the Technical Data and other information referred to in the Contract Documents and has or will make additional surveys and investigations as deemed necessary for the performance of the Work;
  - c. Contractor has correlated these studies and observations with the requirements of the Contract Documents; and
  - d. Contractor has taken all of this information into consideration in developing the Contract Price offered and that the Contract Price offered provides full compensation for providing the Work in accordance with the Contract Documents.

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

### 3.02 Reference Standards

- A. Standard Specifications, Codes, Laws and Regulations:
  1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of technical societies, organizations, or associations, or to Laws or Regulations, whether specific or implied, are those in effect at the time Contractor's Bid is submitted or when Contractor negotiates the Contract Price unless specifically stated otherwise in the Contract Documents.

2. No provision of referenced standard specifications, manuals, reference standards, codes, or instructions of a Supplier changes the duties or responsibilities of OPT or Contractor from those described in the Contract Documents or assigns a duty to or gives authority to the OPT to supervise or direct the performance of the Work or undertake responsibilities inconsistent with the Contract Documents.
  3. The provisions of the Contract Documents take precedence over standard specifications, manuals, reference standards, codes, or instructions of a Supplier unless specifically stated otherwise in the Contract Documents.
- B. Comply with applicable construction industry standards, whether referenced or not.
1. Standards referenced in the Contract Documents govern over standards not referenced but recognized as applicable in the construction industry.
  2. Comply with the requirements of the Contract Documents if they produce a higher quality of Work than the applicable construction industry standards.
  3. Designer determines whether a code or standard is applicable, which of several are applicable, or if the Contract Documents produce a higher quality of Work.
- C. Make copies of reference standards available if requested by OAR.

### 3.03 Reporting and Resolving Discrepancies

- A. Reporting Discrepancies:
1. Carefully study the Drawings and verify pertinent figures and dimensions with respect to actual field measurements before undertaking the Work. Immediately report conflicts, errors, ambiguities, or discrepancies that Contractor discovers or has actual knowledge of to the OAR. Do not proceed with affected Work until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from the OAR or by a Modification to the Contract Documents issued pursuant to Paragraph 11.01.
  2. The exactness of existing grades, elevations, dimensions or locations given on any Drawings issued by Designer, or the work installed by other contractors, is not guaranteed by Owner. Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. Any errors due to Contractor's failure to verify at the site all such grades, elevations, dimensions or locations relating to such existing or other work shall be rectified by Contractor without any additional cost to Owner.
  3. Immediately notify the OAR of conflicts, errors, ambiguities, or discrepancies in the Contract Documents or discrepancies between the Contract Documents and:
    - a. Applicable Laws or Regulations;
    - b. Actual field conditions;
    - c. Standard specifications, manuals, reference standards, or codes; or
    - d. Instructions of Suppliers.
  4. Do not proceed with affected Work until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation from the OAR or by a Modification to the

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

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

#### 3.04 Interpretation of the Contract Documents

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

#### 3.05 Reuse of Documents

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

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

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

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

#### 4.02 Starting the Work

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

#### 4.03 Progress Schedule

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

#### 4.04 Delays in Contractor's Progress

- A. **No Damages for Delay:** Contractor shall receive no compensation for delays or hindrances to the Work, except in the case of direct interference with means and methods by the Owner. In no event shall the Contractor be entitled to any compensation or recovery of any special damages in connection with any delays, including without limitation: consequential damages, lost opportunity costs, impact damages, or other similar damages. Owner's exercise of any of its rights or remedies under the Contract Documents (including without limitation ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference in the Contractor's performance of the Work. An extension of Contract Time, to the extent permitted, shall be the sole remedy of the Contractor for any acknowledged delays. **Contractor agrees that the extension of time provides an equitable adjustment.**
- B. Contractor is not entitled to an adjustment in Contract Price or Contract Times for delays, disruptions, or interference caused by or within the control of Contractor's Team.
- C. No time extensions are allowed for weather conditions, other than those listed in Paragraph 4.04.D, for Projects using calendar days or a fixed date to establish the Contract Time. Contractor is to include the cost associated with weather related delays in the Contract Price and assumes the risks associated with delays related to weather conditions.
- D. Contractor is entitled to an equitable adjustment in the Contract Times if Contractor's performance or progress is delayed, disrupted or interfered with by unanticipated causes not the fault of and beyond the control of OPT or Contractor. These adjustments in Contract Times are the Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. These unanticipated causes may include:
  - 1. Severe and unavoidable natural catastrophes e.g. fires, floods, hurricanes, epidemics, and earthquakes;
  - 2. Acts or failures to act of utility owners performing other work at or adjacent to the Site;
  - 3. Acts of war or terrorism; and
  - 4. Rain days in excess of the number specified in a calendar year.

- E. Delays, disruption, and interference to the performance or progress of the Work resulting from the following are governed by Article 5:
  - 1. The existence of a differing subsurface or physical condition;
  - 2. An Underground Facility not shown or not indicated with reasonable accuracy by the Contract Documents; and
  - 3. Hazardous Environmental Conditions.
- F. Article 8 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- G. Notify the OAR immediately of a potential delaying, disrupting, or interfering event. Submit a Change Proposal seeking an adjustment in Contract Price or Contract Times within 30 days of the commencement of the delaying, disrupting, or interfering event. Claims for adjustment to the Contract Price or Contract Times that do not comply with Article 13 are waived.
- H. Contractor is only entitled to an adjustment of the Contract Times for specific delays, disruptions, and interference to the performance or progress of the Work that can be demonstrated to directly impact the ability of the Contractor to complete the Work within the Contract Times. No adjustments in Contract Times are allowed for delays on components of the Work which were or could have been completed without impacting the Contract Times.
- I. Contractor is not entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of the Owner if this delay is concurrent with a delay, disruption, or interference attributable to or within the control of the Contractor's Team.

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

5.01 Availability of Lands

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

5.02 Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas:
  - 1. Confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Owner or Contractor has arranged to use through construction easements or agreements, and other adjacent areas as permitted by Laws and Regulations. Assume

full responsibility for damage or injuries which result from the performance of the Work or from other actions or conduct of the Contractor's Team, including:

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

### 5.03 Subsurface and Physical Conditions

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

#### 5.04 Differing Subsurface or Physical Conditions

- A. Notify OAR immediately, but in no event later than 3 days, after becoming aware of a subsurface or physical condition that is uncovered or revealed at the Site, and before further disturbing the subsurface or physical conditions or performing any related Work that:
1. Establishes that the Technical Data on which Contractor is entitled to rely as provided in Paragraph 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 to 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.
- D. Possible Contract Price and Contract Times Adjustments:
1. Contractor is entitled to an equitable adjustment in Contract Price or Contract Times to the extent that a differing subsurface or physical condition causes a change in Contractor's cost or time to perform the Work provided the condition falls within one or more of the categories described in Paragraph 5.04.A. Any adjustment in Contract Price for Work that is paid for on a unit price basis is subject to the provisions of Paragraph 15.03.



2. Contractor is not entitled to an adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
  - a. Contractor knew of the existence of the subsurface or physical condition at the time Contractor made an offer to Owner with respect to Contract Price and Contract Times;
  - b. The existence of the subsurface or physical condition could have been discovered or revealed as a result of examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents prior to when Contractor's Bid is submitted or when Contractor negotiates the Contract Price; or
  - c. Contractor failed to give notice as required by Paragraph 5.04.A.
3. Contractor may submit a Change Proposal no later than 30 days after OAR's issuance of the OPT's statement to Contractor regarding the subsurface or physical condition in question.
4. A Change Order is to be issued by the OAR if Owner and Contractor agree that Contractor is entitled to an adjustment in the Contract Price or Contract Times and agree to the amount or extent of adjustments in the Contract Price or Contract Times.

#### 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. Investigating and field-verifying the location of underground facilities before beginning Work;
  2. Reviewing and checking available information and data regarding existing Underground Facilities at the Site;
  3. Complying with Laws and Regulations related to locating Underground Facilities before beginning Work;
  4. Locating Underground Facilities shown or indicated in the Contract Documents;
  5. Coordinating the Work with the owners, including Owner, of Underground Facilities during construction; and
  6. 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, but in no event later than 3 days, if an Underground Facility is uncovered or revealed at the Site that was not shown in the Contract Documents or was not shown with reasonable accuracy in the Contract Documents. Do not further disturb conditions or perform Work affected by this discovery, except in the event of an emergency as required by Paragraph 7.12.

- C. The Designer is to take the following action after receiving notice from the OAR:
  - 1. Promptly review the Underground Facility and conclude whether the Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy;
  - 2. Prepare recommendations to OPT regarding the Contractor's resumption of Work in connection with this Underground Facility;
  - 3. Determine the extent to which a change is required in the Drawings or Specifications to document the consequences of the existence or location of the Underground Facility; and
  - 4. Advise OAR of Designer's findings, conclusions, and recommendations and provide revised Drawings and Specifications if required.
- D. OAR is to issue a statement to Contractor regarding the Underground Facility in question and recommend action as appropriate after review of Designer's findings, conclusions, and recommendations.
- E. Contractor is entitled to an equitable adjustment in the Contract Price or Contract Times as provided in Paragraphs 11.04 and 11.05 to the extent that the existing Underground Facility at the Site that was not shown or indicated in the Contract Documents or was not shown or indicated with reasonable accuracy. Any adjustment in Contract Price for Work that is paid for on a unit price basis is subject to the provisions of Paragraph 15.03.
- F. Contractor is not entitled an adjustment in the Contract Price or Contract Times with respect to an existing Underground Facility at the Site if:
  - 1. Contractor knew of the existence of the existing Underground Facility at the Site at the time Contractor made an offer to Owner with respect to Contract Price and Contract Times;
  - 2. The existence of the existing Underground Facility at the Site could have been discovered or revealed as a result of examinations, investigations, explorations, tests, or studies of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents prior to when Contractor's Bid is submitted or when Contractor negotiates the Contract Price; or
  - 3. Contractor failed to give notice as required by Paragraph 5.05.B.
- G. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of adjustments in the Contract Price or Contract Times no later than 30 days after OAR's issuance of OPT's statement to Contractor regarding the Underground Facility.

#### 5.06 Hazardous Environmental Conditions at Site

- A. The Supplementary Conditions identify:
  - 1. Those reports and drawings known to OPT relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  - 2. Technical Data contained in these reports and drawings.
- B. Contractor may rely upon the accuracy of the Technical Data contained in reports and drawings relating to Hazardous Environmental Conditions identified in the Supplementary

Conditions, but these reports and drawings are not Contract Documents. Except for the reliance on expressly identified Technical Data, Contractor may not rely upon or make claims against Owner's Indemnitees with respect to:

1. The completeness of these reports and drawings for Contractor's purposes, including aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor or Contractor's safety precautions and programs related to Hazardous Environmental Conditions;
  2. Other data, interpretations, opinions, and information contained in these reports or shown or indicated in the drawings; or
  3. Any Contractor interpretation of or conclusion drawn from Technical Data or other data, interpretations, opinions or information.
- C. The results of tests performed on materials described in environmental reports specifically prepared for the Project and made available to Contractor are defined as Technical Data unless Technical Data has been defined more specifically in the Supplementary Conditions.
- D. Contractor is not responsible for removing or remediating Hazardous Environmental Conditions encountered, uncovered or revealed at the Site unless this removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- E. Contractor is responsible for controlling, containing, and duly removing and remediating Constituents of Concern brought to the Site by Contractor's Team and paying associated costs.
1. Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to Contractor for associated costs if Contractor's Team creates a Hazardous Environmental Condition, and Contractor does not take acceptable action to remove and remediate the Hazardous Environmental Condition.
  2. Contractor's obligation to indemnify Owner for claims arising out of or related to Hazardous Environmental Conditions are as set forth in Paragraph 7.14.
- F. Immediately notify the OAR and take the following action if Contractor uncovers or reveals a Hazardous Environmental Condition at the Site or adjacent areas used by the Contractor's Team that was not created by the Contractor's Team:
1. Secure or otherwise isolate this condition;
  2. Stop Work in affected areas or connected with the condition, except in an emergency as required by Paragraph 7.12; and
  3. Do not resume Work in connection with the Hazardous Environmental Condition or in affected areas until after OPT has obtained required permits and OAR sends notice to the Contractor:
    - a. Specifying that this condition and affected areas are or have been rendered safe for the resumption of Work; or
    - b. Specifying special conditions under which Work may be resumed safely.

4. Owner may order the portion of the Work that is in the area affected by the Hazardous Environmental Condition to be deleted from the Work following the procedures in Article 11 if Contractor does not agree to:
  - a. Resume the Work based on a reasonable belief it is unsafe; or
  - b. Resume the Work under the special conditions provided by the OAR.
5. Owner may have this deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- G. Contractor may submit a Change Proposal or Owner may impose a set-off if an agreement is not reached within 10 days of OAR's notice regarding the resumption of Work as to whether Contractor is entitled to an adjustment in Contract Price or Contract Times or on the amount or extent of adjustments resulting from this Work stoppage or special conditions under which Contractor agrees to resume Work.
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or a Hazardous Environmental Condition uncovered or revealed at the Site.

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

### **6.01 Performance, Payment, and Other Bonds**

- A. Furnish Performance and Payment Bonds, each in an amount equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract Documents. These Bonds are to remain in effect until 1 year after the date of final payment. Furnish other Bonds as required by the Contract Documents.
- B. Bonds furnished by the Contractor must meet the requirements of Texas Insurance Code Chapter 3503, Texas Government Code Chapter 2253, and all other applicable Laws and Regulations.
- C. Notify OAR immediately if the surety on Bonds furnished by Contractor:
  1. Is declared bankrupt, or becomes insolvent;
  2. Has its right to do business in Texas terminated; or
  3. Ceases to meet the requirements of Paragraph 6.02.Provide a Bond and surety which comply with the requirements of Paragraph 6.02 within 20 days after the event giving rise to this notification.
- D. Contractor is to use amounts paid by Owner to Contractor under the Contract for the performance of the Contract and to satisfy claims against the Payment Bond.
- E. Notify the OAR of claims filed against the Payment Bond. Notify the claimant and OAR of undisputed amounts and the basis for challenging disputed amounts when a claimant has satisfied the conditions prescribed by Texas Government Code Chapter 2253. Promptly pay undisputed amount.
- F. Owner is not liable for payment of costs or expenses of claimants under the Payment Bond. Owner has no obligations to pay, give notice or take other action to claimants under the Payment Bond.

- G. Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 18 if Contractor fails to obtain or maintain required Bonds.
- H. OPT will provide a copy of the Payment Bond to Subcontractors, Suppliers, or other persons or entities claiming to have furnished labor or materials used in the performance of the Work that request this information in accordance with Texas Government Code Chapter 2253.

#### 6.02 Licensed Sureties

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

#### 6.03 Required Minimum Insurance Coverage

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

#### 6.04 General Insurance Provisions

- A. Provide insurance coverages and limits meeting the requirements for insurance in accordance with this Article 6 and the Supplementary Conditions.
- B. Provide endorsements to the policies as outlined in this Article.
- C. Obtain insurance from companies that are duly licensed or authorized in the State of Texas to issue insurance policies for the required limits and coverages. Provide insurance from companies that have an A.M. Best rating of A-VIII or better.
- D. Furnish copies of endorsements and documentation of applicable self-insured retentions and deductibles upon request by OPT or any named insured or additional insured. Contractor may block out (redact) any confidential premium or pricing information contained in any endorsement furnished under this Contract.
- E. The name and number of the Project must be referenced on the certificate of insurance.
- F. OPT's failure to demand such certificates or other evidence of the Contractor's full compliance with the insurance requirements or failure to identify a deficiency in compliance from the evidence provided is not a waiver of the Contractor's obligation to obtain and maintain the insurance required by the Contract Documents.
- G. Notify the Owner if the Contractor fails to purchase or maintain the insurance required by the Contract Documents. Contractor shall not be allowed to perform any Work on the

Project until the required insurance policies are in effect. A Certificate of Liability Insurance shall be submitted to the OPT.

- H. Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 18 if Contractor fails to obtain or maintain the required insurance.
- I. Owner does not represent that the insurance coverage and limits established in this Contract are adequate to protect Contractor or Contractor's interests.
- J. The required insurance and insurance limits do not limit the Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- K. Provide for an endorsement that the "other insurance" clause shall not apply to the OPT where the OPT is an additional insured shown on the policy. Contractor's insurance is primary and non-contributory with respect to any insurance or self-insurance carried by the OPT for liability arising out of operations under this Contract.
- L. Include the Owner and list the other members of the OPT and any other individuals or entities identified in the Supplementary Conditions as additional insureds on all policies with the exception of the workers' compensation policy and Contractor's professional liability policy.

#### 6.05 Contractor's Insurance

- A. Purchase and maintain workers' compensation and employer's liability insurance for:
  - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts. Obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law and written on a policy and endorsements approved by the Texas Department of Insurance. Provide insurance in amounts to meet all workers' compensation obligations. Provide an "All Other States" endorsement if Contractor is not domiciled in Texas and policy is not written in accordance with Texas Department of Insurance rules.
  - 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees.
  - 3. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
  - 4. Foreign voluntary worker compensation (if applicable).
- B. Purchase and maintain commercial general liability insurance covering all operations by or on behalf of Contractor. The expected coverage is that which would be included in a commercially available ISO Commercial General Liability policy and should provide coverage on an occurrence basis, against:
  - 1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - 2. Claims for damages insured by reasonably available personal injury liability coverage which are sustained;
  - 3. By any person as a result of an offense directly or indirectly related to the employment of such person by Contractor; and

4. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including any resulting loss of use.
- C. Provide Contractor's commercial general liability policy that is written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage as required in this Article and the Supplementary Conditions. Insurance is to remain in effect for 3 years after final payment. Furnish evidence of the continuation of this insurance at final payment and again each year for 3 years after final payment to Owner and each named insured or additional insured.
    - a. If required by the Supplementary Conditions, provide and maintain Installation Floater insurance for property under the care, custody, or control of Contractor. Provide Installation Floater insurance that is a broad form or "All Peril" policy providing coverage for all materials, supplies, machinery, fixtures, and equipment which will be incorporated into the Work.
      - 1) Provide coverage under the Contractor's Installation Floater that includes:
        - a) Faulty or Defective workmanship, materials, maintenance, or construction;
        - b) Cost to remove Defective or damaged Work from the Site or to protect it from loss or damage;
        - c) Cost to cleanup and remove pollutants;
        - d) Coverage for testing and startup;
        - e) Any loss to property while in transit;
        - f) Any loss at the Site;
        - g) Any loss while in storage, both on and off the Site; and
        - h) Any loss to temporary Project Works if their value is included in the Contract Price.
      - 2) Coverage cannot be contingent on an external cause or risk or limited to property for which the Contractor is legally liable. Provide limits of insurance adequate to cover the value of the installation. Pay any deductible carried under this coverage and assume responsibility for claims on materials, supplies, machinery, fixtures, and equipment which will be incorporated into the Work while in transit or in storage.
  2. Blanket contractual liability coverage for Contractor's contractual indemnity obligations in Paragraph 7.14, and all other contractual indemnity obligations of Contractor in the Contract Documents. Industry standard ISO Contractual Liability coverage will meet this obligation.
  3. Broad form property damage coverage.
  4. Severability of interest.
  5. Underground explosion and collapse coverage.

6. Personal injury coverage.
  7. Endorsement CG 2032, "Additional Insured - Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. Purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- E. For Projects with a Contract Value that exceeds \$5,000,000, purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Provide coverage that is at least as broad as all underlying policies. Provide a policy that provides first-dollar liability coverage as needed.
- F. Provide Contractor's commercial general liability and automobile liability policies that:
1. Are written on an occurrence basis;
  2. Include the individuals or entities identified in the Supplementary Conditions as additional insureds;
  3. Include coverage for Owner as defined in Article 1; and
  4. Provide primary coverage for all claims covered by the policies, including those arising from both ongoing and completed operations.
- G. Purchase and maintain insurance coverage for third-party injury and property damage claims, including clean-up costs that result from Hazardous Environmental Conditions which result from Contractor's operations and completed operations. Provide Contractor's pollution liability insurance that includes long-term environmental impacts for the disposal of pollutants/contaminants and is not limited to sudden and accidental discharge. The completed operations coverage is to remain in effect for 3 years after final payment. The policy must name OPT and any other individuals and entities identified in the Supplementary Conditions as additional insureds.
- H. Purchase and maintain applicable professional liability insurance, or have Subcontractors and Suppliers do so, if Contractor or any Subcontractor or Supplier will provide or furnish professional services under this Contract.
- I. The policies of insurance required by this Article must:
1. Include at least the specific coverages and be written for not less than the limits of liability provided in this Article or the Supplementary Conditions or required by Laws or Regulations, whichever is greater.
  2. Contain a provision that coverage afforded will not be canceled or materially changed until at least 30 days prior written notice has been given to Contractor, Owner, and all named insureds and additional insureds.
  3. Remain in effect at all times when Contractor is performing Work or is at the Site to conduct tasks arising from the Contract Documents.
  4. Be appropriate for the Work being performed and provide protection from claims resulting from the Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether performed by Contractor,



Subcontractor, Supplier, anyone directly or indirectly employed or retained by any of them, or by anyone for whose acts they may be liable.

- J. The coverage requirements for specific policies of insurance must be met directly by those policies and may not rely on excess or umbrella insurance provided in other policies to meet the coverage requirement.

#### 6.06 Property Insurance

- A. Purchase and maintain builder's risk insurance in the amount of the full replacement cost of the Project. This policy is subject to the deductible amounts requirements in this Article and the Supplementary Conditions or those required by Laws and Regulations and must comply with the requirements of Paragraph 6.09. This insurance shall:
  - 1. Include the OPT, Contractor, and all Subcontractors, and any other individuals or entities identified in the Supplementary Conditions, as named insureds.
  - 2. Be written on a builder's risk "all risk" policy form that includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and insures against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by this Section. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk, by endorsement or otherwise, this insurance may be provided through other insurance policies acceptable to Owner and Contractor.
  - 3. Cover expenses incurred in the repair or replacement of any insured property.
  - 4. Cover materials and equipment in transit or stored prior to being incorporated in the Work.
  - 5. Cover Owner-furnished or assigned property.
  - 6. Allow for partial utilization of the Work by Owner.
  - 7. Allow for the waiver of the insurer's subrogation rights as set forth below.
  - 8. Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
  - 9. Not include a co-insurance clause.
  - 10. Include a broad exception for ensuing losses from physical damage or loss with respect to any Defective workmanship, design, or materials exclusions.
  - 11. Include testing and startup.
  - 12. Be maintained in effect until the Work as a whole is complete, unless otherwise agreed to in writing by Owner and Contractor.

- B. Evidence of insurance provided must contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Owner and Contractor and to each named insured.
- C. Pay for costs not covered by the policy deductible.
- D. Notify builder's risk insurance provider if Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work. Maintain the builder's risk insurance in effect during this Partial Occupancy or Use.
- E. Contractor may purchase other special insurance to be included in or to supplement the builder's risk or property insurance policies provided under this Article and the Supplementary Conditions.
- F. Contractor, Subcontractors, or employees of the Contractor or a Subcontractor owning property items, such as tools, construction equipment, or other personal property not expressly covered in the insurance required by the Contract Documents are responsible for providing their own insurance.

#### 6.07 Waiver of Rights

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

#### 6.08 Owner's Insurance for Project

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

6.09 Acceptable Evidence of Insurance

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

6.10 Certificate of Insurance

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

6.11 Insurance Policies

- A. If requested by the Owner, make available for viewing a copy of insurance policies, declaration pages and endorsements, and documentation of applicable self-insured retentions and deductibles.
- B. Contractor may block out (redact) any proprietary information or confidential premium pricing information contained in any policy or endorsement furnished under this Contract.

6.12 Continuing Evidence of Coverage

- A. Provide updated, revised, or new evidence of insurance in accordance this Article and the Supplementary Conditions prior to the expiration of existing policies.
- B. Provide evidence of continuation of insurance coverage at final payment and for the following 3 years.

6.13 Notices Regarding Insurance

- A. Notices regarding insurance are to be sent to the Owner at the following address:

City of Corpus Christi – Engineering  
Attn: Construction Contract Admin.  
P.O. Box 9277  
Corpus Christi, TX 78469-9277

- B. Submit questions regarding insurance requirements to the Construction Contract Administrator by calling 361-826-3530.

#### 6.14 Texas Workers' Compensation Insurance Required Notice

##### A. Definitions:

1. Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the Project.
  2. Duration of the Project - includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the governmental entity.
  3. Persons providing services on the Project ("Subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
  - C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the Contract.
  - D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
  - E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
    1. A certificate of coverage, prior to that person beginning Work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

2. No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
  - G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
  - H. The Contractor shall post on each Project Site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
  - I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
    1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
    2. Provide to the Contractor, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
    3. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
    4. Obtain from each other person with whom it contracts, and provide to the Contractor:
      - a. A certificate of coverage, prior to the other person beginning Work on the Project; and
      - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
    5. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
    6. Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
    7. Contractually require each person with whom it contracts, to perform as required by this section, with the certificates of coverage to be provided to the person for whom they are providing services.
  - J. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of

classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

**ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES**

**7.01 Supervision and Superintendence**

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

**7.02 Labor; Working Hours**

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

<b>Holiday</b>	<b>Date Observed</b>
New Year's Day	January 1
Martin Luther King Jr Day	Third Monday in January
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Thanksgiving Day	Fourth Thursday in November

Holiday	Date Observed
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Day	December 25

- D. If a legal holiday falls on a Saturday, it will be observed the preceding Friday. If a legal holiday falls on a Sunday, it will be observed the following Monday.
- E. Pay additional cost incurred by Owner for services of the OAR or RPR to observe Work constructed outside of regular working hours. OAR will issue a Set-off in the Application for Payment for this cost per Paragraph 17.01.B

7.03 Services, Materials, and Equipment

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

7.04 Concerning Subcontractors, Suppliers, and Others

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. All Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor must retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required to do so by the Contract Documents.
- C. Submit a list of proposed Subcontractors and Suppliers to OAR prior to entering into binding subcontracts or purchase orders. These proposed Subcontractors or Suppliers are deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 30 days after receiving this list. Under no circumstances shall any Subcontractor debarred under Chapter 41 of The Code of Ordinances, City of Corpus Christi, be deemed acceptable to Owner.
- D. Contractor is not required to retain Subcontractors, Suppliers, or other individuals or entities to furnish or perform part of the Work after the Effective Date of the Contract if Contractor has reasonable objection.
- E. Owner may require the replacement of Subcontractors, Suppliers, or other individuals or entities retained by the Contractor. Provide an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. Owner also may require Contractor to retain specific replacements, subject to Contractor’s reasonable objections.

- F. Contractor may be entitled to an adjustment in Contract Price or Contract Times with respect to a replacement of Subcontractors, Suppliers, or other entities required by Owner. The Contractor is not entitled to an adjustment in Contract Price or Contract Time with respect to replacement of any individual deemed unsuitable by the OPT. Notify OAR immediately if a replacement of Subcontractors, Suppliers, or other entity increases the Contract Price or Contract Times. Initiate a Change Proposal for the adjustment within 10 days of Owner's notice to replace a Subcontractor, Supplier, or other entity retained by Contractor to perform part of the Work. Do not make the replacement until the change in Contract Price or Contract Times has been accepted by the Owner if Change Proposal is to be submitted.
- G. Owner's initial acceptance of Subcontractors, Suppliers, or other individuals or entities, or their replacements, does not constitute a waiver of the obligation of the Contractor to complete the Work in accordance with the Contract Documents.
- H. Maintain a current and complete list of Subcontractors and Suppliers that are to perform or furnish part of the Work.
- I. Contractor is fully responsible for the acts and omissions of Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work.
- J. Contractor is solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work.
- K. Require Subcontractors, Suppliers, and other individuals or entities performing or furnishing Work to communicate with OPT through Contractor.
- L. Contracts between the Contractor and their Subcontractors or Suppliers may specifically bind the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents. Contractor is responsible for meeting the requirements of the Contract Documents if they choose to not bind the Subcontractors or Suppliers to applicable terms or conditions of the Contract Documents.
  - 1. All Subcontractors employed on this Project must be required to obtain Workers' Compensation Insurance.
  - 2. Proof of this insurance will be required prior to the start of any Work.
- M. OPT may furnish information about amounts paid to Contractor for Work provided by Subcontractors or Suppliers to the entity providing the Work.
- N. Nothing in the Contract Documents:
  - 1. Creates a contractual relationship between members of the OPT and members of the Contractor's Team.
  - 2. Creates an obligation on the part of the Owner to pay or to see to the payment of money due members of the Contractor's Team, except as may be required by Laws and Regulations.

7.05 Patent Fees and Royalties

- A. Pay license fees, royalties, and costs incident to the use of inventions, designs, processes, products, or devices which are patented or copyrighted by others in the performance of the Work, or to incorporate these inventions, designs, processes, products, or devices which are patented or copyrighted by others in the Work. The Contract Documents identify inventions,



designs, processes, products, or devices OPT knows are patented or copyrighted by others or that its use is subject to patent rights or copyrights calling for the payment of a license fee or royalty to others. Contractor is to include the cost associated with the use of patented or copyrighted products or processes, whether specified or selected by the Contractor, in the Contract Price.

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

#### 7.06 Permits

- A. Obtain and pay for construction permits and licenses. OPT is to assist Contractor in obtaining permits and licenses when required to do so by applicable Laws and Regulations. Pay governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time the Contractor's Bid is submitted or when Contractor negotiates the Contract Price. This Project is not exempt from City permits and fees unless expressly stated otherwise.

#### 7.07 Taxes

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

#### 7.08 Laws and Regulations

- A. Give required notices and comply with Laws and Regulations applicable to the performance of the Work. OPT is not responsible for monitoring Contractor's compliance with Laws or Regulations except where expressly required by applicable Laws and Regulations.
- B. Pay costs resulting from actions taken by Contractor that are contrary to Laws or Regulations. Contractor is not responsible for determining that the design aspects of the Work described in the Contract Documents is in accordance with Laws and Regulations. This does not relieve Contractor of its obligations under Paragraph 3.03.

- C. Owner or Contractor may give notice to the other party of changes in Laws or Regulations that may affect the cost or time of performance of the Work, including:
  - 1. Changes in Laws or Regulations affecting procurement of permits; and
  - 2. Sales, use, value-added, consumption, and other similar taxes which come into effect after Contractor's Bid is submitted or when Contractor negotiates the Contract Price.
- D. Contractor may submit a Change Proposal or Owner may initiate a Claim within 30 days of this notice if Owner and Contractor are unable to agree on entitlement to or on the amount or extent of adjustments in Contract Price or Contract Times resulting from these changes.

#### 7.09 Safety and Protection

- A. Contractor is solely responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the Work. This responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Take necessary precautions for the safety of persons on the Site or who may be affected by the Work, and provide the necessary protection to prevent damage, injury, or loss to:
  - 1. Work and materials and equipment to be incorporated in the Work, whether stored on or off Site; and
  - 2. Other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- C. Comply with applicable Laws and Regulations relating to the safety and protection of persons or property. Erect and maintain necessary safeguards for safety and protection. Notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site when prosecution of the Work may affect them. Cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - 1. Comply with requirements of Underground Facility Damage Prevention and Safety Act, Texas Utilities Code Chapter 251.
  - 2. Comply with all applicable safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).
- D. Remedy damage, injury, or loss to property referred to in Paragraph 7.09.B caused by Contractor's Team. Pay remediation costs unless the damage or loss is:
  - 1. Attributable to the fault of the Contract Documents;
  - 2. Attributable to acts or omissions of OPT; or
  - 3. Not attributable to the actions or failure to act of the Contractor's Team.
- E. Contractor's duties and responsibilities for safety and protection of persons or the Work or property at or adjacent to the Site continues until Work is completed and resumes whenever Contractor's Team returns to the Site to fulfill warranty or correction obligations or to conduct other tasks.

- F. Comply with the applicable requirements of the Owner's safety program if required to do so in the Supplementary Conditions. A copy of the Owner's safety program will be provided in the Bidding Documents.

#### 7.10 Safety Representative

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

#### 7.11 Hazard Communication Programs

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

#### 7.12 Emergencies

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

#### 7.13 Contractor's General Warranty and Guarantee

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

7. Correction of Defective Work by Owner.
- D. The Contract Documents may require the Contractor to accept the assignment of a contract between the Owner and a contractor or supplier. The specific warranties, guarantees, and correction obligations contained in an assigned contract govern with respect to Contractor's performance obligations to Owner for the Work described in an assigned contract.

#### 7.14 INDEMNIFICATION

- A. **To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Owner from and against claims, damages, losses and expenses, including but not limited to attorney's fees or dispute resolution costs, arising out of or resulting from performance of the Work and/or failure to comply with the terms and conditions of the contract, violations of Laws or Regulations, or bodily injury, death or destruction of tangible property caused by the acts, omissions or negligence of the Contractor's Team, regardless of whether such claim, damage, loss or expense is alleged to be caused in part by an Owner hereunder, subject to the Owner's defenses and liability limits under the Texas Tort Claims Act. However, nothing herein shall be construed to require Contractor to indemnify an Owner against a claim, loss, damage or expense caused by the sole negligence of an Owner.**
- B. **To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Owner from and against Indemnified Costs, arising out of or relating to: (i) the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor's Team or a Hazardous Environmental Condition created by Contractor's Team, (ii) Contractor's Team's action or inaction related to damages, delays, disruptions or interference with the work of Owner's employees, other contractors, or utility owners performing other work at or adjacent to the Site, or (iii) the correction of Defective Work. Nothing in this paragraph obligates the Contractor to indemnify the Owner from the consequences of the Owner's sole negligence.**
- C. **To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Owner from and against Indemnified Costs resulting from infringement on patent rights or copyrights by Contractor's Team.**

- D. The indemnification obligations of this Paragraph 7.14 are not limited by the amount or type of damages, compensation or benefits payable by or for members of the Contractor's Team or other individuals or entities under workers' compensation acts, disability benefit acts, or other employee benefit acts in claims against Owner by an employee or the survivor or personal representative of employee of Contractor's Team. The indemnification obligations of this Paragraph 7.14 shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by Contractor.
- E. The indemnification obligations of this Paragraph 7.14 do not extend to the liability of Designer arising out of the preparation of the Contract Documents or giving directions or instructions, or failing to give them, to the extent they are obligated to do so if that is the primary cause of the injury or damage.
- F. Notify the other party within 10 days if Owner or Contractor receives notice of any claim or circumstances that could give rise to an indemnified loss. The notice must include the following:
  - 1. A description of the indemnification event in reasonable detail;
  - 2. The basis on which indemnification may be due; and
  - 3. The anticipated amount of the indemnified loss.

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

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

#### 7.15 Delegation of Professional Design Services

- A. Contractor is not required to provide professional design services unless these services are specifically required by the Contract Documents for a portion of the Work or unless these

services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

- B. The Contract Documents specify performance and design criteria related to systems, materials or equipment if professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor. These services or certifications must be provided by the licensed Texas Professional Engineer or Registered Architect who prepares, signs, and seals drawings, calculations, specifications, certifications, Shop Drawings, and other documents.
- C. OPT is entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by Contractor's design professionals, provided OPT has specified to Contractor the performance and design criteria that these services must satisfy.
- D. Pursuant to this Paragraph 7.15, Designer's review and approval of design calculations and design drawings is only for the limited purpose of checking for conformance with the performance and design criteria given and the design concepts expressed in the Contract Documents. Designer's review and approval of Shop Drawings and other documents is only for the purpose stated in the Contract Documents.
- E. Contractor is not responsible for the adequacy of the performance or design criteria specified by OPT. Advise OPT if the performance or design criteria are known or considered likely to be inadequate or otherwise deficient.

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

### **8.01 Other Work**

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

- E. Inspect the work of others and immediately notify OAR if the proper execution of part of Contractor's Work depends upon work performed by others and this work has not been performed or is unsuitable for the proper execution of Contractor's Work. Contractor's failure to notify the OAR constitutes an acceptance of this other work as acceptable for integration with Contractor's Work. This acceptance does not apply to latent defects or deficiencies in the work of others.
- F. Take adequate measures to prevent damages, delays, disruptions, or interference with the work of Owner, other contractors, or utility owners performing other work at or adjacent to the Site.

#### 8.02 Coordination

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

#### 8.03 Legal Relationships

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

- E. Contractor's obligation to indemnify Owner for claims arising out of or related to damages, delays, disruptions, and interference with other work at the Site are as set forth in Paragraph 7.14.

## **ARTICLE 9 – OWNER'S AND OPT'S RESPONSIBILITIES**

### 9.01 Communications to Contractor

- A. OPT issues communications to Contractor through OAR except as otherwise provided in the Contract Documents.

### 9.02 Replacement of Owner's Project Team Members

- A. Owner may replace members of the OPT at its discretion.

### 9.03 Furnish Data

- A. OPT is to furnish the data required of OPT under the Contract Documents.

### 9.04 Pay When Due

- A. Owner is to make payments to Contractor when due as described in Article 17.

### 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 16.02.

### 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.

9.12 Plans and Specifications

- A. Owner does not warrant the plans and specification.

**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 16. OAR is to issue a Defective Work Notice to Contractor and document when Defective Work has been corrected or accepted in accordance with Article 16.

#### 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 Article 11.
- D. OAR's authority related to Applications for Payment is described in Articles 15 and 17.

#### 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 16.04 if Work does not conform to the Contract Documents. OAR will coordinate the response of the OPT to Contractor.
- C. Contractor may appeal Designer's decision by submitting a Change Proposal if Contractor does not agree with the Designer's decision.

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

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

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

#### 11.01 Amending and Supplementing the Contract Documents

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

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

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

- A. Owner may order additions, deletions, or revisions in the Work at any time as recommended by the Designer to the extent the change:
1. Involves the design as described in the Contract Documents;
  2. Involves acceptance of the Work; or
  3. Involves other engineering, architectural or technical matters.
- B. These changes may be authorized by a Modification. Proceed with the Work involved or, in the case of a deletion in the Work, immediately cease construction activities with respect to the deleted Work upon receipt of the Modification. Nothing in this paragraph obligates the Contractor to undertake Work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.03 Unauthorized Changes in the Work

- A. Contractor is not entitled to an increase in the Contract Price or an extension of the Contract Times with respect to Work performed that is not required by the Contract Documents, except in the case of an emergency as provided in Paragraph 7.12, or in the case of uncovering Work as provided in Paragraph 16.05.

- B. Contractor is responsible for costs and time delays associated with variations from the requirements of the Contract Documents unless the variations are specifically approved by Change Order.

#### 11.04 Change of Contract Price

- A. The Contract Price for authorized Work can only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 13.
- B. An adjustment in the Contract Price is to be determined as follows:
  - 1. By applying unit prices to the quantities of the items involved, subject to the provisions of Paragraph 15.03, where the Work involved is covered by unit prices in the Contract Documents;
  - 2. By a mutually agreed lump sum where the Work involved is not covered by unit prices in the Contract Documents; or
  - 3. Payment on the basis of the Cost of the Work determined as provided in Paragraph 15.01 plus a Contractor's fee for overhead and profit determined as provided in Paragraph 15.05 when the Work involved is not covered by unit prices in the Contract Documents and the parties do not reach a mutual agreement to a lump sum.
- C. The original Contract Price may not be increased by more than 25 percent or the limit set out in Texas Local Government Code 252.048 or its successor statute, whichever is greater. Owner may decrease the Work by up to 25 percent of the Contract Price.

#### 11.05 Change of Contract Times

- A. The Contract Times for authorized Work can only be changed by Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 13.
- B. An adjustment of the Contract Times is subject to the limitations described in Paragraph 4.04.

#### 11.06 Change Proposals

- A. Submit a Change Proposal in accordance with Article 12 to the OAR to:
  - 1. Request an adjustment in the Contract Price or Contract Times;
  - 2. Appeal an initial decision by OPT concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents;
  - 3. Contest a set-off against payment due; or
  - 4. Seek other relief under the Contract Documents.

- B. Notify the OAR within 3 days if a Change Proposal is to be submitted. Submit each Change Proposal to OAR no later than 30 days after the event initiating the Change Proposal.

#### 11.07 Execution of Change Orders

- A. Owner and Contractor are to execute Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times, which are agreed to by Owner and Contractor, including undisputed sums or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from Owner set-offs unless the set-off has been successfully challenged by Contractor;
  - 3. Changes in the Work which are:
    - a. Ordered by Owner pursuant to Paragraph 11.02.A,
    - b. Required because Defective Work was accepted under Paragraph 16.04 or Owner's correction of Defective Work under Paragraph 16.07, or
    - c. Agreed to by the Owner and Contractor; and
  - 4. Changes in the Contract Price or Contract Times, or other changes under Paragraph 11.06 or Article 13.
- B. Acceptance of a Change Order by Contractor constitutes a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order must be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor constitutes conclusive evidence of Contractor's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.
- C. All Change Orders require approval by either the City Council or Owner by administrative action. The approval process requires a minimum of 45 days after submission in final form with all supporting data. Receipt of Contractor's submission by Owner constitutes neither acceptance nor approval of a Change Order, nor a warranty that the Change Order will be authorized by City Council or administrative action. The time required for the approval process may not be considered a delay and no extensions to the Contract Times or increase in the Contract Price will be considered or granted as a result of the process. Contractor may proceed with Work if a Work Change Directive is issued.
- D. If the Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, the Change Order is deemed to be in full force as if executed by Contractor. Contractor may file a Claim for payment and/or time, pursuant to Article 13.

#### 11.08 Notice to Surety

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

### **ARTICLE 12 – CHANGE MANAGEMENT**

#### 12.01 Requests for Change Proposal

- A. Designer will initiate Modifications by issuing a Request for a Change Proposal (RCP).
  1. Designer will prepare a description of proposed Modifications.
  2. Designer will issue the Request for a Change Proposal form to Contractor. A number will be assigned to the Request for a Change Proposal when issued.
  3. Return a Change Proposal in accordance with Paragraph 12.02 to the Designer for evaluation by the OPT.

#### 12.02 Change Proposals

- A. Submit a Change Proposal (CP) to the Designer for Contractor initiated changes in the Contract Documents or in response to a Request for Change Proposal. A Change Proposal must be submitted to the OAR no later than 30 days after the event initiating the Change Proposal.
  1. Use the Change Proposal form provided.
  2. Assign a number to the Change Proposal when issued.
  3. Include with the Change Proposal:
    - a. A complete description of the proposed Modification if Contractor initiated or proposed changes to the OPT's description of the proposed Modification.
    - b. The reason the Modification is requested, if not in response to a Request for a Change Proposal.
    - c. A detailed breakdown of the cost of the change if the Modification requires a change in Contract Price. The itemized breakdown is to include:
      - 1) List of materials and equipment to be installed;
      - 2) Man hours for classification;
      - 3) Equipment used in construction;
      - 4) Consumable supplies, fuels, and materials;
      - 5) Royalties and patent fees;
      - 6) Bonds and insurance;
      - 7) Overhead and profit;
      - 8) Field office costs; and
      - 9) Other items of cost.

- d. Provide the level of detail outlined in the paragraph above for each Subcontractor or Supplier actually performing the Work if Work is to be provided by a Subcontractor or Supplier. Indicate appropriate Contractor mark-ups for Work provided through Subcontractors and Suppliers. Provide the level of detail outline in the paragraph above for self-performed Work.
  - e. Submit Change Proposals that comply with Article 15 for Cost of Work.
  - f. Provide a revised schedule. Show the effect of the change on the Project Schedule and the Contract Times.
- B. Submit a Change Proposal to the OAR to request a Field Order.
  - C. A Change Proposal is required for all substitutions or deviations from the Contract Documents.
  - D. Request changes to products in accordance with Article 25.

#### 12.03 Designer Will Evaluate Request for Modification

- A. OAR is to advise OPT regarding the Change Proposal. OPT is to review each Change Proposal and Contractor's supporting data, and within 30 days after receipt of the documents, direct the OAR to either approve or deny the Change Proposal in whole or in part. OAR is to issue a Change Order for an approved Change Proposal. The Contractor may deem the Change Proposal to be denied if OAR does not take action on the Change Proposal within 30 days and start the time for appeal of the denial under Article 13.
  - 1. Change Orders and Contract Amendments will be sent to the Contractor for execution with a copy to the Owner recommending approval. A Work Change Directive may be issued if Work needs to progress before the Change Order or Contract Amendment can be authorized by the Owner.
  - 2. Work Change Directives, Change Orders, and Contract Amendments can only be approved by the Owner.
    - a. Work performed on the Change Proposal prior to receiving a Work Change Directive or approval of the Change Order or Contract Amendment is performed at the Contractor's risk.
    - b. No payment will be made for Work on Change Orders or Contract Amendments until approved by the Owner.
- B. The Contractor may be informed that the Request for a Change Proposal is not approved and construction is to proceed in accordance with the Contract Documents.

#### 12.04 Substitutions

- A. The products of the listed Suppliers are to be furnished where Specifications list several manufacturers but do not specifically list "or equal" or "or approved equal" products. Use of any products other than those specifically listed is a substitution. Follow these procedures for a substitution.
- B. Substitutions are defined as any product that the Contractor proposes to provide for the Project in lieu of the specified product. Submit a Change Proposal per Paragraph 12.02 along with a Shop Drawing as required by Article 25 to request approval of a substitution.

- C. Prove that the product is acceptable as a substitute. It is not the Designer's responsibility to prove the product is not acceptable as a substitute.
  - 1. Indicate on a point by point basis for each specified feature that the product is acceptable to meet the intent of the Contract Documents requirements.
  - 2. Make a direct comparison with the specified Suppliers published data sheets and available information. Provide this printed material with the documents submitted.
  - 3. The decision of the Designer regarding the acceptability of the proposed substitute product is final.
- D. Provide a written certification that, in making the substitution request, the Contractor:
  - 1. Has determined that the substituted product will perform in substantially the same manner and result in the same ability to meet the specified performance as the specified product.
  - 2. Will provide the same warranties and/or bonds for the substituted product as specified or as would be provided by the manufacturer of the specified product.
  - 3. Will assume all responsibility to coordinate any modifications that may be necessary to incorporate the substituted product into the Project and will waive all claims for additional Work which may be necessary to incorporate the substituted product into the Project which may subsequently become apparent.
  - 4. Will maintain the same time schedule as for the specified product.
- E. Pay for review of substitutions in accordance with Article 25.

## **ARTICLE 13 – CLAIMS**

### 13.01 Claims

- A. Follow the Claims process described in this Article for the following disputes between Owner and Contractor:
  - 1. Seeking an adjustment of Contract Price or Contract Times;
  - 2. Contesting an initial decision by OAR concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents;
  - 3. Appealing OAR's decision regarding a Change Proposal;
  - 4. Seeking resolution of a contractual issue that OAR has declined to address; or
  - 5. Seeking other relief with respect to the terms of the Contract.
- B. Contractor shall be entitled to an extension of Contract Time for delays or disruptions due to unusually severe weather in excess of weather normally experienced at the job site, as determined from climatological data set forth by the National Weather Service and which affects the Project's critical path. Contractor shall bear the entire economic risk of all weather delays and disruptions. Contractor shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Upon Contractor reaching Substantial Completion, Owner and Contractor shall look back at the entire duration of the calendar day Project and review the totality of what Contractor claims were unusually severe weather disruptions. If the Project was delayed or disrupted due to unusually severe weather in



excess of weather normally experienced over the entire duration of the Project, Contractor may make a Claim for an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of weather normally experienced at the job site, as determined from climatological data set forth by the National Weather Service and which affects the Project's critical path. Any time extension granted shall be non-compensatory.

### 13.02 Claims Process

- A. Claims must be initiated by written notice. Notice must conspicuously state that it is a notice of a Claim in the subject line or first sentence. Notice must also list the date of first occurrence of the claimed event.
- B. Except for Claims resulting from unusually severe weather, notice of a Claim by Contractor must be in writing and delivered to the Owner, Designer and the OAR within 14 days after the start of the event giving rise to the Claim. Failure by Contractor to submit written notice of a Claim within 14 days shall constitute a waiver of such Claim.
- C. Submit the complete Claim with supporting documentation to Owner no later than 60 days after the start of the event giving rise to the Claim (unless Designer allows additional time for claimant to submit additional or more accurate data in support of such Claim). The Claim must be signed and sworn to by Contractor, certifying that the Claim is made in good faith, that the supporting data is accurate and complete, and that to the best of Contractor's knowledge and belief, the relief requested accurately reflects the full compensation to which Contractor is entitled. Failure by Contractor to submit the Claim within 60 days shall constitute a waiver of such Claim.
- D. Any Claims by Contractor that are not brought within 90 days following the termination of the Contract are waived and shall be automatically deemed denied.
- E. Claims by Owner must be submitted by written notice to Contractor.
- F. The responsibility to substantiate a Claim rests with the entity making the Claim. Claims must contain sufficient detail to allow the other party to fully review the Claim.
  - 1. Claims seeking an adjustment of Contract Price must include the Contractor's job cost report. Provide additional documentation as requested by OAR or Designer.
  - 2. Claims seeking an adjustment of Contract Time must include a Time Impact Analysis and native schedule files in Primavera or MS Project digital format. Provide additional documentation as requested by OAR or Designer.
- G. Claims by Contractor against Owner and Claims by Owner against Contractor, including those alleging an error or omission by Designer but excluding those arising under Section 7.12, shall be referred initially to Designer for consideration and recommendation.
- H. Designer will review a Claim by Contractor within 30 days of receipt of the Claim and take one or more of the following actions:
  - 1. Request additional supporting data from the party who made the Claim;
  - 2. Issue a recommendation;
  - 3. Suggest a compromise; or

4. Advise the parties that Designer is not able to make a recommendation due to insufficient information or a conflict of interest.
- I. If the Designer does not take any action, the Claim shall be deemed denied 30 days after receipt of the Claim.
- J. Following receipt of Designer's initial recommendation regarding a Claim, the Contractor and the Owner shall seek to resolve the Claim through the exchange of information and direct negotiations. If no agreement is reached within 90 days, the Claim shall be deemed denied. The Owner and Contractor may extend the time for resolving the Claim by mutual agreement. Notify OAR of any actions taken on a Claim.
- K. If the entity receiving a Claim approves the Claim in whole or in part or denies it in whole or in part, this action is final and binding unless the other entity invokes the procedure described in Article 22 for final resolution of disputes by filing a notice of appeal within 30 days after this action.
- L. If the Owner and Contractor reach a mutual agreement regarding a Claim, the results of the agreement or action on the Claim will be incorporated in a Change Order by the OAR to the extent they affect the Contract Documents, the Contract Price, or the Contract Times.
- M. Both parties shall continue to perform all obligations under the Agreement during the pendency of any dispute or disagreement relating to this Agreement, unless performance would be impracticable or impossible under the circumstances.
- N. Any failure of Contractor to comply with any of the foregoing conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.
- O. Receipt and review of a Claim by City shall not be construed as a waiver of any defenses to the Claim available to the City under the Contract Documents or at law.

#### **ARTICLE 14 – PREVAILING WAGE RATE REQUIREMENTS**

##### **14.01 Payment of Prevailing Wage Rates**

- A. Contractor and any Subcontractors employed on this Project shall pay not less than the rates established by the Owner as required by Texas Government Code Chapter 2258.
- B. Contractor and its Subcontractors are required to pay Davis-Bacon Wage Rates.
- C. Contractor and its Subcontractors are required to pay laborers and mechanics an overtime rate of not less than one and one-half times the basic rate for all hours worked in excess of forty hours in a given workweek.

##### **14.02 Records**

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

- B. The record shall be open at all reasonable hours to inspection by the officers and agents of the Owner.

14.03 Liability; Penalty; Criminal Offense

- A. Tex. Gov't Code §2258.003 – Liability: An officer, agent, or employee of the Owner is not liable in a civil action for any act or omission implementing or enforcing Chapter 2258 unless the action was made in bad faith.
- B. Tex. Gov't Code §2258.023(b) – Penalty: Any Contractor or Subcontractor who violates the requirements of Chapter 2258, shall pay to the Owner, on whose behalf the Contract is made, \$60 for each worker employed on each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract.
- C. Tex. Gov't Code §2258.058 – Criminal Offense:
  - 1. An officer, agent, or representative of the Owner commits an offense if the person willfully violates or does not comply with a provision of Chapter 2258.
  - 2. Any Contractor or Subcontractor, or an agent or representative of the Contractor or Subcontractor, commits an offense if the person violates Tex. Gov't Code §2258.024.
  - 3. An offense is punishable by:
    - a. A fine not to exceed \$500;
    - b. Confinement in jail for a term not to exceed 6 months; or
    - c. Both a fine and confinement.

14.04 Prevailing Wage Rates

- A. Use the Prevailing Wage Rates specified in the Supplementary Conditions.

**ARTICLE 15 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

15.01 Cost of the Work

- A. The Cost of the Work is the sum of costs described in this Paragraph 15.01, except those excluded in Paragraph 15.01.D, necessary for the proper performance of the Work. The provisions of this Paragraph 15.01 are used for two distinct purposes:
  - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price under cost-plus, time-and-materials, or other cost-based terms; or
  - 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price.
- B. Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment when the value of the adjustment is determined on the basis of the Cost of the Work.

- C. Costs included in the Cost of the Work may not exceed the prevailing costs in the proximate area of the Site for similar work unless agreed to by the Owner. Cost of the Work includes only the following items:
1. Payroll costs for Contractor's employees performing the Work, including one foreman per crew, and other required and agreed upon personnel for the time they are employed on the Work. Employees are to be paid according to wage rates for job classifications as agreed to by Owner. Where the Cost of the Work is being used under provisions of Paragraph 15.01.A.2, rates paid for this Work are to be the same as paid for Contract Work as established by certified payroll. Payroll costs may include:
    - a. Actual costs paid for salaries and wages;
    - b. Actual cost paid for fringe benefits, which may include:
      - 1) Social security contributions,
      - 2) Unemployment,
      - 3) Excise and payroll taxes,
      - 4) Workers' compensation,
      - 5) Health and retirement benefits,
      - 6) Bonuses, and
      - 7) Paid time off for sick leave, vacations, and holidays; and
    - c. Actual cost of additional compensation paid for performing Work outside of regular working hours, on Sunday or legal holidays, to the extent authorized by Owner.
  2. Cost of materials and equipment furnished and incorporated in the Work, including transportation and storage costs and required Suppliers' field services. Contractor may retain cash discounts unless Owner provided funds to the Contractor for early payment of these materials and equipment. Cash discounts are to be credited to Owner if the Owner provides funds for early payment. Make provisions for trade discounts, rebates, refunds, and returns from sale of surplus materials and equipment and reduce the Cost of the Work by these amounts.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. Obtain competitive bids from Subcontractors acceptable to Owner unless Owner agrees to use Subcontractors proposed by the Contractor. Bids are to be opened in the presence of the OAR and other designated members for the OPT. Provide copies of bids to the OAR to use in determining, with the OPT, which bids are acceptable. The Subcontractor's Cost of the Work and fee are determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 15.01 if the subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee.
  4. Supplemental costs including the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work;
    - b. Costs of materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site including transportation and maintenance costs;

- c. Costs of hand tools not owned by the workers consumed in the performance of the Work. Costs of hand tools not owned by the workers which are used but not consumed in the performance of the Work and which remain the property of Contractor, less their market value when Work is completed;
  - d. For Contractor- and Subcontractor-owned machinery, trucks, power tools or other equipment, use the FHWA rental rates found in the *Rental Rate Blue Book* (“Blue Book”) multiplied by the regional adjustment factor and the rate adjustment factor to establish hourly rates. Use the rates in effect for each section of the Blue Book at the time of use. Payment will be made for the actual hours used in the Work.
    - 1) Standby costs will be paid at 50% of the FHWA rental rates found in the Blue Book if Contractor is directed by Owner in writing to standby. Standby costs will not be allowed during periods when the equipment would otherwise have been idle. For a six-day work week, no more than eight hours per a 24-hour day, no more than 48 hours per week and no more than 208 hours per month shall be paid of standby time. Operating costs shall not be charged by Contractor.
  - e. Rental of construction equipment, including the costs of transporting, loading, unloading, assembling, dismantling, and removing construction equipment, whether rented from Contractor or others, in accordance with rental agreements approved by Owner. Costs for rental of equipment will not be paid when the equipment is no longer necessary for the Work. Justify idle time for equipment by demonstrating that it was necessary to keep equipment on Site for related future Work;
    - 1) The hourly rate shall be determined by dividing the actual invoice cost by the actual number of hours the equipment is involved in the Work. Owner reserves the right to limit the hourly rate to comparable Blue Book rates.
    - 2) If Contractor is directed to standby in writing by Owner, standby costs will be paid at the invoice daily rate excluding operating costs, which includes fuel, lubricants, repairs and servicing.
  - f. Applicable sales, consumer, use, and other similar taxes related to the Work for which the Owner is not exempt, and which Contractor pays consistent with Laws and Regulations;
  - g. Deposits lost for causes other than negligence of Contractor’s Team;
  - h. Royalty payments and fees for permits and licenses;
  - i. Cost of additional utilities, fuel, and sanitary facilities at the Site;
  - j. Minor expense items directly required by the Work; and
  - k. Premiums for Bonds and insurance required by the Contract Documents.
- D. The Cost of the Work does not include the following items:
- 1. Payroll costs and other compensation of Contractor’s officers, executives, principals of partnerships and sole proprietorships, general managers, safety managers, superintendents, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, clerks, and other personnel employed

by Contractor, whether at the Site or in Contractor's principal or branch office, for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 15.01.C.1 or specifically covered by Paragraph 15.01.C.4. These administrative costs are covered by the Contractor's fee.

2. Office expenses other than Contractor's office at the Site.
  3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  4. Costs due to the actions of Contractor's Team for the correction of Defective Work, disposal of materials or equipment that do not comply with Specifications, and correcting damage to property.
  5. Losses, damages, and related expenses caused by damage to the Work or sustained by Contractor in connection with the performance of the Work. Contractor is entitled to recover costs if covered by insurance provided in accordance with Article 6. Such losses may include settlements made with the approval of Owner. Do not include these losses, damages, and expenses in the Cost of the Work when determining Contractor's fee.
  6. Any Indemnified Cost paid with regard to Contractor's indemnification of Owner.
  7. Other overhead or general expense costs and the costs of items not described in Paragraphs 15.01.C.
- E. The Contractor's fee for profit and overhead is determined as follows:
1. In accordance with the Agreement when the Work is performed on a cost-plus basis;
  2. A mutually acceptable fixed fee; or
  3. A fee based on the following percentages of the various portions of the Cost of the Work:
    - a. The Contractor's fee is 15 percent for costs incurred under Paragraphs 15.01.C.1, 15.01.C.2 and 15.01.C.4;
    - b. The Contractor's fee is 5 percent for costs incurred under Paragraph 15.01.C.3;
    - c. Fees are to be determined as follows where one or more tiers of subcontracts are used:
      - 1) The Subcontractor's fee is 15 percent for costs incurred under Paragraphs 15.01.C.1 and 15.01.C.2 for the Subcontractor that actually performs the Work at whatever tier;
      - 2) The Subcontractor's fee is 5 percent for costs incurred under Paragraph 15.01.C.4 for the Subcontractor that actually performs the Work at whatever tier; and
      - 3) The Contractor and Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work are to be allowed a fee of 5 percent of the fee plus underlying costs incurred by the next lower tier Subcontractor.
    - d. No fee is payable on the basis of costs itemized under Paragraph 15.01.D;

- e. Five percent of the net decrease in the cost is to be deducted for changes which result in a net decrease in Contract Price; and
- 4. The adjustment in Contractor's fee is based on the net change in accordance with Paragraphs 15.05.B.1 through 15.05.B.5, inclusive when both additions and credits are involved in any one change.
- F. Establish and maintain records in accordance with generally accepted accounting practices and submit these records, including an itemized cost breakdown together with supporting data, in a form and at intervals acceptable to OAR whenever the Cost of the Work is to be determined pursuant to this Paragraph 15.01.

#### 15.02 Allowances

- A. Include allowances specified in the Contract Documents in the Contract Price and provide Work covered by the allowance as authorized by the Owner through the OAR.
- B. Contractor agrees that:
  - 1. The cash allowance is used to compensate the Contractor for the cost of furnishing materials and equipment for the Work covered by the allowance item in the Contract Documents. Cost may include applicable taxes. Make provisions for trade discounts, rebates, and refunds and reduce the allowance costs by these amounts.
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances; and
  - 3. Costs for cash allowances and installation costs as described in Paragraphs 15.02.B.1 and 15.02.B.2 above are included in the Contract Price.
- C. OAR will issue a Change Order to adjust the Contract Price by the difference between the allowance amount and the actual amount paid by Contractor for Work covered by the allowance. The Change Order will be issued at the time costs are incurred by Contractor for Work covered by the allowance and this Work is included on the Application for Payment.

#### 15.03 Unit Price Work

- A. The initial Contract Price for Unit Price Work is equal to the sum of the unit price line items in the Agreement. Each unit price line item amount is equal to the product of the unit price for each line item times the estimated quantity of each item as indicated in the Contract.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work are to be based on actual quantities measured for Work in place.
- C. Each unit price is deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. OAR is to determine the actual quantities and classifications of Unit Price Work performed by Contractor to be incorporated into each Application for Payment. OAR's decision on actual quantities is final and binding, subject to the provisions of Paragraph 15.03.E.

- E. Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price within 30 days of OAR's decision under Paragraph 15.03.D, if:
  - 1. The total cost of a particular item of Unit Price Work amounts to 20 percent or more of the total Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 20 percent from the estimated quantity of an item indicated in the Contract;
  - 2. There is no corresponding adjustment with respect to other items of Work; and
  - 3. Contractor believes it has incurred additional expense as a result of this condition or Owner believes that the quantity variation entitles Owner to an adjustment in the Contract Price.

#### 15.04 Contingencies

- A. Contingency funds may be included in the Contract Price to pay for Work not defined specifically by the Contract Documents that is essential to the completion of the Project. Contingency funds will be as described in the Contract.
- B. The contingency funds may be used for costs incurred by the Contractor provided these costs are approved by the Owner. Costs are to be determined and documented in accordance with Paragraph 15.01. The contingency funds are not to be used for the following items:
  - 1. Cost overruns due to changes in material costs after the Contract Price is established, unless specific price escalation provisions are made in the Contract.
  - 2. Rework required to correct Defective Work.
  - 3. Inefficiencies in completing the Work due to the Contractor's selected means, methods, sequences, or procedures of construction.
  - 4. Work Contractor failed to include in the Contract Price.
  - 5. Changes required by changes in Laws and Regulations enacted after the Contract Price is established.
  - 6. Any Work that does not constitute a change in Scope in the Work included in the Contract Price.
- C. OAR is to issue a Change Order for approved expenditures from contingency funds. When the Change Order is issued, the costs are to be added to the Application for Payment. Contractor is to maintain a tabulation showing the contingency amount, adjustments to the contingency amount, and amounts remaining as the Project progresses.
- D. Any contingency amounts that are not included in a Change Order are retained by the Owner. A Change Order will be issued to deduct unused contingency amounts from the Contract Price prior to Final Payment.



## **ARTICLE 16 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### **16.01 Access to Work**

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

### **16.02 Tests, Inspections and Approvals**

- A. OPT may retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform inspections. Notify OAR when the Work is ready for required inspections and tests. Provide adequate notice to allow for coordination with entities providing inspection or testing as determined by the OAR. Cooperate with inspection and testing personnel and assist with providing access for required inspections, tests, and handling test specimens or Samples.
- B. Arrange for and facilitate inspections, tests, and approvals required by Laws or Regulations of governmental entities having jurisdiction that require Work to be inspected, tested, or approved by an employee or other representative of that entity. Pay associated costs and furnish OAR with the required certificates of inspection or approval.
- C. Arrange, obtain, and pay for inspections and tests required:
  - 1. By the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to OPT;
  - 2. To attain OPT's acceptance of materials or equipment to be incorporated in the Work;
  - 3. By manufacturers of equipment furnished under the Contract Documents;
  - 4. For testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work;
  - 5. For acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work;
  - 6. For re-inspecting or retesting Defective Work, including any associated costs incurred by the testing laboratory for cancelled tests or standby time; and
  - 7. For retesting due to failed tests.
- D. Provide independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to OPT to provide these inspections and tests.

### **16.03 Defective Work**

- A. It is Contractor's obligation to ensure that the Work is not Defective.
- B. OPT has the authority to determine whether Work is Defective and to reject Defective Work.
- C. OAR is to notify Contractor of Defective Work of which OPT has actual knowledge.
- D. Promptly correct Defective Work.
- E. Take no action that would void or otherwise impair Owner's special warranties or guarantees when correcting Defective Work.

- F. Pay claims, costs, losses, and damages arising out of or relating to Defective Work, including:
  - 1. Costs for correction, removal, and replacement of Defective Work;
  - 2. Cost of the inspection and testing related to correction of Defective Work;
  - 3. Fines levied against Owner by governmental authorities because of Defective Work; and
  - 4. Costs of repair or replacement of work of others resulting from Defective Work.

#### 16.04 Acceptance of Defective Work

- A. Owner may elect to accept Defective Work instead of requiring correction or removal and replacement of Defective Work provided:
  - 1. This acceptance occurs prior to final payment;
  - 2. Designer confirms that the Defective Work is in general accordance with the design intent and applicable engineering or architectural principles; and
  - 3. Designer confirms that acceptance of the Defective Work does not endanger public health or safety.
- B. Owner may impose a reasonable set-off against payments due under Article 17 for costs associated with OPT's evaluation of Defective Work to determine if it can be accepted and to determine the diminished value of the Work. Owner may impose a reasonable set-off against payments due under Article 17 if the parties are unable to agree as to the decrease in the Contract Price to compensate Owner for the diminished value of Defective Work accepted. OAR is to issue a Modification for acceptance of the Defective Work prior to final payment. Pay an appropriate amount to Owner if the acceptance of Defective Work occurs after final payment.

#### 16.05 Uncovering Work

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

#### 16.06 Owner May Stop the Work

A. Owner may order Contractor to stop the Work if:

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

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

#### 16.07 Owner May Correct Defective Work

A. Owner may remedy deficiencies in the Work after 7 days' notice to Contractor if:

1. Contractor fails to correct Defective Work, or to remove and replace rejected Work as required by OPT;
2. Contractor fails to perform the Work in accordance with the Contract Documents; or
3. Contractor fails to comply with other provisions of the Contract Documents.

B. Owner may:

1. Exclude Contractor from the Site;
2. Take possession of the Work and suspend Contractor's services related to the Work;  
and
3. Incorporate stored materials and equipment in the Work.

C. Allow OPT access to the Site and off-Site storage areas to enable Owner to exercise the rights and remedies under this Paragraph 16.07.

D. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 16.07 are to be charged against Contractor as a set-off against payments due under Article 17. These claims, costs, losses, and damages include costs of repair and the cost of replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's Defective Work.

E. Contractor is not allowed an extension of the Contract Times because of delays in the performance of the Work attributable to the exercise of the Owner's rights and remedies under this Paragraph 16.07.

### **ARTICLE 17 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

#### 17.01 Progress Payments

A. Progress payment requests are to be submitted to the OAR on the Application for Payment form provided by the OAR following procedures in this Article 17.

1. Progress payments for lump sum Work are to be paid on the basis of the earned value to date at the amounts shown in the Schedule of Values submitted as required by Paragraph 17.03. Final payment will be for the total lump sum amount.
  2. Progress payments for Unit Price Work are based on the number of units completed as determined under the provisions of Paragraph 15.03.
  3. Progress payments for Work to be paid on the basis of the Cost of the Work per Paragraphs 15.01, 15.02 and 15.04 are to be paid for Work completed by Contractor during the pay period.
- B. Reduction in Payment by Owner:
1. Owner is entitled to impose a set-off against payment based on the following:
    - a. Claims made against Owner or costs, losses, or damages incurred by Owner related to:
      - 1) Contractor's conduct in the performance of the Work, including, but not limited to, workplace injuries, non-compliance with Laws and Regulations, or patent infringement; or
      - 2) Contractor's failure to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site, including but not limited to, workplace injuries, property damage, and non-compliance with Laws and Regulations.
    - b. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
    - c. Work is Defective, or completed Work has been damaged by Contractor's Team, requiring correction or replacement;
    - d. Owner has been required to correct Defective Work or complete Work in accordance with Paragraph 16.07;
    - e. The Contract Price has been reduced by Change Orders;
    - f. Events have occurred that would constitute a default by Contractor justifying a termination for cause;
    - g. Liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or completion of the Work;
    - h. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of these Liens;
    - i. Failure to submit up-to-date record documents as required by the Contract Documents;
    - j. Failure to submit monthly Progress Schedule updates or revised schedules as requested by the OAR;
    - k. Failure to provide Project photographs required by the Contract Documents;
    - l. Failure to provide Certified Payroll required by the Contract Documents;

- m. Compensation for OPT for overtime charges of OAR or RPR, third review of documents, review of substitutions, re-inspection fees, inspections or designs related to correction of Defective Work, or other services identified as requiring payment by the Contractor;
  - n. Costs for tests performed by the Owner to verify that Work previously tested and found to be Defective has been corrected;
  - o. OPT has actual knowledge of the occurrence of events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents with associated cost impacts;
  - p. Other items entitling Owner to a set-off against the amount recommended; or
  - q. Payment would result in an over-payment of the Contract Price.
- 2. Compensation for services of OPT staff is to be at the rates established by negotiations between OPT and Contractor.
  - 3. OAR is to notify Contractor stating the amount and the reasons for an imposed set-off. The Owner is to pay the Contractor amounts remaining after deduction of the set-off. Owner is to pay the set-off amount agreed to by Owner and Contractor if Contractor remedies the reasons for the set-off. Contractor may submit a Change Proposal contesting the set-off.
- C. Delayed Payments:
- 1. No money shall be paid by Owner upon any claim, debt, demand, or account whatsoever, to any person, firm, or corporation who is in arrears to Owner for taxes; and Owner shall be entitled to counterclaim and automatically offset against any such debt, claim, demand, or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand, or account after said taxes are due, shall affect the right of Owner to offset said taxes, and associated penalties and interest if applicable, against the same.
  - 2. No payment will be made for Work authorized by a Work Change Directive until the Work Change Directive is incorporated into a Change Order. Payment can be included in an Application for payment when the Change Order is approved.
- D. The Owner is to pay the amount of payment recommended by the OAR within 30 days after receipt of the Application for Payment and accompanying documentation from the OAR.

#### 17.02 Application for Payment

- A. Submit Applications for Payment for completed Work and for materials and equipment in accordance with the Supplementary Conditions, the Agreement, and this Article 17. The Contract Price is to include costs for:
- 1. Providing the Work in accordance with the Contract Documents;
  - 2. Installing Owner furnished equipment and materials;
  - 3. Providing Work for Alternates and Allowances;
  - 4. Commissioning, start-up, training and initial maintenance and operation;
  - 5. Acceptance testing in manufacturer's facilities or on Site;

6. All home office overhead costs and expenses, including profit made directly or indirectly for the Project;
7. Project management, Contract administration, field office, and field operations staff, including supervision, clerical support, and technology system support;
8. Professional services including design fees, legal fees, and other professional services;
9. Bonds and insurance;
10. Permits, licenses, patent fees, and royalties;
11. Taxes;
12. Providing all documents and Samples required by the Contract Documents;
13. Facilities and equipment at the Site including:
  - a. Field offices, office furnishings, and all related office supplies, software, and equipment,
  - b. Storage facilities for Contractor's use, storage facilities for stored materials and equipment, including spare parts storage,
  - c. Shops, physical plant, construction equipment, small tools, vehicles, technology and telecommunications equipment,
  - d. Safety equipment and facilities to provide safe access and working conditions for workers and for others working at the Site,
  - e. Temporary facilities for power and communications,
  - f. Potable water and sanitation facilities, and
  - g. Mobilization and demobilization for all of these facilities and equipment;
14. Products, materials, and equipment stored at the Site or other suitable location;
15. Products, materials, and equipment permanently incorporated into the Project;
16. Temporary facilities for managing water, including facilities for pumping, storage, and treatment as required for construction and protection of the environment;
17. Temporary facilities for managing environment conditions and Constituents of Concern;
18. Temporary facilities such as sheeting, shoring, bracing, formwork, embankments, storage facilities, working areas, and other facilities required for construction of the Project;
19. Temporary and permanent facilities for protection of all overhead, surface, or underground structures or features;
20. Temporary and permanent facilities for removal, relocation, or replacement of any overhead, surface, or underground structures or features;
21. Products, materials, and equipment consumed during the construction of the Project;
22. Contractor labor and supervision to complete the Project, including that provided through Subcontractors or Suppliers;

23. Correcting Defective Work during the Contract Times, during the Correction Period, or as required to meet any warranty provision of the Contract Documents;
  24. Risk associated with weather and environmental conditions, start-up, and initial operation of facilities including equipment, processes, and systems;
  25. Contractor's safety programs, including management, administration, and training;
  26. Maintenance of facilities, including equipment, processes, and systems until operation is transferred to Owner;
  27. Providing warranties, extended or special warranties, or extended service agreements;
  28. Cleanup and disposal of any and all surplus materials; and
  29. Demobilization of all physical, temporary facilities not incorporated into the Project.
- B. Include the cost not specifically set forth as an individual payment item but required to provide a complete and functional system in the Contract Price.
  - C. Provide written approval of the surety company providing Bonds for the Schedule of Values, Application for Payment form, and method of payment prior to submitting the first Application for Payment. Payment will not be made without this approval.
  - D. OAR may withhold processing Applications for Payment if any of the following processes or documentation are not up to date:
    1. Record Documents per Article 20.
    2. Progress Schedule per Article 27.
    3. Project photographs per Article 28.
    4. Documentation required to comply with Owner's Minority / MBE / DBE Participation Policy.
    5. Documentation required to substantiate any approved Project deviation, including overruns of Designer's estimated quantity.
    6. Documentation required by funding agency, if applicable.

#### 17.03 Schedule of Values

- A. Submit a detailed Schedule of Values for the Work at least 10 days prior to submitting the first Application for Payment.
- B. Submit the Schedule of Values in the form attached to the Application for Payment - Tabulation of Earned Value of Original Contract Performed.
- C. Do not submit an Application for Payment until the Schedule of Values has been approved by the OAR.
- D. If unit prices are included in the Contract, use each unit price line item in the Contract as a unit price line item in the Schedule of Values.
- E. Divide lump sum line items, including Subcontractor and Supplier amounts in the Schedule of Values into smaller components to allow more accurate determination of the earned value for each item.

1. Provide adequate detail to allow a more accurate determination of the earned value expressed as a percentage of Work completed for each item.
  2. Line items may not exceed \$50,000.00, unless they are for products, materials or equipment permanently incorporated into the Project that cannot be subdivided into units or subassemblies.
  3. Lump sum items may be divided into an estimated number of units to determine earned value.
    - a. The estimated number of units times the cost per unit must equal the lump sum amount for that line item.
    - b. Contractor will receive payment for the lump sum for the line item, regardless of the number of units installed, unless an adjustment is made by Change Order.
  4. Include Contractor's overhead and profit in each line item in proportion to the value of the line item to the Contract Price.
  5. Include the cost not specifically set forth as an individual payment item but required to provide a complete and functional system in the Contract Price for each item.
  6. These line items may be used to establish the value of Work to be added or deleted from the Project.
  7. The sum of all values listed in the schedule must equal the total Contract Price.
- F. Subdivide each line item in the Schedule of Values into two payment components. The first component is the direct cost for products, materials, and equipment permanently incorporated into the Project. The second component is all other costs associated with the item in the Contract. The sum of the two components must equal the value of the line item in the Schedule of Values.
- G. Where a percentage of the line value is allowed for a specified stage of completion, show the value for each stage of completion as a component of that line item cost.

#### 17.04 Schedule of Anticipated Payments and Earned Value

- A. Submit a schedule of the anticipated Application for Payments showing the application numbers, submission dates, and the anticipated amount to be requested. Incorporate retainage into the development of this schedule of anticipated payments.
- B. Submit a tabulation of the anticipated Total Earned Value of Fees, Work, and Materials to create a graphic (curve) representation of the anticipated progress on the Project each month. Adjust this table and curve to incorporate Modifications. Use this curve to compare actual progress on the Project each month by comparing the anticipated cumulative Total Earned Value of Fees, Work, and Materials to the actual Total Earned Value of Fees, Work, and Materials each month. Use the comparison of values to determine performance on budget and schedule.
- C. Update the Schedule of Payments as necessary to provide a reasonably accurate indication of the funds required to make payments each month to the Contractor for Work performed.



## 17.05 Basis for Payments

### A. Lump Sum Contracts:

1. Payment will be made for the earned value of Work completed during the payment period expressed as a percentage of Work completed for each line item during the payment period per the Contract Documents.
2. Payment amount is the value of Work completed per the Contract Documents multiplied by the percentage of Work completed.
3. Payment for lump sum items divided into an estimated number of units to determine earned value per Paragraph 17.03 will be made for the measured number of units.
4. Payment for stored materials and equipment will be made per Paragraph 17.06.

### B. Unit Price Contracts:

1. Payment will be made for the actual quantity of Work completed during the payment period and for materials and equipment stored during the payment period per the Contract Documents.
  - a. Payment amount is the Work quantity measured per the Contract Documents multiplied by the unit prices for that line item in the Contract.
  - b. Payment for stored materials and equipment will be made per Paragraph 17.06.
2. Measure the Work described in the Contract for payment. Payment will be made only for the actual measured and/or computed length, area, solid contents, number, and weight, unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside finished dimensions shown in the Contract Documents. Include cost for waste, overages, and tolerances in the unit price for that line item.

## 17.06 Payment for Stored Materials and Equipment

### A. Store materials and equipment properly at the Site.

1. Payment will be made for the invoice amount less the specified retainage.
2. Payment for materials and equipment shown in the Application for Payment and attachments will be made for the invoice amount, up to the value shown in the Schedule of Values for that line item. Costs for material and equipment in excess of the value shown in the Schedule of Values may not be added to other line items.
3. Payment will be made in full for the value shown in the line item for products and materials if invoices for materials and equipment are less than the amount shown in the line item and it can be demonstrated that no additional materials or equipment are required to complete Work described in that item.
4. Provide invoices at the time materials are included on the Application for Payment and attachments. Include invoice numbers so that a comparison can be made between invoices and amounts included on the Application for Payment and attachments.

### B. Provide a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of Liens. Provide documentation of payment for

materials and equipment with the next Application for Payment. Adjust payment to the amount actually paid if this differs from the invoice amount. Remove items from the tabulation of materials and equipment if this documentation is not provided. Payment will not be made for material and equipment without documentation of payment.

- C. Contractors can be paid for non-perishable materials on hand stored at the site, provided that invoices are furnished to the City for verification of the material value, and that Contractor provides documents, satisfactory to the City, that show that the material supplier has been paid for the materials delivered to the work site.
- D. Provide evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest.
- E. The Work covered by progress payments becomes the property of the Owner at the time of payment. The Contractor's obligations with regard to proper care and maintenance, insurance, and other requirements are not changed by this transfer of ownership until accepted in accordance with the General Conditions.
- F. Payment for materials and equipment does not constitute acceptance of the product.

#### 17.07 Retainage and Set-Offs

- A. Retainage will be withheld from each Application for Payment per the Agreement. Retainage will be released per the General Conditions.
- B. Reduce payments for set-offs per the General Conditions. Include the appropriate attachment to the Application for Payment.

#### 17.08 Procedures for Submitting an Application for Payment

- A. Submit a draft Application for Payment to the OAR each month at least 20 days before the date established in the Contract for Owner to make progress payments. Do not submit Applications for Payment more often than monthly. Review the draft Application for Payment with the OAR to determine concurrence with:
  - 1. The earned value for each lump sum item including the value of properly stored and documented materials and equipment for each item in the original Contract.
  - 2. The quantity of Work completed for each unit price item.
  - 3. Set-offs included in the Application for Payment.
  - 4. Values requested for materials and equipment consistent with invoices for materials and equipment.
- B. Submit Applications for Payment monthly through the OAR after agreement has been reached on the draft Application for Payment.
  - 1. Number each application sequentially and include the dates for the application period.
  - 2. Show the total amounts for earned value of original Contract performed, earned value for Work on approved Contract Amendments and Change Orders, retainage, and set-offs. Show total amounts that correspond to totals indicated on the attached tabulation for each.

3. Include Attachment A to show the earned value on each line item in the Schedule of Values for Work shown in the original Contract.
  4. Include Attachment B to show the earned value on line items for approved Change Orders. Add items to Attachment B as Change Orders are approved. Change Orders must be approved before payment can be made on Change Order items.
  5. Include Attachment C to document set-offs required per the Contract Documents. Show each set-off as it is applied. Show a corresponding line item to reduce the set-off amount if a payment held by a set-off is released for payment.
  6. Include Attachment D to allow tracking of invoices used to support amounts requested as materials in Attachments A and B. Enter materials to show the amount of the invoice assigned to each item in Attachment A or B if an invoice includes materials used on several line items.
  7. Complete the certification stating that all Work, including materials and equipment, covered by this Application for Payment have been completed or delivered and stored in accordance with the Contract Documents, that all amounts have been paid for Work, materials, and equipment for which previous payments have been made by the Owner, and that the current payment amount shown in this Application for Payment is now due.
- C. Submit attachments in Portable Document Format (PDF):
1. Generate attachments to the Application for Payment using the Excel spreadsheet provided.
  2. Submit PDF documents with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.

#### 17.09 Responsibility of Owner's Authorized Representative

- A. OAR will review draft Application for Payment with Contractor to reach an agreement on the values that will be recommended for payment by the OAR.
- B. OAR will review Application for Payment submitted by Contractor to determine that the Application for Payment has been properly submitted and is in accordance with the agreed to draft Application for Payment.
- C. OAR is to either recommend payment of the Application for Payment to Owner or notify the Contractor of the OPT's reasons for not recommending payment. Contractor may make necessary corrections and resubmit the Application for Payment if it is not recommended within 10 days after receipt of the notice. OAR will review resubmitted Application for Payment and reject or recommend payment of the Application for Payment to Owner as appropriate.
- D. OAR's recommendation of the Application for Payment constitutes a representation by OPT that based on their experience and the information available:
  1. The Work has progressed to the point indicated;
  2. The quality of the Work is generally in accordance with the Contract Documents; and
  3. Requirements prerequisite to payment have been met.

- E. This representation is subject to:
  - 1. Further evaluation of the Work as a functioning whole;
  - 2. The results of subsequent tests called for in the Contract Documents; or
  - 3. Any other qualifications stated in the recommendation.
- F. OPT does not represent by recommending payment:
  - 1. Inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
  - 2. Other matters or issues between the parties that might entitle Contractor to additional compensation or entitle Owner to withhold payment to Contractor may or may not exist.
- G. Neither OPT's review of Contractor's Work for the purposes of recommending payments nor OAR's recommendation of payment imposes responsibility on OPT:
  - 1. To supervise, direct, or control the Work;
  - 2. For the means, methods, techniques, sequences, or procedures of construction, or safety precautions and programs;
  - 3. For Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - 4. To make examinations to ascertain how or for what purposes Contractor has used the monies paid on account of the Contract Price; or
  - 5. To determine that title to the Work, materials, or equipment has passed to Owner free and clear of Liens.

#### 17.10 Contractor's Warranty of Title

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

#### 17.11 Substantial Completion

- A. Notify OAR when Contractor considers the entire Work substantially complete and request a Certificate of Substantial Completion.
- B. OPT is to inspect the Work within 30 days after Contractor's notification to determine if the Work is substantially complete. OAR, within 120 days after receipt of Contractor's notification, is to either issue the Certificate of Substantial Completion which sets the date of Substantial Completion or notify Contractor of the reasons the Project is not considered to be substantially complete.

- C. The OPT and Contractor are to meet to discuss Owner's use or occupancy of the Work following Substantial Completion. Items to be discussed at this meeting include:
  - 1. Review of insurance policies with respect to the end of the Contractor's coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner;
  - 2. Owner's assumption of responsibility for security, operation, protection of the Work, maintenance, and utilities upon Owner's use or occupancy of the Work;
  - 3. Contractor's obligations for operations and maintenance during performance and acceptance testing;
  - 4. Contractor's access to the Site to complete punch list items; and
  - 5. Procedures for correction of Defective Work during the 1-year correction period.

#### 17.12 Partial Utilization

- A. Owner may use or occupy substantially completed parts of the Work which are specifically identified in the Contract Documents, or which OPT and Contractor agree constitutes a separately functioning and usable part of the Work prior to Substantial Completion of the Work. Owner must be able to use that part of the Work for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. Contractor and OPT are to follow the procedures of Paragraph 17.11 for this part of the Work.
- B. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Article 6.

#### 17.13 Final Inspection

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

#### 17.14 Final Application for Payment

- A. Include adjustments to the Contract Price in the final Application for Payment for:
  - 1. Approved Change Orders and Contract Amendments,
  - 2. Allowances not previously adjusted by Change Order,
  - 3. Deductions for Defective Work that has been accepted by the Owner,
  - 4. Penalties and bonuses,
  - 5. Deductions for liquidated damages,
  - 6. Deduction for all final set-offs, and
  - 7. Other adjustments if needed.
- B. OAR will prepare a final Change Order reflecting the approved adjustments to the Contract Price which have not been covered by previously approved Change Orders and if necessary reconcile estimate unit price quantities with actual quantities.

#### 17.15 Final Payment

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

#### 17.16 Waiver of Claims

- A. The making of final payment does not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from:
  - 1. Unsettled Liens or claims for non-payment;
  - 2. Defective Work appearing after final inspection;
  - 3. Contractor's failure to comply with the Contract Documents or the terms of specified special guarantees; or
  - 4. Contractor's continuing obligations under the Contract Documents.
- B. Contractor waives claims and rights against Owner by accepting final payment with the exception of those Claims made in accordance with the provisions of Article 22 and specifically noted in the Certificate of Final Completion.

#### 17.17 Correction Period

- A. Promptly correct Defective Work without cost to Owner for 1 year after the date of Substantial Completion or, in the event of a latent defect, within 1 year after discovery thereof by City.
- B. Promptly correct damages to the Site or adjacent areas that Contractor has arranged to use through construction easements or other agreements. Promptly correct damages to Work or the work of others. Make corrections without cost to Owner.
- C. Owner may have the Defective Work and damages described in Paragraphs 17.17.A and 17.17.B corrected if Contractor does not comply with the terms of OAR's instructions, or in an emergency where delay would cause serious risk of loss or damage.

- D. Contractor's obligation to indemnify Owner for claims arising out of or related to the correction of Defective Work are as set forth in Paragraph 7.14.
- E. The correction period starts to run from the date when a specific item of equipment or system is placed in continuous beneficial use by Owner before Substantial Completion of Work if so provided in the Specifications or if accepted for beneficial use by the Owner.
- F. Contractor's obligations under this Paragraph 17.17 are in addition to other obligations or warranties. The provisions of this Paragraph 17.17 are not a substitute for, or a waiver of, the provisions of applicable statutes of limitation or repose.

## **ARTICLE 18 – SUSPENSION OF WORK AND TERMINATION**

### **18.01 Owner May Suspend Work**

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

### **18.02 Owner May Terminate for Cause**

- A. The occurrence of one or more of the following events constitutes a default by Contractor and justifies termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents, including failure to supply sufficient skilled workers or suitable materials or equipment;
  - 2. Failure to adhere to the Progress Schedule;
  - 3. Failure of the Contractor to provide a satisfactory replacement Bond or insurance in the event either is lost or canceled;
  - 4. Failure of Contractor to maintain financial solvency to adequately complete the Project as indicated by one or more of the following:
    - a. A petition of bankruptcy is filed by or against Contractor,
    - b. Contractor is adjudged as bankrupt or insolvent,
    - c. Contractor or surety makes a general assignment for the benefit of creditors,
    - d. A receiver is appointed for the benefit of Contractor's creditors, or
    - e. A receiver is appointed on account of Contractor's insolvency;
  - 5. Contractor's disregard of Laws or Regulations of public bodies having jurisdiction;
  - 6. Contractor's repeated disregard of the authority of OPT;
  - 7. Contractor's failure to prosecute the work with diligence; or

8. Contractor's other material breach of the contract.
- B. Contractor and surety must provide adequate assurance of future performance in accordance with the Contract Documents that is satisfactory to Owner if Contractor is believed to be in financial distress due to the existence of one or more of the indicators listed in Paragraph 18.02.A.4. Owner may terminate Contractor's performance under this Contract if Contractor and surety fail to provide adequate documentation satisfactory to Owner within 10 days of OAR's request for this information.
- C. Owner may declare Contractor to be in default, give notice to Contractor and surety that Contractor's performance under the Contract is terminated, and enforce the rights available to Owner under the Performance Bond after giving Contractor and surety 10 days' notice that one or more of the events identified in Paragraph 18.02.A has occurred.
- D. Owner may exclude Contractor from the Site, take possession of the Work, incorporate the materials and equipment stored and complete the Work as Owner may deem expedient if Owner has terminated Contractor's performance under the Contract for cause.
- E. Owner may elect not to proceed with termination of Contractor's performance under the Contract under this Paragraph 18.02 if Contractor begins to cure the cause for termination within 7 days of receipt of notice of intent to terminate.
- F. Contractor is not entitled to receive further payments until the Work is completed if Owner proceeds as provided in this Paragraph 18.02. The amount of the Contract Price remaining is to be paid to the Contractor if the unpaid balance exceeds the cost to complete the Work. The cost to complete the Work may include related claims, costs, losses, damages, and the fees and charges of engineers, architects, attorneys, and other professionals retained by Owner. Pay the difference to Owner if the cost to complete the Work including related claims, costs, losses, and damages exceeds the unpaid balance of the Contract Price. Owner is not required to obtain the lowest price for the Work performed when exercising its rights or remedies under this paragraph.
- G. Termination of Contractor's performance does not affect the rights or remedies of Owner against Contractor or against surety under the Payment Bond or Performance Bond. Owner does not release Contractor from liability by paying or retaining money due Contractor.
- H. In the event the Owner terminates the contract for cause, and it is later determined that cause for termination was lacking, the termination will be deemed a termination without cause under Paragraph 18.03.

### 18.03 Owner May Terminate For Convenience

- A. Owner may terminate the Contract without cause after giving 7 days' notice to Contractor of the effective date of termination. Contractor is to be paid for the following if Owner terminates for convenience:
  1. Work completed in accordance with the Contract Documents prior to the effective date of termination;
  2. Actual costs sustained prior to the effective date of termination for Work in progress, plus a fee calculated in accordance with Paragraph 15.05; and
  3. Reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.



- B. No payment is payable to Contractor for loss of anticipated overhead, profits or revenue, or other economic loss arising out of or resulting from this termination.

## **ARTICLE 19 – PROJECT MANAGEMENT**

### 19.01 Work Included

- A. Furnish resources required to complete the Project with an acceptable standard of quality within the Contract Times.
- B. Construct Project in accordance with current safety practices.
- C. Manage Site to allow access to Site and control construction operations.
- D. Construct temporary facilities to provide and maintain control over environmental conditions at the Site. Remove temporary facilities when no longer needed.
- E. Provide temporary controls for pollutions, management of water and management of excess earth.

### 19.02 Quality Assurance

- A. Employ competent workmen, skilled in the occupation for which they are employed. Provide Work meeting quality requirements of the Contract Documents.
- B. Remove Defective Work from the Site immediately unless provisions have been made and approved by the OPT to allow repair of the product at the Site. Clearly mark Work as Defective until it is removed or allowable repairs have been completed.

### 19.03 Document Submittal

- A. Provide documents in accordance with Article 24.
  - 1. Provide copies of Supplier's printed storage instructions prior to furnishing materials or products and installation instructions prior to beginning the installation.
  - 2. Incorporate field notes, sketches, recordings, and computations made by the Contractor in Record Data.

### 19.04 Required Permits

- A. Obtain building permits for the Project from the local authorities having jurisdiction. Pay building permit fees and include this cost in the Contract Price.
- B. Obtain environmental permits required for construction at the Site.
- C. Provide required permits for transporting heavy or oversized loads.
- D. Provide other permits required to conduct any part of the Work.
- E. Arrange for inspections and certification by agencies having jurisdiction over the Work.
- F. Make arrangements with private utility companies and pay for fees associated with obtaining services, or for inspection fees.
- G. Retain copies of permits and licenses at the Site and observe and comply with all regulations and conditions of the permit or license.

#### 19.05 Safety Requirements

- A. Manage safety to protect the safety and welfare of persons at the Site.
- B. Provide safe access to move through the Site. Provide protective devices to warn and protect from hazards at the Site.
- C. Provide safe access for those performing tests and inspections.
- D. Comply with latest provisions of the Occupational Health and Safety Administration and other Laws and Regulation.
- E. Cooperate with accident investigations. Provide two copies of all reports, including insurance company reports, prepared concerning accidents, injury, or death related to the Project to the OAR as Record Data per Article 26.

#### 19.06 Access to the Site

- A. Maintain access to the facilities at all times. Do not obstruct roads, pedestrian walks, or access to the various buildings, structures, stairways, or entrances. Provide safe access for normal operations during construction.
- B. Provide adequate and safe access for inspections. Leave ladders, bridges, scaffolding, and protective equipment in place until inspections have been completed. Construct additional safe access if required for inspections.
- C. Use roadways for construction traffic only with written approval of the appropriate representatives of each entity. Obtain written approval to use roads to deliver heavy or oversized loads to the Site. Furnish copies of the written approvals to the Owner as Record Data per Article 26.

#### 19.07 Contractor's Use of Site

- A. Limit the use of Site for Work and storage to those areas designated on the Drawings or approved by the OAR. Coordinate the use of the premises with the OAR.
- B. Provide security at the Site as necessary to protect against vandalism and loss by theft.
- C. Do not permit alcoholic beverages or illegal substances on the Site. Do not allow persons under the influence of alcoholic beverages or illegal substances to enter or remain on the Site at any time. Persons on Site under the influence of alcoholic beverages or illegal substances will be permanently prohibited from returning to the Site. Criminal or civil penalties may also apply.
- D. Park construction equipment in designated areas only and provide spill control measures.
- E. Park employees' vehicles in designated areas only.
- F. Obtain written permission of the Owner before entering privately-owned land outside of the Owner's property, rights-of-way, or easements.
- G. Do not allow the use of audio devices, obnoxious, vulgar or abusive language, or sexual harassment in any form. These actions will cause immediate and permanent removal of the offender from the premises. Criminal or civil penalties may apply.

- H. Require Workers to wear clothing that is inoffensive and meets safety requirements. Do not allow sleeveless shirts, shorts, exceedingly torn, ripped, or soiled clothing to be worn on the Project.
- I. Do not allow firearms or weapons of any sort to be brought on to the Site under any conditions. No exception is to be made for persons with concealed handgun permits. Remove any firearms or weapons and the person possessing these firearms or weapons immediately from the Site.

#### 19.08 Protection of Existing Structures and Utilities

- A. Examine the Site and review the available information concerning the Site. Locate utilities, streets, driveways, fences, drainage structures, sidewalks, curbs, and gutters. Verify the elevations of the structures adjacent to excavations. Report any discrepancies from information in the Contract Documents to the OAR before beginning construction.
- B. Determine if existing structures, poles, piping, or other utilities at excavations will require relocation or replacement. Prepare a Plan of Action and coordinate Work with local utility companies and others for the relocation or replacement.
- C. Protect buildings, utilities, street surfaces, driveways, sidewalks, curb and gutter, fences, wells, drainage structures, piping, valves, manholes, electrical conduits, and other systems or structures unless they are shown to be replaced or relocated on the Drawings. Restore damaged items to the satisfaction of the OPT and utility owner.
- D. Carefully support and protect all structures and/or utilities so that there will be no failure or settlement where excavation or demolition endangers adjacent structures and utilities. Do not take existing utilities out of service unless required by the Contract Documents or approved by the OAR. Notify and cooperate with the utility owner if it is necessary to move services, poles, guy wires, pipelines, or other obstructions.
- E. Protect existing trees and landscaping at the Site.
  - 1. Identify trees that may be removed during construction with OPT.
  - 2. Mark trees to be removed with paint.
  - 3. Protect trees to remain from damage by wrapping trunks with 2 x 4 timbers around the perimeter, securely wired in place, where machinery must operate around existing trees. Protect branches and limbs from damage by equipment.
  - 4. Protect root zone from compaction.

#### 19.09 Pre-Construction Exploratory Excavations

- A. Excavate and expose existing pipelines that cross within 20 feet of Project pipelines prior to any Work. Survey the line to determine its exact vertical and horizontal location at each point the existing pipeline may potentially conflict with the Work.
- B. Excavate and expose existing parallel pipelines at 300 foot intervals (maximum) for existing pipelines which are within 10 feet of Project pipelines. Survey the line to determine its exact vertical and horizontal location at each point where the line is excavated and exposed.

- C. Prepare a Plan of Action indicating the owner of pipelines excavated and surveyed and all pertinent survey data, including the station where lines cross or conflicts may exist and the distance to the pavement centerline and elevations of the top of existing pipelines.
- D. Do not perform Work on the Project until all exploratory excavations have been completed and the Plan of Action has been approved by the OAR.
- E. Unless specifically indicated otherwise in the Bid Form, no separate payment will be made for pre-construction exploratory excavations. Include the cost for pre-construction exploratory excavations in the unit price for the pipe construction or other applicable feature. When necessary, pavement repairs associated with exploratory excavations that are beyond the limits of the new pavement will be paid for at the unit prices for pavement repair when an item is included in the Bid Form. When an item for pavement repair is not included in the Bid Form, the cost should be included in the unit price for the pipe construction or other applicable feature.

#### 19.10 Disruption of Services/Continued Operations

- A. Existing facilities are to continue in service as usual during the construction unless noted otherwise. Owner of utilities must be able to operate and maintain the facilities. Keep disruptions to existing utilities, piping, process piping, or electrical services to a minimum.
  - 1. Do not restrict access to critical valves or operators.
  - 2. Limit operations to the minimum amount of space needed to complete the specified Work.
  - 3. Maintain storm sewers and sanitary sewers in service at all times. Provide temporary service around the construction or otherwise construct the structure in a manner that the flow is not restricted.
- B. Provide a Plan of Action if facilities must be taken out of operation.

#### 19.11 Field Measurements

- A. Perform complete field measurements prior to purchasing products or beginning construction for products required to fit existing conditions.
- B. Verify property lines, control lines, grades, and levels indicated on the Drawings.
- C. Check Shop Drawings and indicate the actual dimensions available where products are to be installed.
- D. Include field measurements in Record Data as required in Article 26.

#### 19.12 Reference Data and Control Points

- A. The OPT will provide the following control points:
  - 1. Base line or grid reference points for horizontal control.
  - 2. Benchmarks for vertical control.
- B. Locate and protect control points prior to starting the Work and preserve permanent reference points during construction. Designated control points may be on an existing structure or monument. Do not change or relocate points without prior approval of the OAR.

Notify OAR when the reference point is lost, destroyed, or requires relocation. Replace Project control points on the basis of the original survey.

- C. Provide complete engineering layout of the Work needed for construction.
  - 1. Provide competent personnel. Provide equipment including accurate surveying instruments, stakes, platforms, tools, and materials.
  - 2. Provide surveying with accuracy meeting the requirements established for Category 5 Construction Surveying as established in the Manual of Practice of Land Surveying in Texas published by the Texas Society of Professional Surveyors, latest revision.
  - 3. Record Data and measurements per standards.

#### 19.13 Delivery and Storage

- A. Deliver products and materials to the Site in time to prevent delays in construction.
- B. Deliver packaged products to Site in original undamaged containers with identifying labels attached. Open cartons as necessary to check for damage and to verify invoices. Reseal cartons and store properly until used. Leave products in packages or other containers until installed.
- C. Assume full responsibility for the protection and safekeeping of products stored at the Site.
- D. Store products at locations acceptable to the OAR and to allow Owner access to maintain and operate existing facilities.
- E. Store products in accordance with the Supplier's storage instructions immediately upon delivery. Leave seals and labels intact.
- F. Provide additional storage areas as needed for construction. Store products subject to damage by elements in substantial weather-tight enclosures or storage sheds. Provide and maintain storage sheds as required for the protection of products. Provide temperature, humidity control, and ventilation within the ranges stated in the Supplier's instructions. Remove storage facilities at the completion of the Project.
- G. Protect the pipe interior. Keep all foreign materials such as dirt, debris, animals, or other objects out of the pipe during the Work. Cap or plug ends of installed pipe in an approved manner when pipe is not being installed. Clean or wash out pipe sections that become contaminated before continuing with installation. Take precautions to prevent the pipe from floating or moving out of the proper position during or after laying operations. Immediately correct any pipe that moves from its correct position.
- H. Provide adequate exterior storage for products that may be stored out-of-doors.
  - 1. Provide substantial platforms, blocking, or skids to support materials and products above ground which has been sloped to provide drainage. Protect products from soiling or staining.
  - 2. Cover products subject to discoloration or deterioration from exposure to the elements, with impervious sheet materials. Provide ventilation to prevent condensation below covering.
  - 3. Store loose, granular materials on clean, solid surfaces, or on rigid sheet materials, to prevent mixing with foreign matter.

4. Provide surface drainage to prevent erosion and ponding of water.
  5. Prevent mixing of refuse or chemically injurious materials or liquids with stored materials.
  6. Pipes and conduits stored outdoors are to have open ends sealed to prevent the entrance of dirt, moisture, and other injurious materials. Protect PVC pipe from ultraviolet light exposure.
  7. Store light weight products to prevent wind damage.
- I. Maintain storage facilities. Inspect stored products on a weekly basis and after periods of severe weather to verify that:
    1. Storage facilities continue to meet specified requirements;
    2. Supplier's required environmental conditions are continually maintained; and
    3. Products that can be damaged by exposure to the elements are not adversely affected.
  - J. Replace any stored item damaged by inadequate protection or environmental controls.
  - K. Payment may be withheld for any products not properly stored.

#### 19.14 Cleaning During Construction

- A. Provide positive methods to minimize raising dust from construction operations and provide positive means to prevent air-borne dust from discharging into the atmosphere. Control dust and dirt from demolition, cutting, and patching operations.
- B. Clean the Project as Work progresses and dispose of waste materials, keeping the Site free from accumulations of waste or rubbish. Provide containers on Site for waste collection. Do not allow waste materials or debris to blow around or off of the Site. Control dust from waste materials. Transport waste materials with as few handlings as possible.
- C. Comply with Laws and Regulations. Do not burn or bury waste materials. Remove waste materials, rubbish and debris from the Site and legally dispose of these at public or private disposal facilities.
- D. Provide a final cleaning to thoroughly clean the entire Site and make ready for acceptance.
  1. Remove construction debris, boxes, and trash from the Site.
  2. Remove construction storage sheds and field offices.
  3. Restore grade to match surrounding condition and remove excess dirt.
  4. Sweep all drives and parking lots clean of dirt and debris. Use water trucks or hose down paved site to like new appearance.

#### 19.15 Maintenance of Roads, Driveways, and Access

- A. Maintain roads and streets in a manner that is suitable for safe operations of public vehicles during all phases of construction unless the Owner approves a street closing. Do not close public roads overnight.
- B. Submit a Notification by Contractor for Owner's approval of a street closing. The request shall state:

1. The reason for closing the street.
  2. How long the street will remain closed.
  3. Procedures to be taken to maintain the flow of traffic.
- C. Construct temporary detours, including by-pass roads around construction, with adequately clear width to maintain the free flow of traffic at all times. Maintain barricades, signs, and safety features around the detour and excavations. Maintain barricades, signs, and safety features around the Work in accordance with all provisions of the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD).
- D. Assume responsibility for any damage resulting from construction along roads or drives.

#### 19.16 Area Access and Traffic Control

- A. Provide traffic control measures to assure a safe condition and to provide a minimum of inconvenience to motorists and the public. Provide all-weather access to all residents and businesses at all times during construction. Provide temporary driveways and/or roads of approved material during wet weather. Maintain a stockpile of suitable material on the Site to meet the demands of inclement weather.
- B. Schedule operations to minimize adverse impact on the accessibility of adjoining properties. Sequence construction to build driveways in half widths, construct temporary ramps, or any other measure required to maintain access to adjoining properties.
- C. Comply with the Owner's Uniform Barricading Standards and Practices. Copies of this document are available through the Owner's Traffic Engineering Department. Secure required permits from the Owner's Traffic Engineering Department.

#### 19.17 Overhead Electrical Wires

- A. Comply with OSHA safety requirements regarding construction equipment working beneath overhead electrical wires. Prevent and pay for repairs for damage to existing overhead electrical wires or facilities.
- B. Provide for adequate safety with regard to overhead lines whether overhead lines are or are not shown in the Contract Documents.

#### 19.18 Blasting

- A. Blasting is not allowed for any purpose.

#### 19.19 Archeological Requirements

- A. Cease operations immediately and contact the Owner for instructions if historical or archaeological artifacts are found during construction.
- B. Conduct all construction activities to avoid adverse impact on the Sites where significant historical or archaeological artifacts are found or identified as an area where other artifacts could be found.
1. Obtain details for Working in these areas.
  2. Maintain confidentiality regarding the Site.

3. Adhere to the requirements of the Texas Historical Commission.
  4. Notify the OAR and the Texas Historical Commission.
- C. Do not disturb archaeological sites.
1. Obtain the services of a qualified archaeological specialist to instruct construction personnel on how to identify and protect archaeological finds on an emergency basis.
  2. Coordinate activities to permit archaeological work to take place within the area.
    - a. Attempt to archaeologically clear areas needed for construction as soon as possible.
    - b. Provide a determination of priority for such areas.
- D. Assume responsibility for any unauthorized destruction that might result to such Sites by construction personnel, and pay all penalties assessed by the State or Federal agencies for non-compliance with these requirements.
- E. Contract Times will be modified to compensate for delays caused by such archaeological finds. No additional compensation will be paid for delays.

#### 19.20 Endangered Species Resources

- A. Do not perform any activity that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.
- B. Cease Work immediately in the area of the encounter and notify the OAR if a threatened or endangered species is encountered during construction. OPT will implement actions in accordance with the ESA and applicable State statutes. Resume construction in the area of the encounter when authorized to do so by the OAR.

#### 19.21 Cooperation with Public Agencies

- A. Cooperate with all public and private agencies with facilities operating within the limits of the Project.
- B. Provide a 48-hour notice to any applicable agency when work is anticipated to proceed in the vicinity of any facility by using Texas 811 at 811 and the Lone Star Notification Company at 1-800-669-8344.

### **ARTICLE 20 – PROJECT COORDINATION**

#### 20.01 Work Included

- A. Administer Contract requirements to construct the Project. Provide documentation per the requirements of this Section. Provide information as requested by the OPT.

#### 20.02 Document Submittal

- A. Provide documents in accordance with Article 24.



- B. Use the forms provided for Contract administration, applications for payment, document submittals, documentation of test results, equipment installation and documentation, and Project closeout. A digital copy of the required forms will be provided to the Contractor before or at the pre-construction conference.

#### 20.03 Communication During Project

- A. The OAR is to be the first point of contact for all parties on matters concerning this Project.
- B. The OAR will coordinate correspondence concerning:
  - 1. Documents, including Applications for Payment.
  - 2. Clarification and interpretation of the Contract Documents.
  - 3. Contract Modifications.
  - 4. Observation of Work and testing.
  - 5. Claims.
- C. The OAR will normally communicate only with the Contractor. Any required communication with Subcontractors or Suppliers will only be with the direct involvement of the Contractor.
- D. Direct written communications to the OAR at the address indicated at the pre-construction conference. Include the following with communications as a minimum:
  - 1. Name of the Owner.
  - 2. Project name.
  - 3. Contract title.
  - 4. Project number.
  - 5. Date.
  - 6. A reference statement.

#### 20.04 Project Meetings

- A. Pre-Construction Conference:
  - 1. Attend a pre-construction conference.
  - 2. The location of the conference will be determined by the OAR.
  - 3. The time of the meeting will be determined by the OAR but will be after the Notice of Award is issued and not later than 15 days after the Notice to Proceed is issued.
  - 4. The OPT, Contractor's project manager and superintendent, representatives of utility companies, and representatives from major Subcontractors and Suppliers may attend the conference.
  - 5. Provide and be prepared to discuss:
    - a. Preliminary construction schedule per Article 27.
    - b. Schedule of Values and anticipated Schedule of Payments per Article 17.
    - c. List of Subcontractors and Suppliers.

- d. Contractor's organizational chart as it relates to this Project.
  - e. Letter indicating the agents of authority for the Contractor and the limit of that authority with respect to the execution of legal documents, Contract Modifications, and payment requests.
- B. Progress Meetings:
- 1. Attend meetings with the OAR and Owner.
    - a. Meet on a monthly basis or as requested by the OAR to discuss the Project.
    - b. Meet at the Site or other location as designated by the OAR.
    - c. Contractor's superintendent and other key personnel are to attend the meeting. Other individuals may be requested to attend to discuss specific matters.
    - d. Notify the OAR of any specific items to be discussed a minimum of 1 week prior to the meeting.
  - 2. Provide information as requested by the OAR or Owner concerning this Project. Prepare to discuss:
    - a. Status of overall Project schedule.
    - b. Contractor's detailed schedule for the next month.
    - c. Anticipated delivery dates for equipment.
    - d. Coordination with the Owner.
    - e. Status of documents.
    - f. Information or clarification of the Contract Documents.
    - g. Claims and proposed Modifications to the Contract.
    - h. Field observations, problems, or conflicts.
    - i. Maintenance of quality standards.
  - 3. OAR will prepare minutes of meetings. Review the minutes of the meeting and notify the OAR of any discrepancies within 10 days of the date of the meeting memorandum. The minutes will not be corrected after the 10 days have expired. Corrections will be reflected in the minutes of the following meeting or as an attachment to the minutes.
- C. Pre- Submittal and Pre-Installation Meetings:
- 1. Conduct pre-submittal and pre-installation meetings as required in the individual technical Specifications or as determined necessary by the OAR (for example, instrumentation, roofing, concrete mix design, etc.).
  - 2. Set the time and location of the meetings when ready to proceed with the associated Work. Submit a Notification by Contractor in accordance with Paragraph 20.07 for the meeting 2 weeks before the meeting. OPT must approve of the proposed time and location.
  - 3. Attend the meeting and require the participation of appropriate Subcontractors and Suppliers in the meeting.

4. Prepare minutes of the meeting and submit to the OPT for review. OPT will review the minutes of the meeting and notify the Contractor of any discrepancies within 10 days of the date of the meeting memorandum. The minutes will not be corrected after the 10 days have expired. Corrections will be reflected in a revised set of meeting minutes.

#### 20.05 Requests for Information

- A. Submit Request for Information (RFI) to the OAR to obtain additional information or clarification of the Contract Documents.
  1. Submit a separate RFI for each item on the form provided.
  2. Attach adequate information to permit a written response without further clarification. OAR will return requests that do not have adequate information to the Contractor for additional information. Contractor is responsible for all delays resulting from multiple document submittals due to inadequate information.
  3. A response will be made when adequate information is provided. Response will be made on the RFI form or in attached information.
- B. Response to an RFI is given to provide additional information, interpretation, or clarification of the requirements of the Contract Documents, and does not modify the Contract Documents.
- C. Designer will initiate a Request for a Change Proposal (RCP) per Article 12 if the RFI indicates that a Contract Modification is required.
- D. Use the Project Issues Log to document decisions made at meetings and actions to be taken in accordance with Paragraph 20.06.
- E. Use the Action Item Log to document assignments for actions to be taken in accordance with Paragraph 20.06.

#### 20.06 Decision and Action Item Log

- A. OAR will maintain a Project Decision Log to document key decisions made at meetings, telephone conversation or Site visits using the format provided:
  1. Review the log prior to each regular meeting.
  2. Report any discrepancies to the OAR for correction or discussion at the next monthly meeting.
- B. OAR will maintain an Action Item log in conjunction with the Project Decision Log to track assignments made at meetings, telephone conversation, or Site visits using the format provided:
  1. Review the Action Item Log prior to each regular meeting.
  2. Report actions taken subsequent to the previous progress meeting on items in the log assigned to the Contractor or through the Contractor to a Subcontractor or Supplier to the OAR. Report on status of progress 1 week prior to each progress meeting established in Paragraph 20.04 to allow OAR to update the log prior to the Progress meetings.
  3. Be prepared to discuss the status at each meeting.

- C. Decisions or action items in the log that require a change in the Contract Documents will have the preparation of a Modification as an action item if appropriate. The Contract Documents can only be changed by a Modification.

#### 20.07 Notification By Contractor

- A. Notify the OAR of:
  - 1. Need for testing.
  - 2. Intent to work outside regular working hours.
  - 3. Request to shut down facilities or utilities.
  - 4. Proposed utility connections.
  - 5. Required observation by OAR, Designer, or inspection agencies prior to covering Work.
  - 6. Training.
- B. Provide notification a minimum of 2 weeks in advance in order to allow OPT time to respond appropriately to the notification.
- C. Use "Notification by Contractor" form provided.

#### 20.08 Record Documents

- A. Maintain at the Site one complete set of printed Record Documents including:
  - 1. Drawings.
  - 2. Specifications.
  - 3. Addenda.
  - 4. Modifications.
  - 5. Record Data and approved Shop Drawings.
  - 6. Construction photographs.
  - 7. Test Reports.
  - 8. Clarifications and other information provided in Request for Information responses.
  - 9. Reference standards.
- B. Store printed Record Documents and Samples in the Contractor's field office.
  - 1. Record Documents are to remain separate from documents used for construction.
  - 2. Provide files and racks for the storage of Record Documents.
  - 3. Provide a secure storage space for the storage of Samples.
  - 4. Maintain Record Documents in clean, dry, legible conditions, and in good order.
  - 5. Make Record Documents and Samples available at all times for inspection by the OPT.
- C. Maintain a digital record of Specifications and Addenda to identify products provided in PDF format.

1. Reference the Record Data number, Shop Drawings number, and O&M manual number for each product and item of equipment furnished or installed.
  2. Reference Modifications by type and number for all changes.
- D. Maintain a digital record of Drawings in PDF format.
1. Reference the Record Data number, Shop Drawings number, and O&M manual number for each product and item of equipment furnished or installed.
  2. Reference Modifications by type and number for all changes.
  3. Record information as construction is being performed. Do not conceal any Work until the required information is recorded.
  4. Mark Drawings to record actual construction, including the following:
    - a. Depths of various elements of the foundation in relation to finished first floor datum or the top of walls.
    - b. Horizontal and vertical locations of underground utilities and appurtenances constructed and existing utilities encountered during construction.
    - c. Location of utilities and appurtenances concealed in the Work. Refer measurements to permanent structures on the surface. Include the following equipment:
      - 1) Piping.
      - 2) Ductwork.
      - 3) Equipment and control devices requiring periodic maintenance or repair.
      - 4) Valves, unions, traps, and tanks.
      - 5) Services entrance.
      - 6) Feeders.
      - 7) Outlets.
    - d. Changes of dimension and detail.
    - e. Changes by Modifications.
    - f. Information in Request for Information or included in the Project Issues Log.
    - g. Details not on the original Drawings. Include field verified dimensions and clarifications, interpretations, and additional information issued in response to RFIs.
  5. Mark Drawings with the following colors:
    - a. Highlight references to other documents, including Modifications in blue;
    - b. Highlight mark ups for new or revised Work (lines added) in yellow;
    - c. Highlight items deleted or not installed (lines to be removed) in red; and
    - d. Highlight items constructed per the Contract Documents in green.

6. Submit Record Documents to Designer for review and acceptance 30 days prior to Final Completion of the Project.
- E. Applications for Payment will not be recommended for payment if Record Documents are found to be incomplete or not in order. Final payment will not be recommended without complete Record Documents.

## **ARTICLE 21 – QUALITY MANAGEMENT**

### **21.01 Contractor’s Responsibilities**

- A. Review the OPT’s Quality Management Program and prepare and submit the Contractor’s Quality Control Plan.
- B. Implement the Contractor’s Quality Control Plan to control the quality of the Work and verify that the Work meets the standards of quality established in the Contract Documents.
  1. Inspect products to be incorporated into the Project. Ensure that Suppliers have adequate quality control systems to ensure that products that comply with the Contract Documents are provided.
  2. Integrate quality control measures into construction activities to produce Work which meets quality expectations of the Contract Documents. Inspect the Work of the Contractor, Subcontractors, and Suppliers. Correct Defective Work.
  3. Provide and pay for the services of an approved professional materials testing laboratory acceptable to the OPT to provide testing that demonstrates that products proposed in Shop Drawings and Record Data for the Project fully comply with the Contract Documents.
  4. Provide facilities, equipment, and Samples required for quality control inspections and tests:
    - a. Give the OAR adequate notice before proceeding with Work that would interfere with inspections or testing;
    - b. Notify the OAR and testing laboratories prior to the time that testing is required, providing adequate lead time to allow arrangements for inspections or testing to be made;
    - c. Do not proceed with any Work that would impact the ability to correct defects or Work that would require subsequent removal to correct defects until testing services have been performed and results of tests indicate that the Work is acceptable;
    - d. Cooperate fully with the performance of sampling, inspection, and testing;
    - e. Provide personnel to assist with sampling or to assist in making inspections and field tests;
    - f. Obtain and handle Samples for testing at the Site or at the production source of the product to be tested;
    - g. Provide adequate quantities of representative products to be tested to the laboratory at the designated locations;

- h. Provide facilities required to store and cure test Samples;
  - i. Provide calibrated scales and measuring devices for the OPT's use in performing inspections and testing;
  - j. Provide adequate lighting to allow OPT observations; and
  - k. Make Contract Documents available to testing agencies when requested.
5. Provide safe access for all inspection and testing activities, including those to be conducted as part of the OPT's Quality Management Program.
  6. Document Defective Work through Certified Test Reports and Defective Work Notices. Document that corrective actions have been taken to correct any defects and that corrected Work is in compliance with the Contract Documents.
  7. Apply quality control measures to documentation provided for the Project.
  8. Implement countermeasures to prevent future Defective Work.
- C. Perform tests as indicated in this and other Sections of the Specifications. Technical Specifications govern if any testing and inspection requirements of this Section conflict with the testing and inspection requirements of the technical Specifications.
  - D. All verification testing is to be observed by the OAR or designated representative.
  - E. Send test reports to the OAR and the Designer.
  - F. Provide an update on quality control activities at monthly progress meetings.
  - G. Owner will withhold payment for Defective Work, or Work that has not been tested or inspected in accordance with the Contractor's Quality Control Plan, the OPT's Quality Control Program, or the Contract Documents.
  - H. Owner will withhold payment for additional testing fees incurred due to Contractor noncompliance with OPT's Quality Control Program, including retesting fees, standby time, cancellation charges, and trip fees for retesting or cancellations.
  - I. Work performed that is connected or adjacent to Defective Work or Work that would have to be removed to correct Defective Work is also considered to be Defective. Contractor is responsible for all cost with replacing any acceptable Work that must be removed or might be damaged by corrective actions.

#### 21.02 Quality Management Activities by OPT

- A. OPT will perform its own quality assurance tests independent of the Contractor's Quality Control Program. Assist the OPT and testing organizations in performing quality assurance activities per Paragraph 21.01.
- B. Quality assurance testing performed by the OPT will be paid for by the Owner, except for verification testing required per Paragraph 21.07.
- C. Quality assurance activities of the OPT, through their own forces or through contracts with consultants and materials testing laboratories are for the purpose of monitoring the results of the Contractor's Work to see that it is in compliance with the requirements of the Contract Documents. Quality assurance activities or non-performance of quality assurance activities by the OPT do not:

1. Relieve the Contractor of its responsibility to provide Work or furnish products that conform with the requirements of the Contract Documents;
  2. Relieve the Contractor of its responsibility for providing adequate quality control measures;
  3. Relieve the Contractor of its responsibility for damage to or loss of Work or products before OPT's acceptance;
  4. Constitute or imply OPT's acceptance; and
  5. Affect the continuing rights of the Owner after OPT's acceptance of the completed Work.
- D. Work is subject to OPT's quality assurance observations or testing at any time. Products which have been tested or inspected and approved by OPT at a supply source or staging area may be inspected or tested again by the OPT before, during or after incorporation into the Work and rejected if products do not comply with the Contract Documents.

#### 21.03 Contractor's Use of OPT's Test Reports

- A. OPT has prepared a Quality Management Plan that describes, in general, the OPT's anticipated quality assurance testing program for this Project. This testing program will be made available to Bidders during the bidding phase. This plan outlines only the testing in general terms and may not reflect actual testing. Actual testing will depend on the Contractor's means, methods and procedures of construction which will not be known until the Contractor begins Work and submits their own Quality Control Plan for review. There is no guarantee that all testing will be performed.
- B. Contractor will receive copies of all test reports documenting OPT's quality assurance activities. Contractor is entitled to rely on the accuracy of these test results and use these as part of their quality control efforts.
- C. Contractor is to determine additional testing or inspections that may be required to implement the Contractor's Quality Control Plan. Include cost for additional testing and inspections required to meet Contractor's quality control obligations, including the cost for correcting Defective Work in the Contract Price.
- D. Contractor may submit a Change Proposal if OPT's quality assurance testing program deviates significantly from the OPT's Quality Management Plan, and Contractor can demonstrate that additional cost was incurred to implement the Contractor's Quality Control Plan resulting from these deviations.

#### 21.04 Documentation

- A. Provide documentation which includes:
  1. Contractor's Quality Management Plan that establishes the methods of assuring compliance with the Contract Documents. Submit this plan as a Shop Drawings per Article 25.
  2. A Statement of Qualification for any proposed testing laboratories that includes a list of the engineers and technical staff that will provide testing services on the Project, descriptions of the qualifications of these individuals, list of tests that can be performed,



equipment used with date of last certification, and a list of recent projects for which testing has been performed with references for those projects.

3. Provide Certified Test Reports for products to be incorporated into the Project. Provide reports to indicate that proposed products comply with the Contract Documents or indicate that proposed products do not comply with the Contract Documents and why it does not comply. Submit these test reports as part of a Shop Drawings submitted per Article 25.
4. Provide Certified Test Reports for inspection and testing required in this Section and in other Specification Sections. Provide reports to indicate that Work complies with the Contract Documents or indicate that Work does not comply with the Contract Documents and why it does not comply. Submit these test reports on forms provided per Article 24.

#### 21.05 Standards

- A. Provide testing laboratories that comply with the American Council of Independent Laboratories (ACIL) "Recommended Requirements for Independent Laboratory Qualifications."
- B. Perform testing per recognized test procedures as listed in the various Sections of the Specifications, standards of the State Department of Highways and Public Transportation, American Society of Testing Materials (ASTM), or other testing associations. Perform tests in accordance with published procedures for testing issued by these organizations.

#### 21.06 Delivery and Storage

- A. Handle and protect test specimens of products and construction materials at the Site in accordance with recognized test procedures. Provide facilities for storing, curing, and processing test specimens as required by test standard to maintain the integrity of Samples.

#### 21.07 Verification Testing for Corrected Defects

- A. Provide verification testing on Work performed to correct Defective Work to demonstrate that the Work is now in compliance with the Contract Documents. Document that Defective Work has been corrected and verify that the OAR closes the item in the Defective Work Register.
- B. Pay for verification testing. OPT may perform verification testing as part of their Quality Management Program and impose a Set-off to recover the cost for this testing.
- C. Conduct the same tests or inspections used to determine that the original Work was Defective. Different tests or methods may be used if approved by the OPT.

#### 21.08 Test Reports

- A. Certified Test Reports are to be prepared for all tests.
  1. Tests performed by testing laboratories may be submitted on their standard test report forms if acceptable to the OPT. These reports must include the following:
    - a. Name of the Owner, Project title and number and Contractor;

- b. Name of the laboratory, address, and telephone number;
  - c. Name and signature of the laboratory personnel performing the test;
  - d. Description of the product being sampled or tested;
  - e. Date and time of sampling, inspection, and testing;
  - f. Date the report was issued;
  - g. Description of the test performed;
  - h. Weather conditions and temperature at time of test or sampling;
  - i. Location at the Site or structure where the sample was taken;
  - j. Standard or test procedure used in making the test;
  - k. A description of the results of the test;
  - l. Statement of compliance or non-compliance with the Contract Documents; and
  - m. Interpretations of test results, if appropriate.
- 2. Submit reports on tests performed by Contractor, Subcontractors or Suppliers on the forms provided by the OAR.
  - 3. OPT will prepare test reports on test performed by the OPT.
- B. Send test report to Designer within 24 hours of completing the test. Flag tests reports with results that do not comply with Contract Documents for immediate attention.
  - C. Payment for Work may be withheld until test reports indicate that the Work is not Defective.

#### 21.09 Defective Work

- A. Immediately correct any Defective Work or notify the OAR why the Work is not to be corrected immediately and when corrective action will be completed.
- B. No payment will be made for Defective Work. Remove Work from the Application for Payment if Work paid for on a previous Application for Payment is found to be Defective.

#### 21.10 Limitation of Authority of Testing Laboratory

- A. The testing laboratory representatives are limited to providing testing services and interpreting the results of the test performed.
- B. The testing laboratory is not authorized to:
  - 1. Alter the requirements of the Contract Documents;
  - 2. Accept or reject any portion of the Work;
  - 3. Perform any of the duties of the Contractor; or
  - 4. Direct or stop the Work.

#### 21.11 Quality Control Plan

- A. Submit the Contractor's Quality Control Plan for approval as a Shop Drawing per Article 25. Use Contractor's Quality Control Plan Checklist provided to review the document before

submitting and include a copy of the completed checklist with the Contractor's Quality Control Plan. Do not begin Work until the Contractor's Quality Control Plan is approved. Submit an interim plan covering only the portion of Work to be performed if the Contractor plans to begin Work prior to submitting the Contractor's Quality Control Plan for the Project. Do not begin Work on other parts of the Project until the Contractor's Quality Control Plan is approved or another interim plan covering the additional Work to be started is approved.

- B. Provide a Contractor's Quality Control Plan that incorporates construction operations at both the Site and production Work at remote locations and includes Work by Subcontractors and Suppliers. The Contractor's Quality Control Plan is to include:
1. A description of the quality control organization, including an organization chart showing lines of authority to control the quality of Work;
  2. Documentation describing name, qualifications (in resume format), duties, responsibilities, and level of authority of the Quality Control Manager;
  3. The name, qualifications (in resume format), duties, responsibilities, and authorities of other persons assigned a quality control function;
  4. Procedures for scheduling, reviewing, certifying, and managing documentation, including documentation provided by Subcontractors and Suppliers;
  5. Control, verification, and acceptance testing procedures for each specific test. Include:
    - a. Name of tests to be performed,
    - b. Specification paragraph requiring test,
    - c. Parameters of Work to be tested,
    - d. Test frequency,
    - e. Persons responsible for each test, and
    - f. Applicable industry testing standards and laboratory facilities to be used for the test;
  6. Integrate the OPT quality assurance testing into the Contractor's Quality Control Plan, specifically identifying the tests or inspections in Paragraph 21.11.B.5 that will be provided by the OPT as part of their Quality Management Program;
  7. Procedures for tracking and documenting quality management efforts.
  8. Procedures for tracking Defective Work from initial identification through acceptable corrective action. Indicate how documentation of the verification process for deficiencies will be made.
  9. Reporting procedures which incorporate the use of forms provided by the OAR.
  10. The name of the proposed testing laboratories along with documentation of qualifications per Paragraph 21.04.
- C. The Quality Control Manager must have authority to reject Defective Work and redirect the efforts of the Contractor's Team to prevent or correct Defective Work.
- D. Notify the Designer of any changes to the Contractor's Quality Control Plan or quality control personnel.

- E. Meet with the OPT 7 days after Contractor's Quality Control Plan is submitted and before start of construction to discuss the Contractor's Quality Control Plan and expedite its approval.

#### 21.12 Implement Contractor's Quality Control Plan

- A. Perform quality control observations and testing as required in each Section of the Specifications and where indicated on the Drawings.
- B. Include the following phases for each definable Work task. A definable Work task is one which is separate and distinct from other tasks, has separate control requirements, may be provided by different trades or disciplines, or may be Work by the same trade in a different environment.
  - 1. Planning Phase: Perform the following before beginning each definable Work task:
    - a. Review the Contract Drawings.
    - b. Review documents and determine that they are complete in accordance with the Contract Documents.
    - c. Check to assure that all materials and/or equipment have been tested, submitted, and approved.
    - d. Examine the work area to assure that all required preliminary Work has been completed and complies with the Contract Documents.
    - e. Examine required materials, equipment, and Sample Work to assure that they are on hand, conform to Shop Drawings and Record Data, and are properly stored.
    - f. Review requirements for quality control inspection and testing.
    - g. Discuss procedures for controlling quality of the Work. Document construction tolerances and workmanship standards for the Work task.
    - h. Check that the portion of the plan for the Work to be performed incorporates document review comments.
    - i. Discuss results of planning phase with the OAR. Conduct a meeting attended by the Quality Control Manager, the OAR, superintendent, other quality control personnel as applicable, and the foreman responsible for the Work task. Instruct applicable workers as to the acceptable level of workmanship required in order to meet the requirements of the Contract Documents. Document the results of the preparatory phase actions by separate meeting minutes prepared by the Quality Control Manager and attached to the quality control report.
    - j. Do not move to the next phase unless results of investigations required for the planning phase indicate that requirements have been met.
  - 2. Work Phase: Complete this phase after the Planning Phase:
    - a. Notify the OAR at least 24 hours in advance of beginning the Work and discuss the review of the planning effort to indicate that requirements have been met.
    - b. Check the Work to ensure that it is in full compliance with the Contract Documents.

- c. Verify adequacy of controls to ensure full compliance with Contract Documents. Verify required control inspection and testing is performed.
  - d. Verify that established levels of workmanship meet acceptable workmanship standards. Compare with required Sample panels as appropriate.
  - e. Repeat the Work phase for each new crew to work on-site, or any time acceptable specified quality standards are not being met.
3. Follow-up Phase: Perform daily checks to assure control activities, including control testing, are providing continued compliance with contract requirements:
- a. Make checks daily and record observations in the quality control documentation.
  - b. Conduct follow-up checks and correct all deficiencies prior to the start of additional Work tasks that may be affected by the Defective Work. Do not build upon nor conceal Defective Work.
  - c. Conduct a review of the Work with the OPT one month prior to the expiration of the correction period. Correct defects as noted during the review.
- C. Conduct additional planning and Work phases if:
- 1. The quality of on-going Work is unacceptable;
  - 2. Changes are made in applicable quality control staff, on-site production supervision or crews;
  - 3. Work on a task is resumed after a substantial period of inactivity; or
  - 4. Other quality problems develop.

## **ARTICLE 22 – FINAL RESOLUTION OF DISPUTES**

### 22.01 Senior Level Negotiations

- A. Each party is required to continue to perform its obligations under the Contract pending the final resolution of any dispute arising out of or relating to the Contract, unless it would be impossible or impracticable under the circumstances then present.
- B. All negotiations pursuant to Article 22 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- C. Before invoking mediation, Owner and Contractor agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both Owner and Contractor agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within 45 calendar days after a party delivers a written notice of such dispute to the other, then the parties shall proceed with mediation.

### 22.02 Mediation

- A. In the event that Owner and/or Contractor contend that the other has committed a material breach of the Contract or the parties cannot reach a resolution of a claim or dispute pursuant

to Article 13, as a condition precedent to filing a lawsuit, either party shall request mediation of the dispute with the following requirements:

1. The request for mediation shall be in writing and shall request that the mediation commence not less than 30 calendar days or more than 90 calendar days following the date of the request, except upon agreement of the parties.
2. In the event Owner and Contractor are unable to agree to a date for the mediation or to the identity of the mediator within 30 calendar days following the date of the request for mediation, all conditions precedent shall be deemed to have occurred.
3. Owner and Contractor are to each pay one-half of the mediator's fees and costs. Venue for any mediation or lawsuit filed under this Contract shall be in Nueces County, Texas. Any agreement reached in mediation shall be enforceable as a settlement in any court having jurisdiction thereof.
4. Nothing in this Contract shall be construed as consent to a lawsuit. No provision of the Contract shall waive any immunity or defense.

## **ARTICLE 23 – MINORITY/MBE/DBE PARTICIPATION POLICY**

### 23.01 Policy

- A. It is the policy of the City of Corpus Christi that maximum opportunity is afforded minorities, women, low income persons and Minority/Disadvantaged Business Enterprises (M/DBE) to participate in the performance of contracts awarded by the City of Corpus Christi in support of Equal Employment Opportunity goals and objectives. In accordance with such policy, the City has established goals, as stated herein, both for minority and female participation by trade and for Minority Business Enterprise.

### 23.02 Definitions

- A. Prime Contractor: Any person, firm, partnership, corporation, association, or joint venture as herein provided which has been awarded a City contract.
- B. Subcontractor: Any named person, firm, partnership, corporation, association, or joint venture herein identified as providing work, labor, services, supplies, equipment, materials, or any combination of the foregoing under contract with a prime contractor on a City contract.
- C. Minority/Disadvantaged Business Enterprise: A business enterprise that is owned and controlled by one or more minority person(s) or socially and economically disadvantaged individual(s). Minority/Disadvantaged person(s) must collectively own, operate and/or actively manage, and share in payments from such an enterprise in the manner hereinafter set forth:
  1. Owned:
    - a. For a sole proprietorship to be deemed a minority business enterprise, it must be owned by a minority person.
    - b. For an enterprise doing business as a partnership, at least 51 percent of the assets or interest in the partnership property must be owned by one or more minority person(s).

- c. For an enterprise doing business as a corporation, at least 51 percent of the assets or interest in the corporate shares must be owned by one or more minority person(s).
- 2. Controlled:
  - a. The primary power, direct or indirect, to manage a business enterprise rests with a minority person(s).
- 3. Share in Payments:
  - a. Minority partners, proprietors, or stockholders of the business enterprise must be entitled to receive 51 percent or more of the total profits, bonuses, dividends, interest payments, commissions, consulting fees, rents, procurement, and subcontract payments, and any other monetary distribution paid by the business enterprise.
- D. Minority: Minority persons include Blacks, Mexican-Americans and other persons of Hispanic origin, American Indians, Alaskan Natives, and Asians or Pacific Islanders. For the purposes of this policy, women are also considered as minorities.
- E. Socially and economically disadvantaged individual: Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
- F. Female Owned Business Enterprise: A sole proprietorship that is owned and controlled by a woman, a partnership at least 51 percent of whose assets or partnership interests are owned by one or more women, or a corporation at least 51 percent of whose assets or interests in the corporate shares are owned by one or more women.
- G. Joint Venture: A joint venture means an association of two or more persons, partnerships, corporations, or any combination thereof, founded to carry on a single business activity which is limited in scope and direction. The degree to which a joint venture may satisfy the stated MBE goal cannot exceed the proportionate interest of the MBE as a member of the joint venture in the Work to be performed by the joint venture. For example, a joint venture which is to perform 50 percent of the Work itself and in which a minority joint venture partner has a 50 percent interest, shall be deemed equivalent to having minority participation in 25 percent of the Work. Minority members of the joint venture must have financial, managerial, or technical skills in the Work to be performed by the joint venture.

### 23.03 Goals

- A. The goals for participation by minorities and Minority Business Enterprises expressed in percentage terms for the Contractor's aggregate work force on all construction Work for the Contract award shall be
  - 1. Minority participation goal is 45%.
  - 2. Minority Business Enterprise participation goal is 15%.
- B. These goals are applicable to all the construction work (regardless of federal participation) performed in the Contract, including approved Change Orders. The hours of minority

employment must be substantially uniform throughout the length of the Contract and in each trade. The transfer of minority employees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's percentage is prohibited.

#### 23.04 Compliance

- A. Upon completion of the Project, a final breakdown of MBE participation, substantiated by copies of paid invoices, shall be submitted by the Contractor to the City Engineer.
- B. Make bi-weekly payroll submittals to the City Engineer. The Contractor is to indicate the percent of minority and female participation, by trade, which has been utilized on the Project. Along with the request for final payment on the Project, the Contractor will indicate, in writing, the overall participation in these areas which have been achieved. The City Engineer may withhold monthly or final payments to the Contractor for failure to submit bi-weekly payrolls in a timely fashion or to submit overall participation information as required.

### **ARTICLE 24 – DOCUMENT MANAGEMENT**

#### 24.01 Work Included

- A. Submit documentation as required by the Contract Documents and as reasonably requested by the OPT.

#### 24.02 Quality Assurance

- A. Submit legible, accurate, complete documents presented in a clear, easily understood manner. Documents not meeting these criteria will be returned without review.

#### 24.03 Contractor's Responsibilities

- A. Review documents prior to submitting. Make certifications as required by the Contract Documents and as indicated on forms provided.
- B. Provide a Schedule of Documents to list the documents that are to be submitted, the dates on which documents are to be sent to the Designer for review, and proposed dates that documents must be returned to comply with the Project schedule. Use the form provided for this list.
- C. Incorporate the dates for processing documents into the Progress Schedule required by Article 27.
  - 1. Provide documents in accordance with the schedule so construction of the Project is not delayed.
  - 2. Allow a reasonable time for the review of documents when preparing the Progress Schedule. Assume a 14 day review cycle for each document unless a longer period of time is indicated in the Contract Documents or agreed to by Designer and Contractor.
  - 3. Schedule submittal of documents to provide all information for interrelated Work at one time.
  - 4. Allow adequate time for processing documents so construction of the Project is not delayed.



#### 24.04 Document Submittal

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

#### 24.05 Document Numbering

- A. Assign a number to the documents originated to allow tracking of the documents during the review process.
1. Assign the number consisting of a prefix, a sequence number, and a letter suffix. Prefixes shall be as follows:

<b>Prefix</b>	<b>Description</b>	<b>Originator</b>
AP	Application for Payment	Contractor
CO	Change Order	OAR
CP	Change Proposal	Contractor
CTR	Certified Test Report	Contractor
FO	Field Order	OAR
NBC	Notification by Contractor	Contractor
PD	Photographic Documentation	Contractor

Prefix	Description	Originator
RCP	Request for a Change Proposal	OAR
RD	Record Data	Contractor
RFI	Request for Information	Contractor
SD	Shop Drawing	Contractor
SCH	Schedule of Progress	Contractor

2. Issue sequence numbers in chronological order for each type of document.
  3. Issue numbers for resubmittals that have the same number as the original document followed by an alphabetical suffix indicating the number of times the same document has been sent to the Designer for processing. For example: SD 025 A represents Shop Drawing number 25 and the letter "A" designates that this is the second time this document has been sent for review.
  4. Clearly note the document number on each page or sheet of the document.
  5. Correct assignment of numbers is essential since different document types are processed in different ways.
- B. Include reference to the Drawing number and/or Specification Section, detail designation, schedule, or location that corresponds with the data on the document transmittal forms. Other identification may also be required, such as layout drawings or schedules to allow the reviewer to determine where a particular product is to be used.

#### 24.06 Document Requirements

- A. Furnish documents as indicated below or in individual Specification Sections. Submit documents per the procedures described in the Contract Documents.
- B. Submit documents per the Specification Section shown in the following table:

Document Type	Section
Application for Payment	Article 17
Change Proposal	Article 12
Certified Test Report	Article 25 for approval of product
	Article 21 to demonstrate compliance
Notification by Contractor	Article 20
Photographic Documentation	Article 28
Progress Schedules	Article 27
Record Data	Article 26
Request for Information	Article 20
Shop Drawing	Article 25
Schedule of Values	Article 17
Substitutions	Article 12

Document Type	Section
Suppliers and Subcontractors	Articles 20 and 26

## ARTICLE 25 – SHOP DRAWINGS

### 25.01 Work Included

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

### 25.02 Quality Assurance

- A. Submit legible, accurate, and complete documents presented in a clear, easily understood manner. Shop Drawings not meeting these criteria will be rejected.
- B. Demonstrate that the proposed products are in full and complete compliance with the design criteria and requirements of the Contract Documents or will be if deviations requested per Paragraph 25.10 are approved.
- C. Furnish and install products that fully comply with the information included in the document submittal.

### 25.03 Contractor’s Responsibilities

- A. Provide Shop Drawings as required by Paragraph 25.03 of the Supplementary Conditions.
- B. Include Shop Drawings in the Schedule of Documents required by Article 24 to indicate the Shop Drawings to be submitted, the dates on which documents are to be sent to the Designer for review and proposed dates that the product will be incorporated into the Project.
- C. Incorporate the dates for processing Shop Drawings into the Progress Schedule required by Article 27.
  - 1. Submit Shop Drawings in accordance with the schedule so construction of the Project is not delayed.
  - 2. Allow a reasonable time for the review of Shop Drawings when preparing the Progress Schedule. Include time for making revisions to the Shop Drawings and resubmitting the Shop Drawing for a least a second review. Assume a 14-day review cycle for each time

a Shop Drawing is submitted for review unless a longer period of time is indicated in the Contract Documents.

3. Schedule document submittals to provide all information for interrelated Work at one time.
  4. Allow adequate time for ordering, fabricating, delivering, and installing product so construction of the Project is not delayed.
- D. Complete the following before submitting a Shop Drawing or Sample:
1. Prepare Shop Drawing Review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  2. Determine and verify specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to Shop Drawings and Samples;
  3. Determine and verify the suitability of materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  4. Determine and verify information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- E. Determine and verify:
1. Accurate field measurements, quantities, and dimensions are shown on the Shop Drawings;
  2. Location of existing structures, utilities, and equipment related to the Shop Drawing have been shown and conflicts between the products existing structures, utilities, and equipment have been identified;
  3. Conflicts that impact the installation of the products have been brought to the attention of the OPT through the Designer;
  4. Shop Drawings are complete for their intended purpose; and
  5. Conflicts between the Shop Drawings related to the various Subcontractors and Suppliers have been resolved.
- F. Review Shop Drawings prior to submitting to the Designer. Certify that all Shop Drawings have been reviewed by the Contractor and are in strict conformance with the Contract Documents as modified by Addenda, Change Order, Field Order, or Contract Amendment when submitting Shop Drawings except for deviations specifically brought to the Designer's attention on an attached Shop Drawing Deviation Request form in accordance with Paragraph 25.09.
- G. Fabrication or installation of any products prior to the approval of Shop Drawings is done at the Contractor's risk. Defective products may be rejected at the Owner's option.
- H. Payment will not be made for products for which Shop Drawings or Samples are required until these are approved by the Designer.

#### 25.04 Shop Drawing Requirements

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

#### 25.05 Special Certifications and Reports

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

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

#### 25.06 Warranties and Guarantees

- A. Provide all required warranties, guarantees, and related documents with the Shop Drawing. The effective date of warranties and guarantees will be the date of acceptance of the Work by the Owner.
- B. Identify all Extended Warranties, defined as any guarantee of performance for the product or system beyond the 1-year correction period described in the General Conditions. Issue the warranty certificate in the name of the Owner. Provide a Warranty Bond for Extended Warranties if required by Specification Sections.
- C. Provide a copy of all warranties in a separate document in accordance with Article 29.

#### 25.07 Shop Drawing Submittal Procedures

- A. Submit Shop Drawings through the Designer. Send all documents in digital format for processing.
  - 1. Provide all information requested in the Shop Drawing submittal form. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided. The Shop Drawing submittal form is to be the first document in the file submitted.
  - 2. Submit all documents in Portable Document Format (PDF).
    - a. Create PDF documents from native format files unless files are only available from scanned documents.
    - b. Rotate pages so that the top of each document appears at the top of the monitor screen when opened in PDF viewing software.
    - c. Submit PDF document with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.
    - d. Submit color PDF documents where color is required to interpret the Shop Drawing. Submit Samples and color charts per Paragraph 25.08.A.
    - e. Create or convert documents to allow text to be selected for comments or searched using text search features. Run scanned documents through Optical Character Recognition (OCR) software if necessary.
    - f. Flatten markups in documents to prevent markups made by Contractor from being moved or deleted. Flatten documents to allow markup recovery.
    - g. Use software to reduce file size using default settings except the option for "Drop Metadata." Uncheck the "Drop Metadata" box when reducing file size.
    - h. Add footers to each document with the Project name.

3. Submit each specific product or class of material separately so these can be tracked and processed independently. Do not submit Shop Drawings for more than one product in the same Shop Drawing.
  4. Submit items specified in different Specification Sections separately unless they are part of an integrated system.
  5. Define abbreviations and symbols used in Shop Drawings.
    - a. Use terms and symbols in Shop Drawings consistent with the Contract Drawings.
    - b. Provide a list of abbreviations and their meaning as used in the Shop Drawings.
    - c. Provide a legend for symbols used on Shop Drawings.
  6. Mark Shop Drawings to reference:
    - a. Related Specification Sections,
    - b. Drawing number and detail designation,
    - c. Product designation or name,
    - d. Schedule references,
    - e. System into which the product is incorporated, and
    - f. Location where the product is incorporated into the Project.
- B. Use the following conventions to markup Shop Drawings for review:
1. Make comments and corrections in the color blue. Add explanatory comments to the markup.
  2. Highlight items in black that are not being furnished when the Supplier's standard drawings or information sheets are provided so that only the products to be provided are in their original color.
  3. Make comments in the color yellow where selections or decisions by the Designer are required, but such selections do not constitute a deviation from the Contract Documents. Add explanatory comments to the markup to indicate the action to be taken by the Designer.
  4. Make comments in the color orange that are deviation requests. Include the deviation request number on the Shop Drawing that corresponds to the deviation request on the Shop Drawing Deviation Request form. Include explanatory comments in the Shop Drawing Deviation Request form.
  5. Mark dimensions with the prefix FD to indicate field verified dimensions on the Shop Drawings.
- C. Submit a Change Proposal per Article 12 to request modifications to the Contract Documents, including those for approval of "or equal" products when specifically allowed by the Contract Documents or as a substitution for specified products or procedures.
- D. Designate a Shop Drawing as requiring priority treatment in the comment section of the Shop Drawing submittal form to place the review of the Shop Drawing ahead of other Shop Drawings previously delivered. Shop Drawings are typically reviewed in the order received, unless Contractor requests that a different priority be assigned. Priority Shop Drawings will

be reviewed before other Shop Drawings for this Project already received but not yet reviewed. Use of this priority designation for Shop Drawings may delay the review of Shop Drawings previously submitted, pushing the processing of Shop Drawings beyond the 14-day target. Contractor is responsible for delays resulting from the use of the priority designation status on Shop Drawings.

E. Complete the certification required by Paragraph 25.03.

#### 25.08 Sample and Mockup Submittal Procedures

A. Submit color charts and Samples for every product requiring color, texture, or finish selection.

1. Submit color charts and Samples only after Shop Drawings for the products have been approved.
2. Deliver all color charts and Samples at one time.
3. Provide Samples of adequate size to clearly illustrate the functional characteristics of the product, with integrally related parts and attachment devices.
4. Indicate the full range of color, texture, and patterns.
5. Deliver color charts and Samples to the field office and store for the duration of the Project
6. Notify the Designer that color charts and Samples have been delivered for approval using the Notification by Contractor form.
7. Submit color charts and Samples not less than 30 days prior to when these products are to be ordered or released for fabrication to comply with the Project schedule.
8. Remove Samples that have been rejected. Submit new Samples following the same process as for the initial Sample until Samples are approved.
9. Dispose of Samples when related Work has been completed and approved and disposal is approved by the Designer. At Owner's option, Samples will become the property of the Owner.

B. Construct mockups for comparison with the Work being performed.

1. Construct mockups from the actual products to be used in construction per detailed Specification Sections.
2. Construct mockups of the size and in the area indicated in the Contract Documents.
3. Construct mockups complete with texture and finish to represent the finished product.
4. Notify the Designer that mockups have been constructed and are ready for approval using the Notification by Contractor form. Allow 2 weeks for OPT to approve of the mockup before beginning the Work represented by the mockup.
5. Remove mockups that have been rejected. Construct new mockups following the same process as for the initial mockup until mockup is approved.
6. Protect mockups until Work has been completed and accepted by the OPT.



7. Dispose of mockups when related Work has been completed and disposal is approved by the Designer.

#### 25.09 Equal Non Specified Products

- A. Contractor may submit other manufacturers' products that are in full compliance with the Specification where Specifications list one or more manufacturers followed by the phrase "or equal" or "or approved equal."
  1. Submit a Shop Drawing as required by this article to document that the proposed product is equal or superior to the specified product.
  2. Prove that the product is equal. It is not the OPT's responsibility to prove the product is not equal.
    - a. Indicate on a point by point basis for each specified feature that the product is equal to the Contract Document requirements.
    - b. Make a direct comparison with the specified manufacturer's published data sheets and available information. Provide this printed material with the Shop Drawing.
    - c. The decision of the Designer regarding the acceptability of the proposed product is final.
  3. Provide a typewritten certification that, in furnishing the proposed product as an equal, the Contractor:
    - a. Has thoroughly examined the proposed product and has determined that it is equal or superior in all respects to the product specified.
    - b. Has determined that the product will perform in the same manner and result in the same process as the specified product.
    - c. Will provide the same warranties and/or bonds as for the product specified.
    - d. Will assume all responsibility to coordinate any modifications that may be necessary to incorporate the product into the construction and will waive all claims for additional Work which may be necessary to incorporate the product into the Project which may subsequently become apparent.
    - e. Will maintain the same time schedule as for the specified product.

#### 25.10 Requests for Deviation

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

- E. A Modification must be issued by the Designer for approval of a deviation. Approval of a requested Shop Drawing deviation by the Designer on the Shop Drawings Deviation Request form indicates approval of the requested deviation only on its technical merits as generally conforming to the Contract Documents. Deviations from the Contract Documents can only be approved by a Modification.

#### 25.11 Designer Responsibilities

- A. Shop Drawings will be received by the Designer. Designer will log the documents and review per this Article for general conformance with the Contract Documents.
  - 1. Designer's review and approval will be only to determine if the products described in the Shop Drawing or Sample will, after installation or incorporation into the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  - 2. Designer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
  - 3. Designer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- B. Comments will be made on items called to the attention of the Designer for review and comment. Any marks made by the Designer do not constitute a blanket review of the document submittal or relieve the Contractor from responsibility for errors or deviations from the Contract requirements.
  - 1. Designer will respond to Contractor's markups by either making markups directly in the Shop Drawings file using the color green or by attaching a Document Review Comments form with review comments.
  - 2. Shop Drawings that are reviewed will be returned with one or more of the following status designations:
    - a. Approved: Shop Drawing is found to be acceptable as submitted.
    - b. Approved as Noted: Shop Drawing is Approved so long as corrections or notations made by Designer are incorporated into the Show Drawing.
    - c. Not Approved: Shop Drawing or products described are not acceptable.
  - 3. Shop Drawing will also be designated for one of the following actions:
    - a. Final distribution: Shop Drawing is acceptable without further action and has been filed as a record document.
    - b. Shop Drawing not required: A Shop Drawing was not required by the Contract Documents. Resubmit the document per Article 26.
    - c. Cancelled: This action indicates that for some reason, the Shop Drawing is to be removed from consideration and all efforts regarding the processing of that document are to cease.

- d. Revise and resubmit: Shop Drawing has deviations from the Contract Documents, significant errors, or is inadequate and must be revised and resubmitted for subsequent review.
  - e. Resubmit with corrections made: Shop Drawing is “Approved as Noted,” but has significant markups. Make correction and notations to provide a revised document with markup incorporated into the original document so that no markups are required.
  - f. Returned without review due to excessive deficiencies: Document does not meet the requirement of the Specifications for presentation or content to the point where continuing to review the document would be counterproductive to the review process or clearly does not meet the requirements of the Contract Documents. Revise the Shop Drawing to comply with the requirements of this Section and resubmit.
  - g. Actions a through c will close out the Shop Drawing review process and no further action is required as a Shop Drawing. Actions d through f require follow up action to close out the review process.
- 4. Drawings with a significant or substantial number of markings by the Contractor may be marked “Approved as Noted” and “Resubmit with corrections made.” These drawings are to be revised to provide a clean record of the Shop Drawing. Proceed with ordering products as the documents are revised.
  - 5. Dimensions or other data that does not appear to conform to the Contract Documents will be marked as “At Variance With” (AVW) the Contract Documents or other information provided. The Contractor is to make revisions as appropriate to comply with the Contract Documents.
- C. Bring deviations to the Shop Drawings to the attention of the Designer for approval by using the Shop Drawing Deviation Request form. Use a single line for each requested deviation so the Status and Action for each deviation can be determined for that requested deviation. If approval or rejection of a requested deviation will impact other requested deviations, then all related deviations should be included in that requested deviation line so the status and action can be determined on the requested deviation as a whole.
  - D. Requested deviations will be reviewed as possible Modification to the Contract Documents.
    - 1. A Requested deviation will be rejected as “Not Approved” if the requested deviation is unacceptable. Contractor is to revise and resubmit the Shop Drawing with corrections for approval.
    - 2. A Field Order will be issued by the Designer for deviations approved by the Designer if the requested deviation is acceptable and if the requested deviation will not result in a change in Contract Price or Contract Times. Requested deviations from the Contract Documents may only be approved by Field Order.
    - 3. A requested deviation will be rejected if the requested deviation is acceptable but the requested deviation will or should result in a change in Contract Price or Contract Times. Submit any requested deviation that requires a change in Contract Price or Contract Times as a Change Proposal for approval prior to resubmitting the Shop Drawing.

- E. Contractor is to resubmit the Shop Drawing until it is acceptable and marked Approved or Approved as Noted and is assigned an action per Paragraph 25.11 that indicates that the Shop Drawing process is closed.
- F. Information that is submitted as a Shop Drawings that should be submitted as Record Data or other type of document, or is not required may be returned without review, or may be deleted. No further action is required and the Shop Drawing process for this document will be closed.

#### 25.12 Resubmission Requirements

- A. Make all corrections or changes in the documents required by the Designer and resubmit to the Designer until approved.
  - 1. Revise initial drawings or data and resubmit as specified for the original document.
  - 2. Highlight or cloud in green those revisions which have been made in response to the previous reviews by the Designer. This will include changes previously highlighted or clouded in yellow to direct attention to Designer to items requiring selections or decisions by the Designer or highlighted or clouded in orange for a requested deviation from the Contract Documents.
  - 3. Highlight and cloud new items in yellow where selections or decisions by the Designer are required, but such selections do not constitute a deviation from the Contract Documents. Add explanatory comments to the markup to indicate the action to be taken by the Designer.
  - 4. Highlight and cloud new items in orange that are deviation requests. Include the deviation request number on the Shop Drawing that corresponds to the deviation request on the Shop Drawing Deviation Request form. Numbering for these new items is to start with the next number following the last Shop Drawing deviation requested. Include explanatory comments in the Shop Drawing Deviation Request form.
- B. Pay for excessive review of Shop Drawings.
  - 1. Excessive review of Shop Drawings is defined as any review required after the original review has been made and the first resubmittal has been checked to see that corrections have been made.
  - 2. Review of Shop Drawings or Samples will be an additional service requiring payment by the Contractor if the Contractor submits a substitution for a product for which a Shop Drawing or Sample has previously been approved, unless the need for such change is beyond the control of Contractor.
  - 3. Cost for additional review time will be billed to the Owner by the Designer for the actual hours required for the review of Shop Drawings by Designer and in accordance with the rates listed in SECTION 00 73 00 SUPPLEMENTARY CONDITIONS.
  - 4. A Set-off will be included in each Application for Payment to pay costs for the additional review to the Owner on a monthly basis. The Set-off will be based on invoices submitted to Owner for these services.

5. Need for more than one resubmission or any other delay of obtaining Designer's review of Shop Drawings will not entitle the Contractor to an adjustment in Contract Price or an extension of Contract Times.

## **ARTICLE 26 – RECORD DATA**

### **26.01 Work Included**

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

### **26.02 Quality Assurance**

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

### **26.03 Contractor's Responsibilities**

- A. Submit Record Data in accordance with SECTION 00 73 00 SUPPLEMENTARY CONDITIONS.
- B. Include Record Data in the Schedule of Documents required by Article 24 to indicate the Record Data to be submitted, the dates on which documents are to be sent to the Designer for review, and proposed dates that the product will be incorporated into the Project.
- C. Complete the following before submitting Record Data:
  1. Prepare Record Data and coordinate with Shop Drawings or Samples, other Record Data, and with the requirements of the Work and the Contract Documents;
  2. Determine and verify specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information;
  3. Determine and verify the suitability of materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  4. Determine and verify information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

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

#### 26.04 Record Data Requirements

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

#### 26.05 Special Certifications and Reports

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

## 26.06 Warranties and Guarantees

- A. Provide all required warranties, guarantees, and related documents with the Record Data. The effective date of warranties and guarantees will be the date of acceptance of the Work by the Owner.
- B. Identify all Extended Warranties, defined as any guarantee of performance for the product or system beyond the 1 year correction period described in the General Conditions. Issue the warranty certificate in the name of the Owner. Provide a Warranty Bond for Extended Warranties if required.
- C. Provide a copy of all warranties in a separate document in accordance with Article 29.

## 26.07 Record Data Submittal Procedures

- A. Submit Record Data through the Designer. Send all documents in digital format for processing.
  - 1. Provide all information requested in the Record Data submittal form. Do not leave any blanks incomplete. If information is not applicable, enter NA in the space provided. The Record Data submittal form is to be the first document in the file.
  - 2. Submit all documents in Portable Document Format (PDF).
    - a. Create PDF documents from native format files unless files are only available from scanned documents.
    - b. Rotate pages so that the top of each document appears at the top of the monitor screen when opened in PDF viewing software.
    - c. Submit PDF document with adequate resolution to allow documents to be printed in a format equivalent to the document original. Documents are to be scalable to allow printing on standard 8-1/2 x 11 or 11 x 17 paper.
    - d. Submit color PDF documents where color is required to interpret the Record Data.
    - e. Create or convert documents to allow text to be selected for comments or searched using text search features. Run scanned documents through Optical Character Recognition (OCR) software if necessary.
    - f. Flatten markups in documents to prevent markups made by Contractor from being moved or deleted. Flatten documents to allow markup recovery.
    - g. Use software to reduce file size using default settings except the option for "Drop Metadata." Uncheck the "Drop Metadata" box when reducing file size.
    - h. Add footers to each document with the Project name.
  - 3. Submit each specific product, class of material, or product separately so these can be tracked and processed independently. Do not submit Record Data for more than one system in the same Record Data.
  - 4. Submit items specified in different Specification Sections separately unless they are part of an integrated system.
  - 5. Define abbreviations and symbols used in Record Data.

- a. Use terms and symbols in Record Data consistent with the Contract Drawings.
  - b. Provide a list of abbreviations and their meaning as used in the Record Data.
  - c. Provide a legend for symbols used on Record Data.
6. Mark Record Data to reference:
- a. Related Specification Sections,
  - b. Drawing number and detail designation,
  - c. Product designation or name,
  - d. Schedule references,
  - e. System into which the product is incorporated, and
  - f. Location where the product is incorporated into the Project.
- B. Submit a Change Proposal per Article 12 to request modifications to the Contract Documents, including those for approval of “or equal” products when specifically allowed by the Contract Documents or as a substitution for specified products or procedures. Deviations from the Contract Documents can only be approved by a Modification.
- C. Complete the certification required by Paragraph 26.03.

#### 26.08 Designer’s Responsibilities

- A. Record Data will be received by the Designer, logged, and provided to Owner as the Project record.
- 1. Record Data may be reviewed to see that the information provided is adequate for the purpose intended. Record Data not meeting the requirements of Paragraph 26.02 may be rejected as unacceptable.
  - 2. Record Data is not reviewed for compliance with the Contract Documents. Comments may be returned if deviations from the Contract Documents are noted during the cursory review performed to see that the information is adequate.
  - 3. Contractor’s responsibility for full compliance with the Contract Documents is not relieved by the review of Record Data. Contract modifications can only be approved by a Modification.
- B. Designer may take the following action in processing Record Data:
- 1. File Record Data as received if the cursory review indicates that the document meets the requirements of Paragraph 26.02. Document will be given the status of “Filed as Received” and no further action is required on that Record Data.
  - 2. Reject the Record Data for one of the following reasons:
    - a. The document submittal requirements of the Contract Documents indicate that the document submitted as Record Data should have been submitted as a Shop Drawing. The Record Data will be marked “Rejected” and “Submit Shop Drawing.” No further action is required on this document as Record Data and the Record Data process will be closed. Resubmit the document as a Shop Drawing per Article 25.



- b. The cursory review indicates that the document does not meet the requirements of Paragraph 26.02. The Record Data will be marked “Rejected” and “Revise and Resubmit.” Contractor is to resubmit the Record Data until it is acceptable and marked “Filed as Received.” When Record Data is filed, no further action is required, and the Record Data process will be closed.
  - c. The Record Data is not required by the Contract Documents nor is the Record Data applicable to the Project. The Record Data will be marked “Rejected” and “Cancel - Not Required.” No further action is required, and the Record Data process will be closed.
- C. Contractor is to resubmit the Record Data until it is acceptable and marked “Filed as Received.”

## **ARTICLE 27 – CONSTRUCTION PROGRESS SCHEDULE**

### 27.01 Requirements

- A. Prepare and submit a Progress Schedule for the Work and update the schedule on a monthly basis for the duration of the Project.
- B. Provide schedule in adequate detail to allow Owner to monitor progress and to relate document processing to sequential activities of the Work.
- C. Incorporate and specifically designate the dates of anticipated submission of documents and the dates when documents must be returned to the Contractor into the schedule.
- D. Assume complete responsibility for maintaining the progress of the Work per the schedule submitted.
- E. Schedule Work based upon a six day work week.

### 27.02 Document Submittal

- A. Submit Progress Schedules in accordance with Article 24.
- B. Submit a preliminary schedule within 10 days after the Notice of Award. The schedule is to be available at the pre-construction conference.
- C. Submit a detailed schedule at least 10 days prior to the first payment request.
- D. Submit Progress Schedule updates monthly with Applications for Payment to indicate the progress made on the Project to that date. Failure to submit the schedule may cause delay in the review and approval of Applications for Payment.

### 27.03 Schedule Requirements

- A. Schedule is to be in adequate detail to:
  - 1. Assure adequate planning, scheduling, and reporting during the execution of the Work;
  - 2. Assure the coordination of the Work of the Contractor and the various Subcontractors and Suppliers;
  - 3. Assist in monitoring the progress of the Work; and

4. Assist in evaluating proposed changes to the Contract Times and Project schedule.
- B. Provide personnel with 5 years' minimum experience in scheduling construction work comparable to this Project. Prepare the schedule using acceptable scheduling software.
- C. Provide the schedule in the form of a computer generated critical path schedule which includes Work to be performed on the Project. It is intended that the schedule accomplish the following:
  1. Give early warning of delays in time for correction.
  2. Provide detailed plans for the execution of the Work in the form of future activities and events in sequential relationships.
  3. Establish relationships of significant planned Work activities and provide a logical sequence for planned Work activities.
  4. Provide continuous current status information.
  5. Allow analysis of the Contractor's program for the completion of the Project.
  6. Permit schedules to be revised when the existing schedule is not achievable.
  7. Log the progress of the Work as it actually occurs.
- D. Prepare a time scaled CPM arrow or precedence diagram to indicate each activity and its start and stop dates.
  1. Develop Milestone dates and Project completion dates to conform to time constraints, sequencing requirements and Contract completion date.
  2. Use calendar day durations while accounting for holidays and weather conditions in the projection of the duration of each activity.
  3. Clearly indicate the critical path for Work to complete the Project.
- E. Provide a time scaled horizontal bar chart which indicates graphically the Work scheduled at any time during the Project. The chart is to indicate:
  1. Complete sequence of construction by activity;
  2. Identification of the activity by structure, location, and type of Work;
  3. Chronological order of the start of each item of Work;
  4. The activity start and stop dates;
  5. The activity duration;
  6. Successor and predecessor relationships for each activity;
  7. A clearly indicated single critical path; and
  8. Projected percentage of completion, based on dollar value of the Work included in each activity as of the first day of each month.
- F. Provide a schedule incorporating the Schedule of Documents provided in accordance with Article 24 indicating:
  1. Specific date each document is to be delivered to the Designer.
  2. Specific date each document must be received in order to meet the proposed schedule.

3. Allow a reasonable time to review documents, taking into consideration the size and complexity of the document, other documents being processed, and other factors that may affect review time.
4. Allow time for re-submission of each document. Contractor is responsible for delays associated with additional time required to review incomplete or erroneous documents and for time lost when documents are submitted for products that do not meet Specification requirements.

#### 27.04 Schedule Revisions

- A. Revise the schedule if it appears that the schedule no longer represents the actual progress of the Work.
  1. Submit a written report if the schedule indicates that the Project is more than 30 days behind schedule. The report is to include:
    - a. Number of days behind schedule;
    - b. Narrative description of the steps to be taken to bring the Project back on schedule; and
    - c. Anticipated time required to bring the Project back on schedule.
  2. Submit a revised schedule indicating the action that the Contractor proposes to take to bring the Project back on schedule.
- B. Revise the schedule to indicate any adjustments in Contract Times approved by Modification.
  1. Include a revised schedule with Change Proposals if a change in Contract Times is requested.
  2. OPT will deem any Change Proposal that does not have a revised schedule and request for a change in Contract Times as having no impact on the ability of the Contractor to complete the Project within the Contract Times.
- C. Updating the Project schedule to reflect actual progress is not considered a revision to the Project schedule.
- D. Applications for Payment may not be recommended for payment without a revised schedule and if required, the report indicating the Contractor's plan for bringing the Project back on schedule.

#### 27.05 Float Time

- A. Define float time as the amount of time between the earliest start date and the latest start date of a chain of activities on the construction schedule.
- B. Float time is not for the exclusive use or benefit of either the Contractor or Owner.
- C. Where several subsystems each have a critical path, the subsystem with the longest time of completion is the critical path and float time is to be assigned to other subsystems.
- D. Contract Times cannot be changed by the submission of a schedule. Contract Times can only be modified by a Change Order or Contract Amendment.

- E. Schedule completion date must be the same as the Contract completion date. Time between the end of construction and the Contract completion date is float time.

## **ARTICLE 28 – VIDEO AND PHOTOGRAPHIC DOCUMENTATION**

### 28.01 Work Included

- A. Provide a video recording of the Site prior to the beginning of construction.
  - 1. Record the condition of all existing facilities in or abutting the construction area (right-of-way) including but not limited to streets, curb and gutter, utilities, driveways, fencing, landscaping, etc.
  - 2. Record after construction staking is complete but prior to any clearing.
  - 3. Provide one copy of the recording, dated and labeled to the OAR before the start of construction. Provide additional recording as directed by the OAR if the recording provided is not considered suitable for the purpose of recording pre-existing conditions.
- B. Furnish an adequate number of photographs of the Site to clearly depict the completed Project.
  - 1. Provide a minimum of ten different views.
  - 2. Photograph a panoramic view of the entire Site.
  - 3. Photograph all significant areas of completed construction.
  - 4. Completion photographs are not to be taken until all construction trailers, excess materials, trash, and debris have been removed.
  - 5. Employ a professional photographer approved by the OAR to photograph the Project.
  - 6. Provide one aerial photograph of the Site from an angle and height to include the entire Site while providing adequate detail.
- C. All photographs, video recordings, and a digital copy of this media are to become the property of the Owner. Photographs or recordings may not be used for publication, or public or private display without the written consent of the Owner.

### 28.02 Quality Assurance

- A. Provide clear photographs and recordings taken with proper exposure. View photographs and recordings in the field and take new photographs or recordings immediately if photos of an adequate print quality cannot be produced or video quality is not adequate. Provide photographs with adequate quality and resolution to permit enlargements.

### 28.03 Document Submittal

- A. Submit photographic documentation as Record Data in accordance with Article 24.
- B. Submit two DVDs of the video recording as Record Data in accordance with Article 24.

#### 28.04 Photographs

- A. Provide photographs in digital format with a minimum resolution of 1280 x 960, accomplished without a digital zoom.
- B. Take photographs at locations acceptable to the OAR.
- C. Provide two color prints of each photograph and a digital copy on a DVD of each photograph taken.
- D. Identify each print on back with:
  - 1. Project name.
  - 2. Date, time, location, and orientation of the exposure.
  - 3. Description of the subject of photograph.
- E. Submit photographs in clear plastic sheets designed for photographs. Place only one photograph in each sheet to allow the description on the back to be read without removing the photograph.
- F. Final photographs are to include two 8-by-10-inch glossy color prints for each of ten photographs selected by the OAR. These photographs are in addition to normal prints.

#### 28.05 Video Recording

- A. Provide digital format on DVD that can be played with Windows Media Player in common format in full screen mode.
- B. Identify Project on video by audio or visual means.
- C. Video file size should not exceed 400 MB.
- D. Video resolution shall be 1080p.
- E. The quality of the video must be sufficient to determine the existing conditions of the construction area. Camera panning must be performed while at rest, do not pan the camera while walking or driving. Camera pans should be performed at intervals sufficient to clearly view the entire construction area.
- F. DVD shall be labeled with construction stationing and stationing should be called out, voice recorded, in the video.
- G. The entire construction area recording shall be submitted at once. Sections submitted separately will not be accepted.
- H. Pipeline projects should be recorded linearly from beginning to end.

### **ARTICLE 29 – EXECUTION AND CLOSEOUT**

#### 29.01 Substantial Completion

- A. Notify the OAR that the Work or a designated portion of the Work is substantially complete per the General Conditions. Include a list of the items remaining to be completed or corrected before the Project will be considered to be complete.

- B. OPT will visit the Site to observe the Work within 30 days after notification is received to determine the status of the Project.
- C. OAR will notify the Contractor, within 120 days after notification, that the Work is either substantially complete or that additional Work must be performed before the Project will be considered substantially complete.
  - 1. OAR will notify the Contractor of items that must be completed before the Project will be considered substantially complete.
  - 2. Correct the noted deficiencies in the Work.
  - 3. Notify the OAR when the items of Work in the OAR's notice have been completed.
  - 4. OPT will revisit the Site and repeat the process.
  - 5. OAR will issue a Certificate of Substantial Completion to the Contractor when the OPT considers the Project to be substantially complete. The Certificate will include a tentative list of items to be corrected before Final Payment will be recommended.
  - 6. Review the list and notify the OAR of any objections to items on the list within 10 days after receiving the Certificate of Substantial Completion.

#### 29.02 Final Inspections

- A. Notify the OAR when:
  - 1. Work has been completed in compliance with the Contract Documents;
  - 2. Equipment and systems have been tested per Contract Documents and are fully operational;
  - 3. Final Operations and Maintenance Manuals have been provided to the Owner and all operator training has been completed;
  - 4. Specified spare parts and special tools have been provided; and
  - 5. Work is complete and ready for final inspection.
- B. OPT will visit the Site to determine if the Project is complete and ready for Final Payment within 30 days after the notice is received.
- C. Designer will notify the Contractor that the Project is complete or will notify the Contractor that Work is Defective.
- D. Take immediate steps to correct Defective Work. Notify the Designer when Defective Work has been corrected. OPT will visit the Site to determine if the Project is complete and the Work is acceptable. OAR will notify the Contractor that the Project is complete or will notify the Contractor that Work is Defective.
- E. Submit the Request for Final Payment with the closeout documents described in Paragraph 29.04 if notified that the Project is complete, and the Work is acceptable.

#### 29.03 Reinspection Fees

- A. Owner may impose a Set-off against the Application for Payment in accordance with the General Conditions to compensate the OPT for additional visits to the Project if additional Work is required.

#### 29.04 Closeout Documents Submittal

- A. Record Documents per Article 20.
- B. Warranties and bonds.
- C. Equipment installation reports on equipment.
- D. Shop Drawings, Record Data, and other documents as required by the Contract Documents.
- E. Evidence of continuing insurance and bond coverage as required by the Contract Documents.
- F. Final Photographs per Article 28.

#### 29.05 Transfer of Utilities

- A. If applicable to the Project, transfer utilities to the Owner when the Certificate of Substantial Completion has been issued and the Work has been occupied by the Owner.
- B. Submit final meter readings for utilities and similar data as of the date the Owner occupied the Work.

#### 29.06 Warranties, Bonds and Service Agreements

- A. Provide warranties, bonds, and service agreements required by the Contract Documents.
- B. The date for the start of warranties, bonds, and service agreements is established per the Contract Documents.
- C. Compile warranties, bonds, and service agreements and review these documents for compliance with the Contract Documents.
  - 1. Provide a log of all equipment covered under the 1-year correction period specified in the Contract Documents and all products for which special or extended warranties or guarantees are provided. Index the log by Specification Section number on forms provided. Include items 2.e through 2.g below in the tabulation.
  - 2. Provide a copy of specific warranties or guarantees under a tab indexed to the log. Each document is to include:
    - a. A description of the product or Work item;
    - b. The firm name with the name of the principal, address, and telephone number;
    - c. Signature of the respective Supplier or Subcontractor to acknowledge existence of the warranty obligation for extended warranties and service agreements;
    - d. Scope of warranty, bond, or service agreement;
    - e. Indicate the start date for the correction period specified in the Contract Documents for each product and the date on which the specified correction period expires.
    - f. Indicate the start date for extended warranties for each product and the date on which the specified extended warranties period expires.
    - g. Start date, warranty or guarantee period, and expiration date for each warranty, bond, and service agreement;

- h. Procedures to be followed in the event of a failure; and
    - i. Specific instances that might invalidate the warranty or bond.
  - D. Submit digital copies of the documents to the Designer for review.
  - E. Submit warranties, bonds, and service agreements within 10 days after equipment or components are placed in service.

## **ARTICLE 30 – MISCELLANEOUS**

### **30.01 Computation of Times**

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

### **30.02 Owner's Right to Audit Contractor's Records**

- A. By execution of the Contract, Contractor grants Owner the right to audit, examine, inspect and/or copy, at Owner's election at all reasonable times during the term of this Contract and for a period of four (4) years following the completion or termination of the Work, all of Contractor's written and electronically stored records and billings relating to the performance of the Work under the Contract Documents. The audit, examination or inspection may be performed by an Owner designee, which may include its internal auditors or an outside representative engaged by Owner. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the Contract, then, such retention period must extend until final resolution of the dispute. As used in these General Conditions, "Contractor written and electronically stored records" include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Examples of Contractor written and electronically stored records include, but are not limited to: accounting data and reports, billings, books, general ledgers, 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, Subcontractor agreements, Supplier agreements, rental equipment proposals, federal and state tax filings for any issue in question, along with any and all other agreements, sources of information and matters that may, in Owner's sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents.
- B. Owner agrees to exercise the right to audit, examine or inspect Contractor's records only during regular business hours. Contractor agrees to allow Owner and/or Owner's designee access to all of the Contractor's Records, Contractor's facilities, and current or former employees of Contractor, deemed necessary by Owner or its designee(s), to perform such audit, inspection or examination. Contractor also agrees to provide adequate and



appropriate work space necessary for Owner or its designees to conduct such audits, inspections or examinations.

- C. Contractor must include this Paragraph 30.02 in any Subcontractor, supplier or vendor contract.

### 30.03 Independent Contractor

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

### 30.04 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available to the Owner or Contractor by these General Conditions are in addition to, and are not a limitation of, the rights and remedies which are otherwise imposed or available by:
  1. Laws or Regulations;
  2. Special warranties or guarantees; or
  3. Other provisions of the Contract Documents.
- B. The provisions of this Paragraph 30.04 are as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

### 30.05 Limitation of Damages

- A. Owner is not liable to Contractor for claims, costs, losses or damages sustained by Contractor's Team associated with other projects or anticipated projects.
- B. Contractor waives claims for consequential damages, incidental or special damages arising out of or relating to this Contract, whether the damages are claimed in contract, tort or on any other basis.

### 30.06 No Waiver

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

### 30.07 Severability

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

30.08 Survival of Obligations

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

30.09 No Third Party Beneficiaries

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

30.10 Assignment of Contract

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

30.11 No Waiver of Sovereign Immunity

- A. The Owner has not waived its sovereign immunity by entering into and performing its obligations under this Contract.
- B. This Contract is to perform a governmental function solely for the public benefit.

30.12 Controlling Law

- A. This Contract is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Nueces County, Texas. Cases must be filed and tried in Nueces County and cannot be removed from Nueces County, Texas.

30.13 Conditions Precedent to Right to Sue

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

30.14 Waiver of Trial by Jury

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

30.15 Attorney Fees

- A. The Parties expressly agree that, in the event of litigation, all parties waive rights to payment of attorneys' fees that otherwise might be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

### 30.16 Compliance with Laws

- A. Comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.
- B. No qualified person shall on the basis of race, color, religion, national origin, gender, age or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.
- C. Comply with all applicable federal, state and city laws, rules and regulations.
- D. Each applicable provision and clause required by law to be inserted into the Contract shall be deemed to be enacted herein, and the Contract shall be read and enforced as though each were physically included herein.

### 30.17 Enforcement

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

### 30.18 Subject to Appropriation

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

### 30.19 Contract Sum

- A. The Contract Sum is stated in the Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the Corpus Christi City Council. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any party to this Contract.

### 30.20 Contractor's Guarantee as Additional Remedy

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

### 30.21 Notices.

- A. Any notice required to be given to Owner under any provision in this Contract must include a copy to OAR by mail or e-mail.

30.22 Public Information

- A. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and Contractor agrees that the contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**END OF SECTION**