

SANTA FE INDEPENDENT SCHOOL DISTRICT

CONTRACT DOCUMENTS AND SPECIFICATIONS FOR CONSTRUCTION OF

Detention Pond Isolator & Area Inlet Repairs

to serve

SANTA FE HIGH SCHOOL

Santa Fe, Galveston County, Texas



January, 2021



KIRST KOSMOSKI, INC.
Civil/Consulting Engineers (F-7309)
2400 Augusta Dr., Ste. 405; Hou., Tx. 77057
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Eddie Kirst

p0279-002-004

01/21/21

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Specification sections shown in ***Bold Italics*** in this Table of Contents ARE NOT included herein but are part of the Standard Document & Specifications and are hereby incorporated as if included here verbatim. Electronic copies of the Standard Document & Specifications, Divisions 01 – 03 may be obtained from the City of Pearland Engineering web site at: <https://www.pearlandtx.gov/departments/engineering-and-capital-projects/engineering/standard-construction-documents>.

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END OF SECTION

Section 00100**INVITATION TO BID**

Sealed Bids, in duplicate, addressed to SANTA FE INDEPENDENT SCHOOL DISTRICT, Attention: Mr. Mr. Bob Atkins, Director of Maintenance, Operations, & Construction, will be received at 4133 Warpath Ave., Santa Fe, Texas, 77510, until 10:00 a.m. local time, Wednesday, February 10, 2021, and then publicly opened and read aloud for “**Detention Pond Isolator & Area Inlet Repairs to serve SANTA FE HIGH SCHOOL**” for Santa Fe Independent School District, Santa Fe, Galveston County, Texas.

Scope of Work of the Contract includes approximately: removing and reconstructing the upper portion of 10 area inlets and remediating sinkholes around them, and installation of an isolator wall in one area inlet.

Bids received after the closing time will be returned unopened. A **MANDATORY** pre-bid conference will be held on Wednesday, February 3, 2021, at 10:00 a.m. local time, at the office of the Director of Maintenance, Operations, & Construction, 4135 Warpath Ave., Santa Fe, Texas, 77510.

Each Bid must be accompanied by a bid bond or a certified or cashier’s check, acceptable to the Owner, in an amount not less than 5 percent (5%) of the total amount bid, as a guarantee that the successful bidder will enter into the Contract and execute the Bonds on the forms provided and provide the required insurance certificates within 7 days after the date Contract Documents are received by the Contractor.

Copies of the bidding documents may be obtained from www.CivcastUSA.com: search “Santa Fe Drainage Repairs”. Bidders must register on this website in order to view and/or download specifications, plans, soils and environmental reports for this project. There is NO charge to view or download documents.

Bidding documents may be examined without charge at Kirst Kosmoski, Inc., 2400 Augusta Dr., Ste. 405, Houston, Texas, 77057.

The Owner reserves the right to reject any or all Bids and to waive all defects and irregularities in bidding or bidding process except time of submitting a Bid. The Successful Bidder, if any, will be the responsible Bidder which in the Board’s judgment will be most advantageous to the District and result in the best and most economical completion of the Project.

END OF SECTION

INSTRUCTIONS TO BIDDERS

1. **PREPARATION OF BIDS.** Unless otherwise directed in the Invitation to Bidders, each Bid shall be submitted, in duplicate, on the bid forms provided or on photocopies of the forms, in conformity with the requirements of the Invitation to Bidders, these instructions, and the instructions printed on the bid form.

The District may not accept this bid until it has received from the bidder a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (TEC), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The undersigned understands that failure to provide said form complete with a certificate number assigned by the TEC will result in a non-conforming bid and will prohibit the District from considering this bid for acceptance.

All blanks on the bid form shall be completed, typed, or written in ink, and no change shall be made on the bid form or any other of the Contract Documents. All amounts shall be written in figures, with amounts extended and totaled. Minimum unit prices have been established for certain items shown on the bid. See Paragraph 7 of these instructions. If the bidder chooses not to bid on optional items (if any), "No Bid" shall be entered in the bid space. Any Bid may be rejected if it contains any omission, erasure, alteration, addition, irregularity of any kind, or items not called for; if it does not submit prices for each of the items in the bid form; if any of the prices are obviously unbalanced; or if it shall, in any manner, fail to conform to the conditions of the Invitation to bidders and these instructions.

The bidder shall sign its Bid in the signature space. If the Bid is made by a partnership or corporation, the name and address of the partnership or corporation shall be shown, together with the names and addresses of the partners or officers. If the Bid is made by an individual, it must be executed by that person; if made by a partnership, it must be executed by one of the partners (and if by a limited partnership, then executed by the general partner); or if made by a corporation, it must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or assistant secretary of the corporation. The corporate address and state of incorporation must be shown below the signature.

When applicable, evidence of authority to conduct business as an out-of-state corporation in the State of Texas shall be provided in accordance with the paragraph entitled **QUALIFICATION OF BIDDERS.** State Contractor license number, if any, must also be shown.

The Bid and the Bid Security must be enclosed in a sealed envelope, plainly identified on the outside with the contents (i.e. Bid or Bid Security), the bidder's name, and the job name and number, and addressed to the Owner as prescribed in the Invitation to Bidders.

2. **CONTRACT DOCUMENTS.** The Contract Documents are complementary and must be read together as a whole; what is called for by one is as binding as if called for by all.

Bidders desiring further information or further interpretation of any part of the Contract Documents are hereby obligated to submit a written request online to the www.CivcastUSA.com system or to the Engineer not less than **7 calendar days** before the Bid opening. Answers to these requests will be given, in writing, to all bidders as addenda to the Contract, and each addendum will be made a part of the Contract. No explanation or interpretation of the Contract, other than written addenda, shall be binding.

Should a bidder find discrepancies in or omissions from the Contract Documents or should the bidder be in doubt as to any meaning, the bidder is hereby obligated to notify Engineer, so a written addendum may be sent to all bidders. It is the responsibility of each bidder to determine if it has received all addenda, complete files of which will be maintained at the Engineer's office and the office designated to receive the Bids.

Each bidder shall inform itself fully of the construction and labor conditions under which the Work will be performed and shall be presumed to have inspected the Site and to have read and to be thoroughly familiar with the Contract Documents. Failure to do so will not relieve the successful bidder of its obligation to furnish all materials and labor necessary to carry out the provision of the Contract and to complete the Work for the consideration of its Bid.

Successful Bidder agrees to meet the requirements of the Developer to become an active vendor for the Developer. Requirements can be provided by the Engineer.

3. **PRE-BID CONFERENCE.** A **MANDATORY** pre-bid conference among Owner, Engineer, prospective bidders, and others will be held to discuss the scope of the Work and to answer questions concerning the Work. No addendum will be issued at this conference, but an addendum will be issued afterwards, if necessary, to answer questions. The pre-bid conference will be held at the time and place shown in the Invitation to bidders.

4. **BID SECURITY.** Each Bid shall be accompanied by a bid bond or a certified or cashier's check, acceptable to the Owner, in an amount not less than 5 percent of the total amount bid (the "Bid Security"), as a guarantee that the successful bidder will enter into the Contract and execute the Bonds on the forms provided and provide the required insurance certificates within 7 days after the date Contract Documents are received by the Contractor. Bid Securities will be returned to all but the three most qualified, responsible bidders within 5 days after opening of Bids, and the latter's Bid Securities will be returned after complete execution of the Contract. The surety company providing a bid bond must conform to the same requirements for surety companies providing the performance bonds, maintenance bonds and/or payment bonds described below.

5. **BONDS.** The successful bidder must furnish Performance, Maintenance, and Payment Bonds, each in the sum of 100 percent of the Contract Price, from a surety company holding a permit from the State of Texas to act as surety. Unless otherwise specified, the cost of proving such Bonds shall be included in the bidders total bid amount. The surety company must have a minimum **Best Key Rating** of "B+" or better. The surety company, the agency and agent issuing the Bonds must be authorized to issue Bonds in Texas in an amount equal to the total Contract Price and such authorization must be recorded in the files of the Texas Department of Insurance. The Bonds must be executed by a duly appointed representative of the surety company licensed by the State of Texas as a General Lines Agent and such licensing must be recorded in the files of the Texas Department of Insurance. If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the rules and regulations of the Treasury Department with respect to performance and payment bonds for federal jobs, including specifically the rules related to underwriting limitation. For contracts over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law, or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. If bidder's

proposed surety company, agency or agents do not meet the aforementioned requirements, then Owner may refrain from considering the bidder for Contract award and Owner may require bidder to forfeit the Bid Security.

6. DELIVERY OF BIDS. It is each bidder's responsibility to deliver its Bid and Bid Security to the location named in the Invitation to Bidders before the closing time. The fact that a Bid and Bid Security were dispatched will not be considered. The Bid and Bid Security must actually be delivered to be considered.

7. "OR EQUAL" SUBMISSIONS. Where materials or equipment are specified by a trade or brand name, it is not the intention of the Owner to discriminate against an equal product of another manufacturer, but to set a definite standard of quality or performance. In preparing his/her proposal, each bidder is expected to include in his/her base Bid the cost of the item so specified. However, in certain Technical Specification sections, manufacturers are listed followed by "or equal." In certain other Technical Specification sections, manufacturers are listed with "or equal" not included. In those items where "or equal" is not included, it is hereby added and understood to be included, even though not specifically stated in each and every Technical Specification. If a Contractor chooses to submit a suggested "or equal" product in lieu of a product by one of the named manufacturers, Owner will evaluate the item to determine if it is an equal. The Contractor is responsible for providing all data required to evaluate an item submitted as a suggested "or equal." Owner's decision on whether an unnamed manufacturer is an "equal" is to be final. No claims for additional cost, time delay, etc. will be accepted if an unnamed manufacturer is submitted by Contractor as a suggested "equal" and Owner decides the item is not "equal."

Contractor must submit list of items to be submitted as a suggested "or equal" at time of bid submission. No additional suggested "or equal" items will be considered after bid opening.

8. MINIMUM AND EXTRA UNIT PRICE ITEMS. If the approximate quantity and a minimum unit price have been established for items as shown in the Bid, the bidder may not bid a unit price less than the minimum value; however, it may bid an amount greater than the minimum unit price. If no entry is made in the spaces provided, the minimum unit prices shown shall apply. These Extra Unit Price Items are included to facilitate payment for changes and alterations that may be required to complete the Work. The Work, as provided by the Contract Documents, is described in bid items other than Extra Unit Price Items. When additional Work covered by Extra Unit Price Items is performed, payment will be based on the quantity actually constructed and the unit prices entered in the Bid.

9. TIME FOR COMPLETION. Contractor will not be allowed time extensions that are due to (i) inclement weather (not including Force Majeure); (ii) non-availability of equipment or material, when the principal units of Work and tasks on the critical path are not in progress or are not delayed by the event of delay, interference, disruption, or hindrance; (iii) when at least seven (7) hours of available working time remain out of the working day; (iv) while materials are drying and it is possible for the Contractor to enclose the area and use drying devices; (v) when an event of delay, interference, disruption, or hindrance occurs on a day other than a working day or other day when the Contractor had not originally planned to work; (vi) when an event of delay, interference, disruption, or hindrance occurs after the expiration of the time for completion; (vii) to the extent the Contractor could have anticipated or alleviated the impact of the event of delay, interference, disruption, or hindrance through reasonable efforts; (viii) when events of concurrent delay overlap the claimed delay; and/or (ix) when an extension of time is precluded by any other provision of the Contract Documents.

10. QUALIFICATION OF BIDDERS. The apparent most qualified, responsible bidder shall submit to Owner, within **5 calendar days** of notification, either i) a fully completed Contractor's Statement of Qualification or ii) a written statement that the most recently submitted Contractor's Statement of Qualification is accurate, which statement shall be considered in the award of the Contract. Failure to accurately complete the Contractor's Statement of Qualification or to submit the Statement will, at Owner's option, disqualify the bidder from consideration in the award of the Contract. The form of the Contractor's Statement of Qualification is available from Engineer. No other form of Statement of Qualification will be acceptable. Evidence of out-of-state corporation to conduct business in the state in which the Work is to be performed, along with state contractor license number, must also be provided.

11. MODIFICATION AND WITHDRAWAL OF BIDS. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids. If, within twenty-four hours after Bids are opened, any bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that bidder may withdraw its Bid and the Bid Security will be returned. Thereafter, that bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

12. AWARD OF CONTRACT. Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids and to reject the Bid of any bidder if Owner believes that it would not be in the best interest of the Project to make award to that bidder, whether because the Bid is not responsive or the bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities and defects in bidding, except time of submitting a Bid. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, Owner will consider, among other things, the qualifications of bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award. Alternate bid items will not be considered unless requested in the Bid Form.

Owner may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for the Work. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of bidders, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents, to Owner's satisfaction.

BY SUBMITTING A BID, EACH BIDDER AGREES TO FULLY AND FOREVER WAIVE AND RELEASE ANY CLAIM (KNOWN OR UNKNOWN) IT HAS OR MAY HAVE AGAINST THE OWNER, ENGINEER, DEVELOPER AND THEIR RESPECTIVE ATTORNEYS, EMPLOYEES, CONSULTANTS, REPRESENTATIVES, AND AGENTS ARISING OUT OF OR IN CONNECTION WITH THE: (I) ADMINISTRATION, EVALUATION, OR RECOMMENDATION (OR LACK THEREOF) OF ANY BID; (II) WAIVER OF ANY

REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS; AND
(III) ACCEPTANCE OR REJECTION OF ANY BIDS AND AWARD OF THE CONTRACT.

Owner reserves the right to award the Bid, at Owner's discretion, based on the amount of the Total Base Bid (without including "Extra Unit Price Items" or "alternate" bid items) or on the amount of the Total Amount Bid (including "Extra Unit Price Items" items or "alternate" bid items), or based on any other combination, means or method determined appropriate by Owner. If the contract is to be awarded, it will be awarded to the responsible bidder whose evaluation by Owner indicates that the award will be most advantageous to the Owner and result in the best and most economical completion of the Work.

If the contract is to be awarded, Owner will give the successful bidder a notice of award within sixty (60) days after the day of the Bid opening.

Within 10 calendar days of receipt from the Owner of the Notice of Award, the successful bidder must submit to the Engineer the original Bonds and all information or other items necessary to complete the Contract Documents, including the Schedule of Completion and Contractor's safety program. The successful bidder must return the fully executed Contract Documents to Engineer within 7 calendar days of receipt, or Owner may at its sole discretion disqualify the bid and accept another bid and the bidder shall, at Owner's option, forfeit its bid security.

13. TAXES, LICENSES AND FEES. Certain taxes, licenses, fees and other similar items are part of the cost of the Work and it shall be Contractor's responsibility to familiarize itself with these costs and to observe and comply with the Laws and Regulations relating to the same. The prices, sums, rates and other charges set forth in the Contractor's Bid shall cover and include all such costs. Owner is exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.309 as a political subdivision of the State of Texas. Owner shall provide Contractor, if requested by Contractor in writing, with a completed Texas Sales and Use Tax Exemption Certification as evidence of the applicability of such exemption and Contractor shall not collect Texas sales and use taxes from Owner with respect to this Contract. Contractor and all subcontractors to Contractor shall issue a Texas Sales and Used Tax Exemption Certification with respect to, and shall not pay Texas sales and use taxes on, all purchases of the following items that are exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.311: (i) tangible personal property that will be incorporated into Owner's realty; (ii) tangible personal property that is necessary and essential for the performance of this contact and is consumed entirely on the job site; and (iii) taxable services for use in the performance of this Contract that are performed at the job site and are either integral to the performance of this Contract or expressly required to be provided by this Contract. In addition, Contractor and all subcontractors to Contractor (i) shall not include any provision for Texas sales and use taxes with respect to such exempt items in any Bid or the Contract Price, and (ii) shall pass on to the Owner cost savings due to the exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor shall include the foregoing provision regarding the exemption from Texas Sales and use taxes. Contractor must pay taxes on items that are not exempt.

14. NUMBER OF SIGNED SETS OF DOCUMENTS. The Contract Documents will be prepared in at least five original sets for signature, one for delivery to the successful bidder. Owner will furnish the successful bidder six sets of Plans and Technical Specifications free of charge, and additional sets may be obtained from Engineer at Engineer's reproduction rates. The successful bidder shall provide five signed originals of each of the Bonds to be bound with the Contract Documents.

15. WORKER'S COMPENSATION INSURANCE. See section entitled "INSURANCE" in Special Conditions Part A of the Contract.

16. SOILS REPORT. If a soils investigation has been made for this project, the soils report and log of borings is available for bidder's information only. The report is not a warranty of subsurface conditions, nor is it a part of the Contract Documents. Bidders are expected to examine the Site and such reports and then decide for themselves the character of the materials to be encountered.

Owner and Engineer disclaim any responsibility for the accuracy, true location and extent of the surface and subsurface investigations that have been prepared by others. Owner and Engineer further disclaim responsibility for interpretation of that data by bidder, *i.e.* projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water or underground facilities.

17. LABOR CLASSIFICATION AND MINIMUM WAGE SCALE.

(A) General: Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall ascertain the general prevailing wage rate received by the classes of workers employed on projects similar to this project and shall specify in the call for Bids and in the Contract the minimum wage rates which shall be paid for each type of worker. This statute further provides that the Contractor or subcontractors shall pay, as penalty, to Owner Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract.

The statute likewise requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them on the construction of the Project and to show the accrual per diem wages paid to each worker. These records are open to the inspection of Owner.

(B) The minimum wage rates that apply to this Contract are specified in the Special Conditions Part A of the Contract. Contractor and subcontractors shall review and ascertain such wage rates and pay at least such minimum rates.

Section 00300

BID PROPOSAL

Date: _____

Bid of _____, an individual proprietorship / a corporation organized and existing under the laws of the State of Texas / a partnership consisting of _____, for the construction of:

**Detention Pond Isolator & Area Inlet Repairs
to serve
SANTA FE HIGH SCHOOL
Santa Fe, Galveston County, Texas**

(Submitted in Duplicate)

To: SANTA FE INDEPENDENT SCHOOL DISTRICT
4133 Warpath Ave.
Santa Fe, Texas, 77510

Attn.: Mr. Bob Atkins,
Director of Maintenance, Operations, & Construction

Pursuant to the Invitation to Bidders, and Instructions to Bidders, the undersigned Bidder hereby proposes to do all the work and furnish all necessary superintendence, labor, machinery, equipment, tools and materials, and whatever else may be necessary to complete all the work described in or reasonably inferable from the Contract Documents for the construction of the **Detention Pond Isolator & Area Inlet Repairs** to serve Santa Fe High School with all related appurtenances, complete, tested, and operational, in accordance with the Plans, and Specifications prepared by the Engineer, Kirst Kosmoski, Inc., 2400 Augusta Drive, Ste. 405, Houston, Texas 77057, Mr. Eddie Kirst, P.E., under the District's inspection for the unit prices or applicable prices set forth on the attached bid sheet(s) which bears the undersigned's initials for identification. It is understood that, in the event any changes are ordered on any part of the Work, the applicable unit prices bid shall apply as additions to or deductions from the total prices for the parts of the Work so changed.

The Bid Security, if required under the Instructions to Bidders, is included with this Bid Proposal.

The Bidder agrees to submit to the Owner the Qualifications of Bidder, including the Financial Statement of Bidder, as required by the Instructions to Bidders.

The Bidder binds himself upon acceptance of his Bid Proposal to execute the Standard Form of Agreement and, if required, furnish a Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the total Contract Price, according to the forms included in the Contract Documents.

Bidder's Initial's: _____

The undersigned Bidder agrees to commence work within ten (10) days after the date of a written notice to commence work. It is understood that the Work is to be Substantially Complete within **thirty (30) days** after the date of the notice to commence work. Time for Substantial Completion shall begin on the date established by the notice to commence work. The Contractor will pay liquidated damages in the amount(s) specified in Document 00500 – Standard Form of Agreement in the event the Work is not Substantially Complete in this time limit.

Item No.	Bid Item Description	Unit	Approx. Quantity	Unit Price	Amount Bid
BASE BID ITEMS					
INLET B-15 REPAIR & POND ISOLATOR					
1.	30" Pipe Plug Including: Rental, Installation, Maintenance, Removal	LS	1		
2.	Initial Pump Down of Upstream Storm Sewers & Detention Pond(s)	Day	5		
3.	Excavate Around Inlet, Remove Face Brick & Mortar Around Pipe Penetrations, Reseal Around Pipe Penetrations with Suitable Concrete Brick & Non-Shrink Grout, Backfill with 2.5 Sack Flowable Fill	LS	1		
4.	Construct Concrete Wier Wall with 6" Gate Valve Inside "B-15"	LS	1		
SUBTOTAL BASE BID INLET "B-15" REPAIR & POND ISOLATOR:					
AREA INLET REPAIRS					
5.	Excavate Around Inlet, Remove Frame & Grate, Remove Face Brick & Mortar Above Pre-Cast Base Section and Around Pipe Penetrations, Reconstruct Walls & Reseal Around Pipe Penetrations with Suitable Concrete Brick & Non-Shrink Grout, Install Pre-Cast Riser Sections as Needed, Reinstall Frame & Grate, Backfill with 2.5 Sack Flowable Fill	Ea	9		
6.	4½ " Thick Concrete Slope Paving Between Existing Walkway and Fence at Inlet "A-7" (Approximately 24' x 6')	SY	16		
7.	4' x 4' x 4½ " Thick Concrete Walkway Panel at Inlet "B-10"	SY	2		
8.	4½" Thick Concrete Slope Paving Between Existing Walkway and Tennis Court at Inlet "B-10" (Approximately 20' x 15')	SY	33		

Bidder's Initial's: _____

Item No.	Bid Item Description	Unit	Approx. Quantity	Unit Price	Amount Bid
9.	4' High Chain Link Fence Mounted on Existing Walkway North of Inlet "B-10"	LF	48		
10.	Raise Inlet "B-12" Grate to Max. 6" Below Surrounding Walkway Including: Additional Pre-Cast Riser Sections as Needed, Placing Excess Excavation to Regrade Area to Drain, & Sod	LS	1		
SUBTOTAL BASE BID AREA INLET REPAIRS:					
MISCELLANEOUS					
11.	Mobilization, Insurance, & Bonds; Cleanup & Demobilization	LS	1		
12.	ALLOWANCE for Owner's Contingency (Only as Directed by Owner)	LS	1	\$10,000	\$10,000
13.	ALLOWANCE for Additional Pumping as Necessitated by Weather (Only as Directed by Owner)	Day	5	\$500	\$2,500
14.	ALLOWANCE for SFISD/City of Santa Fe Permitting/Inspection Fee	LS	1	\$830	\$830
SUBTOTAL BASE BID MISCELLANEOUS:					
SUBTOTAL BASE BID ITEMS:					
ALTERNATE #1 BID ITEMS					
AREA INLET REPAIRS					
15.	Add/(Deduct) for Complete Removal of Area Inlet & Replacement with Same Size New Precast Inlet, Complete in Place	Ea	9		
SUBTOTAL ALT. #1 ITEMS:					
TOTAL BID:					

Bidder's Initial's: _____

It is agreed that the Contract Price may be increased or decreased to cover work added, altered, or deleted by order of the Engineer, in accordance with the provisions of the General Conditions of Agreement.

The undersigned agrees that the amounts bid in this Bid Proposal will not be withdrawn or modified for sixty (60) days following date of Bid Proposal opening, or such longer period as may be agreed to in writing by the School District and Bidder.

It is understood that in the event the Successful Bidder fails to enter into the Standard Form of Agreement and/or, if required, furnish a Performance Bond and Payment Bond, each in the amount of one hundred (100) percent of the Contract Price within ten (10) days of the Notice of Award, the Successful Bidder will forfeit the Bid Security as provided in the Instructions to Bidders.

Unless otherwise expressly provided herein, all references to "day(s)" shall mean calendar day(s).

The following Addenda have been received. The modifications to the Bidding Documents noted therein have been considered and all costs thereto are included in the Bid Proposal prices.

Addendum No.: _____	Date: _____	Addendum No.: _____	Date: _____
Addendum No.: _____	Date: _____	Addendum No.: _____	Date: _____
Addendum No.: _____	Date: _____	Addendum No.: _____	Date: _____

Bidder hereby represents that the only person or parties interested in this offer as principals are those named above. Bidder has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding.

Firm Name: _____

By: _____

Title: _____

Address: _____

Phone No: _____

ATTEST:

(Typed or Printed Name)

(Seal, if Bidder is a Corporation)

Signature

Date: _____

END OF SECTION

Bidder's Initial's: _____

AGREEMENT

STATE OF TEXAS §

COUNTY OF _____ §

THIS AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2021, by and between SANTA FE INDEPENDENT SCHOOL DISTRICT, 4133 Warpath, P.O. Box 370, Santa Fe, Texas, 77510, of Galveston County, Texas, and _____, of the City of _____, County of _____, and State of _____, hereinafter termed “Contractor.”

All capitalized terms used herein shall be given the meanings set forth in the General Conditions. Kirst Kosmoski, Inc. shall be referred to herein as the “Engineer.”

For and in consideration of the mutual covenants hereinafter set forth, and under the conditions expressed in the Bonds bearing even date herewith, the Contractor and Owner hereby agree as follows:

Contractor shall commence and complete the Work generally described as follows:

**Detention Pond Isolator & Area Inlet Repairs
to serve
SANTA FE HIGH SCHOOL,
Santa Fe, Galveston County, Texas**

according to those particular Plans and Technical Specifications prepared by Engineer

in the initial Contract Price of \$_____

and all Extra Work in connection therewith, under the terms as stated in the General and Special Conditions of the Agreement, and, at Contractor’s own proper cost and expense, to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said Work, in accordance with the conditions and prices stated in the Bid attached hereto and in accordance with the Contract Documents, including, but not limited to, Invitation to Bidders, Instructions to Bidders, General and Special Conditions of the Agreement, Plans, and other drawings and printed or written explanatory matter thereof, and the Technical Specifications, on file with Engineer. Contractor represents and warrants to the Owner that it has carefully examined this Agreement and all other Contract Documents, which are made a part of the Contract, and is thoroughly familiar therewith.

The Contractor hereby agrees to begin work within **10 calendar days** after written Notice to Proceed has been given by Engineer. Contractor hereby also agrees to achieve Substantial Completion of the Work within thirty **(30) calendar days** after the date of the written Notice to Proceed and to achieve Final Completion of the Work within forty five **(45) calendar days** after the date of the written Notice to Proceed.

Owner agrees to pay Contractor for completion of the Work in accordance with the Contract Documents the initial Contract Price of _____ dollars & ____ cents (\$_____), plus or minus any increases or decreases to the initial Contract Price as provided by the Contract. Contractor will be paid in current funds for the performance of the Contract in accordance with the Bid submitted therefor, subject to additions and deductions as approved by Change Order under the Contract Documents, and to make payments on account thereof as provided therein. If included as Attachment A, the Developer shall act as "Owner" for the purposes of payment.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

SANTA FE INDEPENDENT SCHOOL DISTRICT
Owner

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____

Contractor

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____

(The following to be executed if Contractor is a Corporation)

I, _____, certify that I am the secretary of the Corporation named as Contractor herein; that _____, who signed this Contract on behalf of Contractor, was then _____ of said Corporation; that said Contract was duly signed for and on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

Signed: _____

Corporate Seal

PERFORMANCE BOND

STATE OF TEXAS § Contract Date _____

COUNTY OF _____ § Date Bond Executed _____

PRINCIPAL _____

SURETY _____

OWNER SANTA FE INDEPENDENT SCHOOL DISTRICT

PENAL SUM OF BOND (in words and figures) _____,
being 100 percent of the Contract Price.

CONTRACT for: **Detention Pond Isolator & Area Inlet Repairs to serve SANTA FE HIGH SCHOOL Santa Fe, Galveston County, Texas** (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, dated the same date as this bond, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly performs the work in accordance with the plans, specifications and any other contract documents, during the original term of the Contract and any extensions thereof that may be granted by Owner, with or without notice to Surety, and during the life of any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to faithfully and strictly perform the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions contained herein and in the Contract are applicable whether or not within the scope of said statute.

Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

PRINCIPAL

ATTEST

By _____
Name _____
Title _____
Address _____

By _____
Name _____
Title _____

(SEAL)

SURETY

ATTEST

By _____
Name _____
Title _____

By _____
Name _____
Title _____

(SEAL)

Physical Address:

Mailing Address:

Telephone: _____

Local Recording Agent Personal Identification Number:

Surety must attach its original Power of Attorney to this bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the secretary of the corporation named as Principal in the Bond; that _____, who signed the bond on behalf of Principal, was then _____ of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

_____ (Corporate Seal)

ATTACH POWER OF ATTORNEY

PAYMENT BOND

STATE OF TEXAS §

Contract Date _____

COUNTY OF _____ §

Date Bond Executed _____

PRINCIPAL _____

SURETY _____

OWNER SANTA FE INDEPENDENT SCHOOL DISTRICT

PENAL SUM OF BOND (in words and figures) _____,
being 100 percent of the Contract Price.

CONTRACT for: Detention Pond Isolator & Area Inlet Repairs to serve SANTA FE HIGH SCHOOL Santa Fe, Galveston County, Texas (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into the Contract with Owner, dated the same date as this bond, which Contract is incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal shall promptly pay claimants for all labor, subcontracts, materials and specially fabricated materials performed or furnished under or by virtue of the Contract, and duly authorized modifications and normal and usual extras thereto, notice of which modifications to Surety being hereby waived, then this obligation shall be void, otherwise to remain in full force and effect. Should Principal fail to promptly pay claimants for all labor, subcontracts, materials and specially fabricated materials performed or furnished under or by virtue of the Contract, Surety is hereby bound to make such payments on behalf of Principal up to a total aggregate amount equal to the penal sum of the bond. Labor, subcontracts, materials, and specially fabricated materials shall be construed in accordance with Chapter 2253, Texas Government Code.

PROVIDED, HOWEVER, that Owner having required Principal to furnish this Bond in order to comply with the provisions of Chapter 2253, Texas Government Code, all rights and remedies on this Bond shall inure solely to such claimants and shall be determined in accordance with the provisions, conditions, and limitations of the aforesaid Government Code to the same extent as if they were copied at length herein.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

PRINCIPAL

ATTEST

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Address _____

(SEAL)

SURETY

ATTEST

By _____

By _____

Name _____

Name _____

Title _____

Title _____

(SEAL)

Physical Address:

Mailing Address:

Telephone: _____

Local Recording Agent Personal Identification Number:

Surety must attach its original Power of Attorney to this bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the secretary of the corporation named as Principal in the Bond; that _____, who signed the bond on behalf of Principal, was then _____ of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

_____ (Corporate Seal)

ATTACH POWER OF ATTORNEY

MAINTENANCE BOND

STATE OF TEXAS §

Contract Date _____

COUNTY OF _____ §

Date Bond Executed _____

PRINCIPAL _____

SURETY _____

OWNER SANTA FE INDEPENDENT SCHOOL DISTRICT

PENAL SUM OF BOND (in words and figures) _____,
being 100 percent of the Contract Price.

CONTRACT for: Detention Pond Isolator & Area Inlet Repairs to serve SANTA FE HIGH SCHOOL Santa Fe, Galveston County, Texas (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, dated the same date as this bond, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work covered by the Contract, including any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

The parties intend this maintenance bond to be a common law bond to be constructed in accordance with Texas law.

Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

 PRINCIPAL
 By _____
 Name _____
 Title _____
 Address _____

ATTEST
 By _____
 Name _____
 Title _____
 (SEAL)

 SURETY
 By _____
 Name _____
 Title _____

ATTEST
 By _____
 Name _____
 Title _____

(SEAL)

Physical Address:

 Mailing Address:

 Telephone: _____

Local Recording Agent Personal Identification Number:

Surety must attach its original Power of Attorney to this bond.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the secretary of the corporation named as Principal in the Bond; that _____, who signed the bond on behalf of Principal, was then _____ of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

_____ (Corporate Seal)

ATTACH POWER OF ATTORNEY

PARTIAL WAIVER OF LIEN AND PAYMENT AFFIDAVIT

STATE OF TEXAS §

COUNTY OF _____ §

The undersigned contracted with SANTA FE INDEPENDENT SCHOOL DISTRICT to furnish labor, materials, and/or incidental items in connection with certain improvements to real property located in City of Santa Fe, Galveston County, Texas, and owned by Santa Fe Independent School District which improvements are described as follows:

**Detention Pond Isolator & Area Inlet Repairs
to serve
SANTA FE HIGH SCHOOL
Santa Fe, Galveston County, Texas**

In consideration of Pay Estimate No. _____ in the amount of _____
_____ DOLLARS (\$ _____) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the undersigned does hereby waive and release any mechanics' lien or materialmen's lien or claims of lien that the undersigned has or hereafter has on the above-mentioned real property on account of any labor performed or materials furnished or to be furnished or labor performed and materials furnished by the undersigned pursuant to the above-mentioned contract or any constitutional lien that the undersigned may have.

Undersigned hereby guarantees that all bids for labor performed and/or materials furnished in the erection and construction of such improvements on the Property have been fully paid and satisfied and Undersigned does further guarantee that if for any reason a lien or liens is/are filed for material or labor against said Property arising out of any bills for material or labor in connection with the erection or construction of said improvements thereon, Undersigned will obtain a settlement of such lien or liens and a proper release thereof shall be obtained.

Contractor Name

Signature Title

SWORN TO AND SUBSCRIBED BEFORE ME, on this the ____ day of _____, 20____,
to certify which witness my hand and seal of office.

My Commission Expires: _____
Notary Public in and for the State of Texas

GENERAL CONDITIONS OF THE AGREEMENT

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GENERAL CONDITIONS OF THE AGREEMENT**ARTICLE I. DEFINITIONS**

- 1.01. **DEFINITIONS.** The following terms shall be defined as described below, unless such definition is expressly modified by the Contract Documents. Any capitalized terms used in the Contract Documents not defined in this section shall have the meaning assigned to such term under the Contract Documents.
- a. **Bid.** The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 - b. **Bond(s).** Performance bonds, maintenance bonds and payment bonds, or any of them, as required by the Contract Documents.
 - c. **Change Order.** A document signed by Contractor, Engineer and Owner and entered into in accordance with the Contract Documents that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the time for completion.
 - d. **Claim.** A “Claim” is a claim, demand, or assertion by the Contractor seeking for itself or on behalf of a subcontractor or supplier: adjustment or interpretation of any Contract term, including without limitation, adjustment of the Contract Price or Contract Time; payment of money; relief from obligations; or other relief or recovery with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question asserted by the Contractor (whether for itself or on behalf of a subcontractor or supplier) arising out of or relating to the Contract.
 - e. **Contract.** The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 - f. **Contract Documents.** The Invitation to Bidders, Instructions to Bidders, Bid, Agreement, General Conditions, Special Conditions, Technical Specifications, Plans, Change Orders, any written amendment to the Contract signed by both Contractor and Owner, Written Work Orders, written interpretations of the Contract or addenda issued by Engineer, and all other documents designated as incorporated by reference. Documents incorporated by reference are Contract Documents, whether attached or not. Approved Shop Drawings and other Contractor’s submittals, inspections and reports, such as testing of subsurface and physical or environmental conditions, are not Contract Documents.
 - g. **Contractor.** The entity with whom Owner has entered into this Contract.
 - h. **Contractor Parties.** The contractor, subcontractor, supplier and their respective agents, representatives or employees, or any of them.

- i. Contract Price. The amount of money stated in the Agreement as payable by Owner to Contractor for timely completion of the Work in accordance with the Contract Documents, plus or minus any increases or decreases to the initial Contract Price agreed to by Owner as provide by the Contract.
- j. Contract Time. The number of days or the dates stated in the Agreement to achieve Final Completion, expressed as a number of calendar days or as a reference to the date of Final Completion. If the Contract Time is measured by calendar days, each and every calendar day shall be counted against the Contract Time.
- k. Engineer. The design consultant so identified in the Agreement, or such other firm that Owner may designate, is herein called Engineer and is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.
- l. Extra Unit Price Items. All extra unit price items or alternate unit price items so specified in the Bid.
- m. Extra Work. All Work that may be required by Engineer or Owner to be done by Contractor to accomplish any change, alteration, or addition to the Work shown upon the Plans, implied by the Technical Specifications, or otherwise within the Contract Documents and not covered by Contractor's Bid. Notwithstanding the foregoing, Extra Unit Price Work required by Engineer or Owner as described herein is not included in the definition of Extra Work.
- n. Final Completion. The date on which the entire Work or an agreed portion thereof is complete in strict conformance with the Contract Documents. If any governmental entity has jurisdiction to approve or accept Contractor's work on the Project, or any portion thereof, Final Completion is not achieved unless and until written approval or acceptance of the entity is received.
- o. Force Majeure. Fire, flood, or act of God, earthquakes, hurricanes, tornadoes, epidemics, war, riot, civil disturbance, sabotage, terrorism, governmental or judicial restraint but only to the extent such event (i) is beyond the control of and cannot be reasonably anticipated by, or the effects alleviated by, the Contractor and (ii) prevents the performance of the Work. Events not specifically listed herein shall not constitute events of Force Majeure.
- p. Hazardous Environmental Condition. The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, Contaminants, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
- q. Indemnified Parties. Owner, Engineer, and the officers, directors, employees, agents, and representatives of each such party.
- r. Laws and Regulations. Any and all applicable federal, state and local laws, rules, regulations, codes, and orders of any and all governmental bodies, agencies,

authorities, and courts having jurisdiction and any and all rules of common law pertaining to the Contractor's services, the Site, Contractor's employees and subcontractor's employees and/or the Work, and those of any other governmental entities with jurisdiction, including, without limitations all applicable laws of the State of Texas, Chapter 411 of the Texas Labor Code, Title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964, The Occupational Safety and Health Act of 1970, The National Environmental Policy Act, The Federal Water Pollution Control Act, The Clean Air Act, The Clean Water Act, The Toxic Substance Control Act, The Resource Conservation and Recovery Act, and all amendments thereof. The agencies charged with the administration and enforcement of the Laws and Regulations include, but are not limited to, the Department of the Interior, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, the U.S. Corps of Engineers, the National Fire Protection Association, the U.S. Geological Survey, the Minerals Management Service, the Texas Commission on Environmental Quality, the county in which the Owner is located, and the municipality, as applicable, in whose corporate or extraterritorial jurisdiction the Owner is located. Certain of the specific regulations that may be applicable to the Work are the Occupational Safety and Health Construction and General Industry Standards (29 CFR Part 1926 and 1910), and various environmental regulations.

- s. Notice to Proceed. A written notice given by or on behalf of Owner to Contractor fixing the date on which the Contract Time will begin to run and on which Contractor shall start to perform the Work.
- t. Owner. The entity so specified in the Agreement.
- u. Plans. That part of the Contract Documents which graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- v. Project. The total construction on the Site, which may include work performed by the Owner or other contractors.
- w. Regulatory Agencies. Any and all governmental bodies, agencies, authorities, counties, municipalities, and courts having jurisdiction over the Project.
- x. Shop Drawing. All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- y. Site. The land or area furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access.
- z. Substantial Completion. The time at which the Work, or any portion thereof, is sufficiently completed in accordance with the Contract Documents so that Owner can occupy the entirety of the Work and put it to the full and unrestricted use for which it was intended, and all required certificates of occupancy and other permits, approvals, licenses, and documents required to occupy the Project by all entities, agencies and governmental authorities having jurisdiction over the Project and/or the operation and

occupancy of the Project, as determined by the Engineer, have been given so that the Project may operate for its intended purpose, although the Project may still require minor miscellaneous Work and adjustment. The Work will not be considered substantially complete if any Project systems included in the Work are not operational as designed and scheduled, if designated instructions of Owner, Engineer, or Owner's other representative in the operation of systems has not been completed, or any final finishes within the Contract Documents are not in place. The terms "substantially completed" or "substantially complete" as applied to all or part of the Work shall have the same meanings as set forth here.

- aa. Technical Specifications. That part of the Contract Documents, including any written addenda thereto, consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- bb. Work. All obligations of the Contractor under the Contract Documents and all equipment, materials, labor, construction, management, supervision, services, and activities of every kind and nature, whether commenced or not, or completed or partially completed, undertaken by the Contractor, provided or to be provided by the Contractor, required of the Contractor, or inferable from the Contract Documents to perform and fulfill all of the Contractor's obligations pursuant to the Contract Documents.
- cc. Written Work Order. A written statement to Contractor signed by Owner or Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions. A Written Work Order will not change the Contract Price or Contract Time, but is evidence that the parties expect that the Written Work Order will be incorporated in a subsequently issued Change Order following agreement by the parties as to its effect, if any, on the Contract Price or Contract Time.

ARTICLE II. CONTRACT DOCUMENTS

2.01. INTERPRETATION OF CONTRACT DOCUMENTS AND PHRASES.

- a. Whenever the words "required," "permitted," "designated," "considered necessary," "prescribed," or words of like import are used, it shall be understood that the requirement, permission, order, designation, or prescription of Engineer is intended and similarly, the words "approval," "acceptable," or "satisfactory," or words of like import shall mean approved by, or acceptable to, Engineer.
- b. Whenever in the Technical Specifications or Plans accompanying this Agreement, the terms or descriptions of various qualities relative to finish, workmanship, or other qualities of similar kind which cannot from their nature be specifically and clearly described and specified, are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said judgment of said Technical Specifications or Plans shall be decided by Engineer, and said Work shall be done in accordance with his

interpretations of the meaning of the words, terms, or clauses defining the character of the Work.

- c. The parties hereto agree that these Contract Documents shall not be construed against any party hereto on the basis that such party did or did not draft the Contract Documents.
- d. The section headings used herein are for convenience only and shall not affect the construction or terms hereof.
- e. If there is an irreconcilable conflict between Contract Documents, the document highest in precedence shall control, but except in such event and to avoid such conflict, every construction of provisions shall be that each is in aid to, or supplementary to or complementary of, each other provision, to control and secure for Owner the completion of the entire Work in an expeditious, orderly and coordinated manner. The precedence, from highest to lowest, shall be in the following order:
 1. Permits for the Work from governmental authorities as may be required by law;
 2. Agreement between Owner and Contractor;
 3. Special Conditions Part A;
 4. General Conditions;
 5. Special Conditions Part B Technical Specifications and Plans.

The most recently issued document takes precedence over previously issued forms of the same document. Modifications take precedence over applicable previously issued documents under items 2 through 5 above. Detailed drawings shall take precedence over general drawings. In the event of any discrepancies between the Plans and Technical Specifications, or likewise, in the event of any doubt as to the meaning and intent of any portion of the Contract, including the Technical Specifications or Plans, Engineer shall define that which is intended to apply to the Work.

- f. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period.
- 2.02. EXHIBITS. All Work shall be done and all materials furnished in strict conformity with the Contract Documents, all of which are hereto attached (or considered as if attached) and are hereby made a part of this Contract.
- 2.03. ACCURACY. These Contract Documents, including the Technical Specifications, Plans, and Bid, are intended to show all Work to be done and material to be furnished hereunder. Contractor understands and acknowledges that errors may exist in the Contract Documents and that the Owner does not warrant the accuracy or sufficiency thereof. The Contractor accepts any lack of completeness of the Contract Documents, including the Plans, Technical

Specifications and Bid, and acknowledges that such documents were sufficiently detailed, accurate and comprehensive to enable Contractor to have adequately estimated and established the Contract Price and to perform the Work within the time for completion.

ARTICLE III. PRELIMINARY MATTERS

- 3.01. CONSTRUCTION SCHEDULE. The Contractor shall submit a construction schedule based on critical path method (“CPM”) or other method specifically approved by the Engineer and that is sufficiently accurate during the entire Contract Time to determine if the Contractor is performing on schedule.

Within 10 days following the end of each month after Notice to Proceed, or at more frequent intervals when requested by Engineer, the Contractor shall submit an updated and revised schedule; the revision must be current as of the immediate past schedule period. Each element shall be updated to reflect the actual start and stop dates, actual duration and actual number of days worked, anticipated changes to future start and stop dates, and changes due to change in amount of Work or Contract Time. When requested by Engineer, the Contractor will submit only that portion of the CPM submittal required.

Failure to meet any schedule submission dates or to comply with any requested submittal or failure to provide an acceptable submittal will be cause to withhold payment of all or portions of the next scheduled monthly payment or any portions of future monthly payment until an acceptable submittal has been made.

As a minimum, the Contractor shall have available at least one individual with authority to maintain and revise the schedule as needed to reflect the actual and planned work schedule. This individual is to cooperate with Engineer’s staff and be available to discuss schedule with Engineer’s staff when requested.

- 3.02. SCHEDULE OF VALUES. If directed by Engineer within 10 calendar days following the Notice to Proceed, the Contractor shall submit, within 10 calendar days following such direction from Engineer, a schedule of values showing the subdivision of the Contract into various items of payment of construction. This schedule of values must state quantities and prices to the smallest common measurement, e.g., cubic yard, pound, linear feet, etc., and will be used as a basis for computing value to the Owner of Work to be paid for in partial payments. Except for work associated with prices bid as supplemental items listed in the Bid, the schedule of values also will be used to determine the value of like or similar work that may be added to or deleted from the Contract. The above-mentioned schedule of values must be in a format and of such detail to be acceptable to the Engineer. No partial payments will be made unless the schedule of values has been submitted by Contractor and accepted by the Engineer. Engineer may require that the schedule of values be cross-referenced to CPM with each item on schedule of values to show which CPM activity corresponds to or includes the item.

- 3.03. KEEPING PLANS AND SPECIFICATIONS ACCESSIBLE. Contractor shall be furnished with five copies of all Plans and Technical Specifications without expense to him, and shall keep one copy of each constantly accessible on the Site.

3.04. SALES TAX. Owner is exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.309 as a political subdivision of the State of Texas. Owner shall provide Contractor, if requested by Contractor in writing, with a completed Texas Sales and Use Tax Exemption Certification as evidence of the applicability of such exemption. Contractor shall not collect Texas sales and use taxes from Owner with respect to this Contract. Contractor and all subcontractors to Contractor shall issue a Texas Sales and Use Tax Exemption Certification with respect to, and shall not pay Texas sales and use taxes on, all purchases of the following items that are exempt from Texas sales and use taxes pursuant to Texas Tax Code § 151.311: (i) tangible personal property that will be incorporated into Owner's realty; (ii) tangible personal property that is necessary and essential for the performance of this Contract and is consumed entirely on the job site; and (iii) taxable services for use in the performance of this Contract that are performed at the job site and are either integral to the performance of this Contract or expressly required to be provided by this Contract. In addition, Contractor and all subcontractors to Contractor (i) shall not include any provision for Texas sales and use taxes with respect to such exempt items in any bid or contract amount, and (ii) shall pass on to Owner cost savings due to the exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor shall include the foregoing provision regarding the exemption from Texas sales and use taxes. The Certification is included as Attachment A.

3.05. SHOP DRAWING SUBMITTALS.

- a. Shop Drawing Submittal List. Within 15 days after the date of the Notice to Proceed, Contractor shall submit for the Engineer's review a complete Shop Drawing submittal list. The list is to include Shop Drawings for all equipment and manufactured materials to be furnished under this Contract. The list should include, but not be limited to, the following, with each submittal to be numbered with a consecutive numbering system.
- i) Name (description) of submittal.
 - ii) Applicable specification number or drawing number.
 - iii) Scheduled submission date.
 - iv) Latest date acceptable submittal required to prevent delay in purchase.

The Engineer may waive all or portions of the submittal requirements for any Shop Drawing on the submittal list. No payment will be made for the Work until the submittal list is accepted by the Engineer.

- b. Contractor's Duties. The Contractor shall review Shop Drawings prior to submittal to verify field measurements, field construction criteria, manufacturer model number and other pertinent data, to ensure conformance to Contract Documents, coordination with other submittals, and schedule for submittal and review.

The Contractor shall stamp and sign submittals with stamp which states "This submittal is certified to be in conformance with Contract Documents unless noted herein." All submittals without this certification will not be reviewed but will be

returned to the Contractor for proper submission. The Engineer will rely on this statement when performing the review of the submittal.

The Contractor shall schedule submittals to allow sufficient time for review process and to coordinate submittals with the schedule to prevent delay to Work.

No Work may be performed in connection with fabrication, manufacturer, or purchase of materials or equipment until submittals have been reviewed and marked "No Exception Taken" or "Make Corrections Noted." Work performed on submittals marked "Make Corrections Noted" must be in accordance with all corrections noted thereon.

The Contractor shall correct submittals and resubmit or shall prepare new submittals for review by Engineer for all submitted items marked "Submit Specified Item," "Rejected," or "Revise and Resubmit." No claims for extra time or delays will be considered due to time required for review of submittals or resubmittals.

- c. Engineer's Duties. The Engineer shall review submittals as quickly as possible consistent with a thorough review and consistent with type of information submitted, but in any event not later than 14 calendar days from the date of submittal. Failure to comply with such review period shall not constitute the basis of a Claim.

Such review by the Engineer shall be for the sole purpose of determining the general conformity of said Shop Drawings or schedules to the Contract Documents and shall not relieve the Contractor of his duty as an independent contractor as set forth herein, it being expressly understood and agreed that the Engineer does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules or any means or methods reflected thereby, in relation to the safety of either person or property during Contractor's performance hereunder. The Engineer's review of drawings will not constitute an acceptance of all dimensions, quantities, and details of the material, equipment, device, or item shown and does not relieve the Contractor from any responsibility for errors or deviations from the Contract requirements.

The Engineer shall clearly mark four copies of submittals with required corrections and shall stamp drawings noting the appropriate action, signature, and date.

- d. Form of Submittal. The Contractor must submit four copies of all submittals. One copy of the appropriately marked submittal will be retained at the Engineer's office, one copy will be retained at the Engineer's field office, and two copies will be returned to the Contractor for Contractor's use. The Engineer will not mark additional copies for the Contractor. If the Contractor desires additional copies, they must be marked by the Contractor.

The Contractor shall submit a complete copy of relevant Contract Document items which has been marked by the manufacturer to certify each point of the Contract Document item noting compliance and each point of deviation.

The Contractor must submit relevant literature, catalog cuts, or written descriptive matter backing up all points of the Contract Documents item compliance.

Contractor must submit comparative life cycle, cost, performance, or other data supporting consideration of all points of the Contract Documents item deviation.

All information supplied must be carefully and completely cross-referenced to the relevant Contract Document item requirement.

When required by an individual Contract Document item, the Contractor shall submit written step-by-step test plan for functional checkout and demonstration test of respective equipment. Submissions that do not conform to the form of submittal as outlined herein will not be considered and will be returned to the Contractor for proper submission.

The Contractor must have acceptable Shop Drawings at the Site. Failure of the Contractor to supply acceptable drawings will be deemed sufficient cause for Owner to delay the Work at Contractor's risk and expense until such drawings are available. This procedure shall not entitle Contractor to an extension of time.

- e. Installation Drawings. When required by individual items of the Technical Specifications, the Contractor shall provide, for the Engineer's use, two copies of installation drawings and instructions consisting of all necessary details required for field assembly, erection, and installation of a particular component of Work, including, but not limited to, unloading and storage instructions, layout/placement drawings, erection sequences, assembly drawings, connection details, and wiring diagrams.

- 3.06. VARIATIONS AND ALTERNATE DESIGNS. Foundations, structural supports, electrical work, and piping when shown on Plans for items of equipment may be changed if necessary to accommodate equipment furnished. Every effort has been made to design foundations, structural supports, electrical work, and piping so that no changes will be necessary; however, exact dimensions and size of subject foundations and structural supports and exact electrical and piping installations cannot be finally determined until various items of equipment are purchased and manufacturer's certified Shop Drawings are secured. Structural or electrical changes must be signed and sealed by a professional engineer licensed in the State of Texas. Contractor shall make required changes, after prior consultation with the Engineer, at no cost to Owner.

If substitute items of equipment are authorized which vary materially from those shown on Plans, Contractor shall prepare equipment data and detailed drawings covering necessary modifications and submit to the Engineer for approval. Contractor shall make drawings same size as Plans and of comparable quality. Contractor shall make payment of charges resulting from modifications including engineering charges for checking modifications.

If alternate design features are proposed for the convenience of the Contractor, the Contractor shall submit design calculations and detailed drawings covering proposed changes and related modifications of the Plans to the Engineer for review. Design calculations and detailed drawings submitted by the contractor must be signed and sealed by a professional engineer licensed in the State of Texas. The Contractor shall make drawings the same size as the Plans and of comparable quality. Contractor shall make payment of charges resulting from modifications, including engineering charges for checking such designs.

ARTICLE IV. SITE ACCESS/ CONDITIONS/ REFERENCE POINTS

- 4.01. ACCESS AND AVAILABILITY OF LANDS. Except as provided herein, the Owner shall provide, as indicated on the Plans, land upon which the Work is to be done, rights-of-way for access to same, and such other lands which are designated for use of the Contractor. If required, Contractor shall provide, at its own cost, for additional lands and access for temporary construction facilities or storage of materials and equipment.

Contractor shall propose, for Engineer's review and approval, access roads for moving construction personnel and equipment. The access routes are subject to change by the Engineer, occasioned by the progress of the Work or unforeseen conditions. If routes are changed, Contractor may propose alternate routes. Changes required in haul routes shall not be the basis for extra payment unless such changes are required by written directive from the Engineer.

Contractor shall, whenever possible, keep all construction traffic out of existing neighborhoods. Contractor shall keep haul routes clean at all times to the satisfaction of the Engineer and the local governing body having jurisdiction over the haul routes.

- 4.02. SURVEYING; LINES AND GRADES. The Owner will establish reference points for construction only; the Contractor is responsible for staking from bench marks and horizontal control references established by Engineer. The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Engineer. The Contractor shall report to the Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

- 4.03. SOILS REPORT. If provided, any soils report and log of borings is available for Contractor's information only. The report is not a warranty of subsurface conditions, nor is it a part of the Contract Documents. Contractor is expected to examine the Site and such reports and then decide for itself the character of the materials to be encountered.

Owner and Engineer disclaim any responsibility for the accuracy, true location and extent of the surface and subsurface investigations that have been prepared by others. Owner and Engineer further disclaim responsibility for interpretation of that data by Contractor, i.e. projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water or underground facilities.

- 4.04. SUBSURFACE EXPLORATION. It is not represented that the Plans show all existing storm sewer, sanitary sewer, water, gas, telephone and electrical facilities, and other underground structures. Contractor is to determine the location of these installations in the way of construction by referring to available records, consulting appropriate municipal departments and utility owners, and by making necessary exploration and excavations.

- 4.05. DEVIATIONS OCCASIONED BY UTILITY STRUCTURES. Whenever existing utilities, not indicated on the Plans, present obstructions to grade and alignment of pipe, Contractor shall immediately notify the Engineer who, without delay, will determine whenever existing

improvements are to be relocated or grade and alignment of pipe changed. Where necessary to move services, poles, guy wires, pipelines, or other obstructions, the Contractor will make arrangements with owners of utilities. The Owner will not be responsible for or liable for damages for any delays due to changes made by owners of utilities which hinder progress of work. The Owner may, at its discretion, determine whether to grant any extension of time.

- 4.06. DIFFERING SUBSURFACE OF PHYSICAL CONDITIONS. Contractor shall give prompt written notice to Engineer if any subsurface or physical condition is uncovered or revealed and either i) differs materially from that shown or indicated in the Contract Documents or the technical data or related documents or ii) is of a highly unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work performed at the location. After receipt of Contractor's written notice, Engineer will promptly review the condition, determine the necessity of Owner's obtaining additional exploration or tests and advise Owner in writing of Engineer's findings and conclusions. Contractor shall not further disturb such condition or perform any Work in connection therewith until receipt of written order from Engineer to do so. Absent an emergency, any Work performed by Contractor before receiving Engineer's response will be at the sole expense of the Contractor.

The Contract Price and/or the Contract Times may be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work. Provided, however, Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if i) Contractor knew, or should have known, of the existence of such conditions at the time Contractor entered into the Contract; ii) the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site required by the Contract Documents to be conducted prior to Contractor's entering into the Contract; or iii) Contractor failed to give the written notice as required. If Owner and Contractor cannot agree on entitlement to, or the amount or extent of, any adjustment in the Contract Price or Contract Times, or both, a Claim may be made.

- 4.07. ARCHAEOLOGICAL OR HISTORICAL MATERIALS. On discovery of materials with potential archaeological or historical significance, the Contractor shall stop work and notify the Engineer. The Contractor shall protect the site from disturbance until it is cleared by the Engineer to resume work. The Contractor may receive damages for delay, limited to the actual costs of de-mobilization and re-mobilization, without mark-up, and may make a Claim for an extension to the Contract Time.
- 4.08. HAZARDOUS ENVIRONMENTAL CONDITIONS. Reports identifying Hazardous Environmental Condition are not Contract Documents. Owner and Engineer do not warrant the accuracy or completeness of such documents and disclaim all responsibility and liability for accuracy of investigations and reports prepared by third parties. Owner and Engineer also disclaim any responsibility for Contractor's interpretation of such reports and tests. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby; and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to

evaluate such condition or take corrective action, if any. Contractor shall not be required to resume Work in connection with such condition or in any affected area until the affected area is or has been rendered safe for the resumption of Work. Except as provided in this section, it will not be the Contractor's duty to provide any required governmental notifications relative to the discovery of Hazardous Environmental Conditions.

- 4.09. LOSSES FROM UNFORESEEN CIRCUMSTANCES AND CONDITIONS OR NATURAL CAUSES. Except as specifically provided in the Contract Documents, all loss or damage arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstances or natural causes in the prosecution of the same, or from the soil, subsurface, and other conditions, whether naturally occurring or manmade, or from concealed conditions or unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by Contractor at his own cost and expense. Contractor accepts such risk even for circumstances and conditions that differ materially from those indicated in the Contract Documents, geotechnical report, a review of the Site and surrounding areas or other information furnished by or on behalf of Owner. Accordingly, Contractor shall not be entitled to any additional compensation or time associated with unforeseen circumstances or conditions or natural causes.

ARTICLE V. CONTRACTOR'S RESPONSIBILITIES/ INDEMNITIES

- 5.01. INDEPENDENT CONTRACTOR. It is understood and agreed that all Work done by Contractor shall meet with the approval of Owner's representative but that the detailed manner and method of doing the Work shall be under the control of Contractor as set forth more fully in these General Conditions, Owner being interested only in the result obtained, and that Contractor is an independent contractor as to all Work performed hereunder.
- 5.02. TIME AND ORDER OF COMPLETION. It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that Contractor shall be allowed to prosecute his Work at such times, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that:
- a. In all instances Contractor shall comply with the Contract Documents and the order, time, techniques, sequences, procedures, manner, means and methods of prosecution of the Work shall be such that the Work shall comply with and shall be substantially completed as a whole and in part, in accordance with the Contract Documents, including the Plans and Technical Specifications, and within the required time of completion, and Contractor shall have no right to perform any portion of the Work or utilize means, methods, techniques, sequences, procedures or individuals in violation of the Contract Documents or that may damage the Work or decrease the life expectancy of the Project.
 - b. The exercise of any of the rights and authority granted the Owner in the Contract Documents (including, without limitation, ordering changes in the Work, rejecting proposed means, methods, techniques, sequences or procedures, and directing suspension, rescheduling, re-execution or correction of the Work) shall not be construed as or deemed to be control of, charge of, or responsibility for or violation of Contractor's responsibility for and rights with respect to such construction means, methods, techniques, sequences, procedures, safety precautions and programs.

- c. When Owner is having other work done, either by contract or by his own force, Engineer may prescribe the time and sequence of constructing the Work done under this Contract so that conflict will be avoided and the various construction being done for Owner shall be harmonized.

With regard only to items a. and b. above, any additional schedules or charts furnished; acquisition of any necessary additional equipment; work of hours in excess of those encompassed within Contractor's normal workday; or performance of certain tasks whether similar or dissimilar to the foregoing shall be done without additional cost to Owner.

- 5.03. CONTRACTOR'S DUTY AND STANDARD OF CARE. Contractor is an independent contractor and shall give personal attention to the faithful prosecution and completion of the Work and shall be present either in person or by duly authorized representatives on the Site continuously during its progress. Contractor shall exercise a high degree of skill, care, and diligence in the performance of the Work. Contractor warrants that Contractor will (i) perform, supervise and direct the Work, using the Contractor's best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Owner, (ii) utilize his best skill, efforts and judgment in furthering the interests of the Owner, (iii) perform the Work in strict compliance with applicable Laws and Regulations, such that the Work, no later than the time for completion, will comply with applicable Laws and Regulations, and (iv) furnish efficient business administration and supervision (all of the foregoing collectively, the "Standard of Care"), and (v) perform the Work in strict accordance with the Contract Documents. If directed by the Engineer, he shall maintain an office on or adjacent to the Site. Regardless of what authority and rights may be assigned by the Owner to the Engineer, Contractor remains fully and solely responsible and liable for its obligations to perform the Work in strict accordance with the requirements of the Contract Documents; to insure against failures in safety precautions; to carry out the Work pursuant to safe methods of construction; to select and fulfill the proper manner, means, and methods in performing the Work in order to fully comply with the Plans, Specifications and other Contract Documents; and to otherwise complete the Work in accordance with the Contract Documents.
- 5.04. CONTRACTOR'S AGENT. Contractor, during his absence from the Site, shall keep a competent superintendent or foreman upon the Site, fully authorized to act for him in his absence. Contractor shall provide Engineer and Owner with written notification of such individual's position, name, and contact information. Any notice given by Engineer, when given to any superintendent, foreman, or agent of Contractor in charge of any operation of the Work in the absence of Contractor, shall be considered as notice to Contractor, provided any notice given under this paragraph shall be in writing.
- 5.05. CHARACTER OF WORKERS. Contractor agrees to employ only orderly, competent, and skillful people to do the Work; and agrees that whenever Owner shall inform him in writing that any person(s) or subcontractors on the Work are, in his opinion, incompetent, unfaithful, or disorderly, such person(s) or subcontractor shall be discharged from the Work and shall not again be employed on the Work without Owner's written consent.
- 5.06. CONSTRUCTION MATERIALS. Contractor shall provide all labor, tools, equipment, machinery, and material necessary in the prosecution and completion of this Contract, unless otherwise specifically provided. It is understood that Owner shall not be held responsible for

the care, preservation, conservation, or protection of any material, tools, or machinery or any part of the Work until it is finally completed and accepted. The Contractor shall incorporate into the Work only new materials and equipment and shall store these materials and equipment in manner to protect them from damage. The manner of protection is subject to specific approval of the Engineer. Pipe, fittings, equipment, and other serviceable materials found on the Site or dismantled by reason of construction shall remain property of the Owner unless otherwise designated. The Contractor shall remove and deliver materials to Owner at designated points and shall pay, at prevailing market price, for usable materials that are damaged through negligence.

- 5.07. OTHER CONTRACTS. Other construction may be underway concurrently in this area. The Contractor shall afford utility companies and other contractors reasonable opportunity for introduction and storage of their materials and execution of their work. All work under this Contract must be properly connected and coordinated with that constructed by others.
- 5.08. DAMAGES. In the event Owner is damaged in the course of the Work by the act, negligence, omission, mistake, or default of Contractor, or should Contractor delay the progress of the Work being done by others on the job so as to cause loss or liability to Owner, then Contractor shall reimburse Owner for such loss.

NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, IN NO EVENT (INCLUDING, WITHOUT LIMITATION, DEFAULT BY OWNER), SHALL OWNER'S LIABILITIES, IF ANY, TO CONTRACTOR EVER EXCEED THE TOTAL CONTRACT PRICE, LESS ALL SUMS FOR WORK, MATERIALS AND/OR LABOR PREVIOUSLY PAID TO CONTRACTOR BY OWNER.

- 5.09. TITLE AND RISK OF LOSS. Although Contractor has custody and possession of the Work, as between Owner and Contractor, ownership and title to (as opposed to risk of loss of) all of the Work completed and in the course of construction at the Site and of all materials furnished irrespective of the location thereof, shall be in the name of the Owner. The vesting of such title in the Owner shall not impose any obligations on the Owner or relieve Contractor of any of its obligations hereunder. The Contractor warrants that it shall acquire no Work or equipment and materials, whether directly or through a subcontractor, subject to an agreement under which a security interest is retained by the seller or otherwise imposed by the Contractor, any subcontractor, or any other person or entity. Notwithstanding the passage of title, risk of loss or damage shall remain with Contractor until the Owner finally accepts the Work, unless otherwise specified in a certificate of Substantial Completion approved by the Owner.
- 5.10. PROTECTION OF PERSONS AND PROPERTY. Contractor shall at all times take reasonable precautions for the safety of its employees and of all other persons at the Site, and for the protection of adjacent property of others. Contractor shall comply with all applicable federal, state, and municipal safety laws and regulations and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the Manual of Accident Prevention in Construction of the Associated General Contractors of America unless such instructions are incompatible with Laws and Regulations. Where damage occurs on adjacent property, or where necessary to take down fences, signs, or other obstructions, Contractor shall repair, renew or replace in their original condition and restore damaged property or make satisfactory restitution to a condition equal to or better than that

which existed before Contractor caused the damage or removal, at no cost to Owner. Contractor shall promptly report to Engineer all accidents involving Contractor's employees or any other parties or property. Where livestock are present, Contractor shall take all necessary precautions to assure that no construction or construction related activity will allow livestock to leave their confine. Where existing fences are being crossed, Contractor shall maintain the integrity of the fence during construction through placement of guards, temporary fences, or other adequate measures as approved by the Engineer. All construction activities, including ingress and egress, shall occur within the boundaries and Contractor constraints of the temporary and permanent construction limits. Additionally, no staging, parking, loading and/or unloading shall occur outside of the designated construction limits.

5.11. INSURANCE AND BONDS. Contractor shall procure and maintain in force and effect during the Work the insurance described in the Special Conditions. It is further agreed by the parties to this Contract that Contractor will execute a Performance Bond, Maintenance Bond and/or Payment Bond, each as further specified in the Special Conditions.

5.12. INDEMNIFICATION OF OWNER. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST EVERY LOSS, ITEM OF DAMAGE, INJURY, EXPENSE, DEMAND, CLAIM, CAUSE OF ACTION, JUDGMENT OR LIABILITY, OF WHATSOEVER KIND OR CHARACTER, WHETHER ARISING IN CONTRACT OR TORT OR UNDER ANY STATUTE, FOR EVERY ELEMENT OF RECOVERY, WHETHER DIRECT OR INDIRECT, INCLUDING SPECIAL AND CONSEQUENTIAL DAMAGES, AND INCLUDING ALL RELATED FINES, FEES AND COSTS, TO INCLUDE ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, FOR:**

(I) **BODILY INJURY OR DEATH OF AN EMPLOYEE OF ANY CONTRACTOR PARTIES, EVEN IF SUCH BODILY INJURY OR DEATH IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF AN INDEMNIFIED PARTY;AND**

(II) **BODILY INJURY TO OR DEATH OF ANY PERSON NOT ENCOMPASSED IN (I), ABOVE, PROPERTY DAMAGE OR ECONOMIC LOSS (INCLUDING LOSS OF USE) CAUSED BY OR ARISING OUT OF ANY BREACH OF THIS CONTRACT, OR THE BREACH OF ANY COMMON LAW DUTY, OR THE VIOLATION OF ANY STATUTE OR REGULATION BY THE CONTRACTOR PARTIES IN CONNECTION WITH THE PERFORMANCE (OR NON-PERFORMANCE) OF THE WORK, IN EACH INSTANCE, EVEN IF DUE IN PART TO THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF AN INDEMNIFIED PARTY, PROVIDED, HOWEVER, THAT CONTRACTOR'S OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE PERCENTAGE OF DAMAGES, INJURIES, EXPENSES,**

DEMANDS, CLAIMS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, COSTS AND FEES CAUSED BY THE INDEMNIFIED PARTIES.

THIS INDEMNITY AGREEMENT IS INTENDED TO MEET THE TEXAS “EXPRESS NEGLIGENCE RULE” BECAUSE CONTRACTOR AGREES THAT IT APPLIES AND IS ENFORCEABLE EVEN AS TO LOSSES, DAMAGES, INJURIES, EXPENSES, CLAIMS, CAUSES OF ACTION, JUDGMENTS OR LIABILITIES JOINTLY OR CONCURRENTLY CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED PARTIES. THE TERM “FAULT” IN THE PREVIOUS SENTENCE INCLUDES THE VIOLATION OR BREACH BY THE INDEMNIFIED PARTIES OF ANY COMMON LAW DUTY, ANY TERM OF THIS CONTRACT, OR ANY STATUTE OR REGULATION.

THIS INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY OTHER PROVISION OF THIS CONTRACT OR BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR PARTIES UNDER WORKERS’ COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS ACTS.

THIS INDEMNIFICATION OBLIGATION IS IN ADDITION TO ALL OTHER LEGAL, EQUITABLE, OR INDEMNIFICATION REMEDIES AVAILABLE TO THE INDEMNIFIED PARTIES. THIS INDEMNIFICATION OBLIGATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS CONTRACT.

In the event that any statute, rule of law or equitable principle should be held applicable to any indemnity clause contained in this Contract in favor of one or more of the Indemnified Parties which would render void, voidable, or unenforceable any such indemnity clause as to any party by reason of any provisions contained therein, then and in only such event, such indemnity clause shall be deemed modified and read, construed and enforced as to such party with respect to the provisions held to violate the statute, rule of law or equitable principle to require indemnity by Contractor of the Indemnified Parties to the fullest extent required by such indemnity provision modified and limited only to the degree or extent necessary to bring such indemnity into compliance with such statute, rule of law or equitable principle, but otherwise, the indemnity shall remain in full force and effect and binding upon the parties hereto.

Each party hereto agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that the party has no notice or knowledge of such provision or that the provision is not “conspicuous.”

If other provisions contain any indemnities or limitations, such indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided herein to the end that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnified Parties to the fullest extent of each such indemnity.

Contractor shall include in each of its subcontracts with its subcontractors of every tier provisions the same as in all material respects those contained herein. Such provisions shall be for the benefit of and in favor of the Indemnified Parties and such other parties on whom Contractor and such subcontractors may agree.

5.13. INTELLECTUAL PROPERTY RIGHTS, COPYRIGHT AND INDEMNIFICATION.

- a. Contractor shall not furnish or provide to Owner any materials or Work that infringes a third party's intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to Owner.
- b. Contractor represents and warrants that the materials and the Work shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- c. Contractor represents and warrants to Owner that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Owner shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- d. Contractor represents and warrants that all processes or methods utilized by Contractor to provide it services to Owner are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all products provided by Contractor to Owner are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall cooperate fully and promptly with Owner with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Owner in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to Owner, Contractor shall obtain agreements from Contractor's vendors to cooperate in connection with requests for disclosure generated or received by Owner pursuant to the Process Patents Amendment Act of 1988.
- e. THE INDEMNITY AGREEMENT PROVIDED IN CONTRACTOR'S INDEMNITY OBLIGATION PROVIDED IN SECTION 5.12, ABOVE, INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING:

(I) CONTRACTOR'S BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS, DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS, AND EXPENSES, INCLUDING ATTORNEY'S FEES INCURRED BY OWNER, IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH.

IN ADDITION TO CONTRACTOR'S INDEMNITY OBLIGATION PROVIDED IN SECTION 5.12, ABOVE, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST EVERY LOSS, ITEM OF DAMAGE, INJURY, EXPENSE, DEMAND, CLAIM, CAUSE OF ACTION, JUDGMENT OR LIABILITY, OF WHATSOEVER KIND OR CHARACTER, WHETHER ARISING IN CONTRACT OR TORT OR UNDER ANY STATUTE, FOR EVERY ELEMENT OF RECOVERY, WHETHER DIRECT OR INDIRECT, INCLUDING SPECIAL AND CONSEQUENTIAL DAMAGES, AND INCLUDING ALL RELATED FEES AND COSTS, TO INCLUDE ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, BASED UPON, ARISING OUT OF, OR RELATING TO ANY ALLEGATION OF VIOLATION OF COPYRIGHT LAWS AS A RESULT OF CONTRACTOR'S PERFORMANCE (OR NON-PERFORMANCE) OF THE WORK AND EVEN IF DUE TO THE NEGLIGENCE, BREACH OF CONTRACT, VIOLATION OF STATUTE, OTHER FAULT OR LIABILITY WITHOUT REGARD TO FAULT OF ANY INDEMNIFIED PARTY.

- f. Contractor confirms and agrees that the Owner has and shall retain all rights, title, and interest in and to the drawings, documents, designs and information, including, without limitation, any copyright or other intellectual property rights, provided to Contractor or on behalf of Owner, and that by use of such drawings, documents,

designs and information, the Contractor shall not acquire any right, title, or interest in such drawings, documents, designs and information, including, without limitation, any copyright or other intellectual property rights. The Owner makes no representation or warranty, and hereby disclaims any such warranty, that any information provided to the Contractor by or on behalf of the Owner in connection with the Work is accurate, correct, sufficient, complete, fit for its intended purpose or can be used without infringing any intellectual property rights of third parties under any intellectual property rights of the world.

- 5.14. SUBCONTRACTOR'S ASSIGNMENT AND SUBLETTING. Contractor shall be fully responsible to Owner for all acts and omissions of any subcontractor, supplier, or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Contractor. All Work performed for Contractor by such subcontractor, supplier, persons or organization shall be pursuant to an appropriate agreement between Contractor and each such party that specifically binds such party to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

Contractor shall timely pay its subcontractors and material suppliers, as required by law and any agreements between or among Contractor and its subcontractors/material suppliers, and such payments are a condition precedent to final payment.

- 5.15. CONTRACTOR'S SETTLEMENT OF CLAIMS. Contractor shall promptly settle or cause the settlement of all claims for which it is responsible, in whole or in part, pursuant to the Contract Documents. Upon receipt of any claim, Contractor shall immediately notify the Owner of the full particulars thereof, and the Owner may elect, by notice to Contractor, to have its representative accompany Contractor's representative in making settlement of the same.

- 5.16. SETTLING SMALL CLAIMS. Owner shall provide Contractor written notice of any claims made arising out of or relating to the Contract or the Contractor's performance of the Work. Contractor shall, within 10 calendar days following such notice, appoint in writing and thereafter, until Final Completion, unless earlier allowed by Owner, maintain on the Site a special agent who shall have full duty and authority on behalf of Contractor to settle and pay any claims payable by Contractor described herein, to request or confirm payment by Owner of such claims for the account of Contractor, and to do all other things necessary or convenient in connection with the foregoing authority. In addition, Contractor shall cause said special agent to accompany the representative of Owner to solicit the settlement of such claims as Owner's representative may request. Contractor, through his special agent, shall settle and pay claims payable by Contractor hereunder, but only in the presence and with the cooperation of the representative of the Owner, and in such settlement Contractor shall take receipts and releases in favor of and releasing the Indemnified Parties as well as Contractor.

Understanding that Owner has a special interest in preserving the good will of persons whose property may be injured in the course of the Work, should Contractor fail to settle and pay claims, including providing written receipts and releases in favor of and releasing the Indemnified Parties, within 30 calendar days of Owner's initial written notice, Owner shall thereafter have the rights and authority to itself settle and pay, on Contractor's behalf, such claims as described in this paragraph. Contractor expressly acknowledges, acquiesces and confirms that a representative of Owner may, in good faith, determine whether claims are

payable in whole or in part by Contractor under the provisions herein (the hazard and expense of litigation and the special interest of Owner in liquidating all Claims being considered), and if found so payable in part, the portion thereof properly payable by Contractor. To minimize the expense of employing agents in settling claims, Contractor hereby further authorizes Owner to settle and pay any claims payable by Contractor hereunder which may be settled for up to \$10,000 per claim (or such greater amount per claim as Contractor may fix by written notice to Owner). The amount of any such claims may be withheld from Contractor's final payment. Owner will use diligence in undertaking the settlement and payment of any such claims.

Contractor shall reimburse Owner for all costs and expenses incurred by Owner in the settlement of any claims payable by Contractor.

5.17. CONTRACTOR'S USE OF OWNER'S PROPERTY. In the event that any arrangement is made whereby Contractor or any of its subcontractors of any tier use any employees of Owner, any tools, equipment, apparatus, improvements or other personal property of Owner or any utilities (such as electricity, gas, water, compressed air and toilet facilities) furnished by or through Owner, irrespective of who pays the employees and regardless of whether any consideration is paid for the use of the tools or the utilities, then the employees while engaged in the use of the tools or the utilities shall be conclusively considered the agents, servants, and employees of Contractor, and the acceptance and/or use of the tools or the utilities by Contractor or its subcontractors of every tier shall mean the Contractor has inspected and determined the tools and utilities satisfactory for Contractor's intended purposes and uses, and accepted full responsibility for the tools and utilities. Owner makes no representation or warranty regarding the condition or suitability of any such tools, equipment, apparatus, improvements, other property or utilities. Contractor shall return the tools at the conclusion of Contractor's use thereof in the same condition as when received, ordinary wear and tear excepted.

5.18. LAWS AND REGULATIONS.

- a. Prior to beginning the Work, Contractor shall become familiar with all of the Laws and Regulations relating to the Work or which in any manner might affect the Work, and shall thereafter comply with all such Laws and Regulations. Contractor shall, at its expense, obtain all permits, licenses, certificates and other authorizations required by or reasonably necessary in connection with the Work and shall at all times observe and comply with the Laws and Regulations.
- b. Contractor agrees that all financial settlements, billings, and reports rendered to Owner as provided for in the Contract Documents will, to the best of its knowledge and belief, reflect properly the facts about all activities and transactions handled for the account of Owner, which data may be relied upon as being complete and accurate in any further recording and reporting made by Owner for whatever purpose.
- c. Contractor agrees to notify Owner promptly upon discovery of any instance where the Contractor fails to comply with provision (a) above or where Contractor has reason to believe data covered by (b) above is no longer accurate and complete.

- 5.19. BUSINESS STANDARDS. Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interests of the Owner. Contractor shall review with the Owner at reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with the Owner's employees, agents, and representatives, vendors, subcontractors and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

In connection with this Contract and the Work, neither Contractor, its subcontractors of every tier, nor the employees, representatives, and agents of Contractor or any such subcontractor shall at any time solicit, accept, offer or bestow gratuities of more than nominal value from or to one or more of the Indemnified Parties, any of Owner's other contractors associated with the Work, the employees, agents, or representatives of such other contractors, or anyone else associated with the Work. Violation of this policy by Contractor or any subcontractor shall constitute a material breach of Contractor's obligations under the Contract Documents that may result at the Owner's election in a declaration of default.

- 5.20. SAFETY.

- a. Contractor shall develop a safety program applicable to each job site and to the Work to be done and enforce such program at all times. Further, Contractor shall comply with all applicable Laws and Regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor employees. Contractor shall have complete responsibility for protecting the safety and health of its employees, subcontractors, and all other persons.
- b. Contractor shall notify Owner immediately by telephone, with prompt confirmation in writing, of injuries and fatalities that occur on the Site in connection with any Work being performed under this Contract and shall provide Owner with such reports of injuries and fatalities as Owner shall deem necessary, including but not limited to, copies of all reports or other documents filed or provided to Contractor's insurers or the State of Texas in connection with such injury or fatality.
- c. Nothing contained herein shall be interpreted as enlarging Owner's legal duty to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or altering the status of Contractor as an independent Contractor.

- 5.21. ALCOHOL, DRUGS, WEAPONS, ETC. The use of alcohol or controlled substances by any person on Owner's property or the Site or any person remaining on Owner's property or the Site under the influence of such substances is strictly prohibited. In addition, possession of alcohol, controlled substances, firearms, explosives, weapons, and hazardous substances or articles without proper authorization is not permitted on Owner's property or the Site. Entry onto Owner's property is deemed to be consent to and recognition of the right of Owner or a representative of the Owner who has been specifically authorized to search the person, motor vehicles, and other property of each individual while entering, on, or departing the Site.

- 5.22. UTILITY SERVICES FOR CONSTRUCTION. The Contractor shall provide all utilities necessary for construction at no additional cost to Owner unless otherwise specified in the Contract Documents.
- 5.23. OPERATION AND MAINTENANCE MANUALS. Operation and maintenance manuals are to be provided where required by an item in the Technical Specifications. The Contractor is responsible for obtaining installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the Contract and shall submit three copies of each complete manual and one CD to the Engineer within 90 days after approval of Shop Drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the Site or storage location. Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start up equipment.
- Each manual must be bound in a folder and labeled to identify the contents and project to which it applies. The Engineer may additionally request electronic copies of each manual, stored on electronic media suitable to the Engineer. The manual should contain the following:
- a. An 8-1/2-inch x 11-inch typewritten sheet listing the manufacturer's identification, including order number, model, and serial number and location of parts and service centers.
 - b. A separate 8-1/2-inch x 11-inch typewritten list of recommended stock of parts, including part number and quantity.
 - c. Complete replacement parts list.
 - d. Performance data and rating tables.
 - e. Specific instructions for installation, operation, adjustment, and maintenance.
- 5.24. INTERRUPTION OF UTILITY SERVICES. The Contractor shall not operate any valve or other control on existing systems. The Contractor shall exercise care in performing work so as not to interrupt service, including, but not limited to, locating and uncovering existing utilities ahead of heavy excavation equipment and at house connections, either lifting trenching machine over lines or cutting and reconnecting with minimum interruption of service, as approved.
- 5.25. TRAFFIC SAFETY MEASURES. If the Work occurs on or adjacent to any street, alley, or public place or where construction creates hazard to traffic or public safety, the Contractor shall furnish and maintain suitable barricades, warning signs, and lights and remove same when no longer necessary. The Contractor shall be responsible for all phases of traffic control according to the guidelines as set forth in Manual on Uniform Traffic Control Devices.
- 5.26. USE OF STREETS. Except where approved otherwise, the Contractor may not hinder or inconvenience travel on streets or intersecting alleys for more than two blocks at any one time. Whenever streets are closed the Contractor shall place properly worded signs announcing such fact to the public, with proper barricades at the nearest street corners, on

both sides of obstruction. The Contractor shall leave no street or driveway blocked at night. When streets are closed, Contractor shall also notify the Engineer, the Fire Department and the Police Department. The Contractor shall not block ditches, inlets, fire hydrants, etc., and, where necessary, shall provide temporary drainage.

The Contractor shall remove as soon as practicable, accumulated rubbish and open each block for public use. Use of any portion of a street shall not constitute acceptance of any portion of Work. The Contractor shall backfill and shape trenches across street intersections or driveways for safe traffic at night or, where permitted, span open trenches with steel plates or bridges to permit traffic flow. When driveways are cut, the immediate placement of mats for ingress or egress of vehicles may be directed if undue hardship to property owner would otherwise result.

- 5.27. CONSTRUCTION STORMWATER DISCHARGES. The Contractor shall, without any additional expense to the Owner, be responsible for obtaining any necessary licenses and permits and for complying with all applicable Laws and Regulations, including, but not limited to, any Laws or Regulations concerning storm water permitting and management. Specifically, without limitation, the Contractor will comply with all aspects of the Texas Pollutant Discharge Elimination System (“TPDES”) General Permit for Storm Water Discharges from Construction Activities in Texas and with the Storm Water Pollution Prevention Plan (SWPPP) that has been developed for the Project. At Owner’s expense, the baseline SWPPP for the Project will be provided by the Engineer to Contractor. The Contractor will implement the baseline SWPPP and advise the Engineer in writing prior to implementing any changes required to the SWPPP due to changes in construction activities. The Engineer may update the SWPPP due to changes in construction activities. The Contractor will file the Notice of Intent (“NOI”) for permit coverage with the Texas Commission on Environmental Quality and will maintain a copy thereof, file stamped by such governmental authority, at the Site. Weekly inspection to ensure compliance with the SWPPP and other permit requirements will be performed by the Contractor. Upon Final Completion, the Contractor shall file the Notice of Termination (“NOT”) with the Texas Commission on Environmental Quality.

The Contractor, and not the Owner, shall be responsible for any and all monetary fines or damages assessed by any governing agency resulting from the failure to comply with the requirements of the SWPPP.

- 5.28. SITE MAINTENANCE AND CLEAN-UP. Contractor shall maintain the Site during construction to keep it reasonably neat and free of trash, rubbish, and other debris. In clean-up operations, Contractor shall remove from the Site and from public and private property temporary structures, rubbish, and waste materials and dispose of excavated materials beyond that needed to bring the Site to elevations shown. During final clean-up, any road constructed by Contractor for access to the Site must be leveled and ruts filled so that surface drainage is not hindered.
- 5.29. AS-BUILT DIMENSIONS/ RECORD DRAWINGS. The Contractor shall make daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities. Upon completion of Work, the Contractor shall furnish Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and location of all Work constructed.

- 5.30. SANITATION. Necessary sanitary conveniences for the use of laborers on the Work, properly secluded from public observation, shall be constructed and maintained by Contractor, in such manner and at such point as shall be approved by Owner, and their use shall be strictly enforced.
- 5.31. CONTRACTOR'S BUILDINGS. The building of structures for housing men, or the erection of tents or other forms of protection will be permitted only at such places as Owner shall prescribe, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to Owner.

ARTICLE VI. ENGINEER'S STATUS DURING CONSTRUCTION

- 6.01. ENGINEER'S AUTHORITY AND DUTY. It is mutually agreed between the parties to this Contract that: Engineer will act as Owner's representative during the construction of the Project, and that no act or omission on the part of Engineer, his subordinates or representatives, will excuse Contractor from full and proper performance of this Contract according to its terms, or give rise to any liability or obligation from Engineer to Contractor. All authority and rights assigned by the Owner to the Engineer with respect to the Work are solely and exclusively for the benefit of the Owner and not for the Contractor. The Engineer shall have no liability to Contractor under these Contract Documents in the absence of actual fraud.

To prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to the Contract that, if it cannot be otherwise agreed, Engineer shall in all cases determine the amounts and quantities of the several kinds of Work which are to be paid for under this Contract, and he shall determine all questions in relation to said Work and the construction thereof, and he shall in all cases decide every question which may arise relative to the performance of this Contract on the part of Contractor; provided, however, that should Engineer render any decision or make any requirement which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with Engineer within 30 calendar days his written objection to the decision or requirement so rendered. Contractor's failure to object to Engineer's decision or requirement within such 30 calendar days shall be deemed Contractor's agreement with such decision or requirement and constitute a waiver of any right of Contractor to additional time, compensation or damages as a result of such decision or requirement. It is the intent of this Contract that there shall be no delay in the performance of the Work. To this end, the decision or requirement of Engineer shall be promptly carried out. Engineer shall, within a reasonable time or as otherwise required in the Contract Documents, render and deliver to both Owner and Contractor a written decision on all claims of the parties hereto and on all questions that may arise relative to the execution of the Work or the interpretation of the Contract, Technical Specifications, or Plans.

- 6.02. EXAMINATION, OBSERVATION, AND TESTING. It is agreed by Contractor that Engineer shall be and is hereby authorized to appoint from time to time such subordinate engineers or project representatives as Owner may deem proper to examine the material furnished and observe the Work done and to ascertain whether the said material is furnished and said Work is done in accordance with the Contract Documents there for. Contractor shall furnish all reasonable aid and assistance required by the subordinate engineers or project representatives for the proper examination and testing of the Work and materials. The

authority of subordinate engineers and project representatives shall be limited to examination, observation, and testing of Work and materials, and reporting same to Engineer.

- 6.03. PRELIMINARY APPROVAL. Neither Engineer nor his subordinates shall have any power to waive the obligations of this Contract for the furnishing by Contractor of good material, or for his performance of good Work as herein described and in full accordance with the Plans, Technical Specifications, and other Contract Documents. No action taken or thing done, written or oral, including, but not limited to, inspections made, payments made, or Final Completion of the Work, and no failure or omission of Engineer or his subordinates to discover, object to, or condemn any defective Work or material, shall release Contractor from the obligation to fully and properly perform the Contract, including, without limitation, the obligation to at once tear out, remove, and properly replace the same.

Any questioned Work may be ordered by Engineer to be taken up or removed for re-examination prior to final acceptance, and if found not in accordance with the Contract Documents for said Work, all expense of removing, reexamination, and replacement shall be borne by Contractor; cost of uncovering any Work will be borne by Owner only when the Work is found acceptable and the Work was originally performed with the knowledge of the Engineer.

- 6.04. RIGHT OF ENGINEER TO MODIFY METHODS AND EQUIPMENT. The Contractor shall provide and use accepted equipment and materials in sufficient qualities and quantities to facilitate diligent prosecution of the Work to the end that the Work will be completed within the time for completion and otherwise in accordance with the Contract Documents. If at any time Engineer shall find that the methods, materials or equipment used by Contractor are faulty or inadequate to secure the quality of Work or the rate of progress necessary for Contractor to complete the Work (or any portion thereof) within the time period required by this Contract or otherwise will prevent the Work from being completed in accordance with the Contract Documents, Engineer may, in writing, require Contractor to improve their character and efficiency, replace and/or supplement them, and Contractor shall comply with such requirements.

If at any time the working force of Contractor is inadequate for securing the progress herein specified, Contractor shall, if so notified in writing, increase his force or equipment, or both, to such an extent as to ensure compliance with the schedule of progress (and timely completion of the Work) all in accordance with the Contract Documents.

ARTICLE VII. EXTRA WORK/ CHANGE ORDERS/ CLAIMS

- 7.01. CHANGES AND ALTERATIONS. Contractor further agrees that Owner may make such changes and alterations as Owner may see fit in the line, grade, form, dimensions, Plans, Technical Specifications, or materials for or scope of the Work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this Contract and the accompanying Bonds.

If such changes or alterations diminish the quantity of the Work to be done, such changes may reduce the Contract Price according to the quantity of Work actually done and the unit price established for such Work under this Contract and shall not constitute the basis for a Claim. If such changes or alterations increase the amount of Work and the increased Work

can fairly be classified under the Plans, Technical Specifications, or other Contract Documents, such increase shall be paid for according to the quantity of Work actually done and at the unit price established for such Work under this Contract; otherwise such Extra Work shall be paid for as provided in this Article. If Owner makes such changes or alterations as makes useless any Work already done or materials already furnished or used in accordance with the Contract Documents in connection with said Work, then Owner shall recompense Contractor for such Work, labor and materials, in accordance with the prices therefore in the Contract Documents, made useless by such change.

- 7.02. **EXTRA WORK.** It is agreed that Contractor shall perform all Extra Work when presented with a Written Work Order or Change Order. **The Contract Price for Extra Work may be changed only by a Change Order signed by Owner, Engineer and Contractor.** It is agreed that pricing in any Change Order for performing Extra Work shall be determined by one or more of the following methods:

Method (A) - By agreed unit prices; or

Method (B) - By agreed lump sum; or

Method (C) - If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then Contractor shall be paid the "actual field cost" of the Extra Work, less any savings attributable to the change, alteration or addition, plus 15 percent of the net amount.

In the event said Extra Work be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost of all workmen, such as foremen, timekeepers, mechanics, and laborers, and all materials, supplies, teams, trucks, and rentals on machinery and equipment for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred if such equipment or machinery be not already on the job together with all power, fuel, lubricants, water, and similar operating expenses; also all necessary incidental expenses, incurred directly on account of such Extra Work, including Social Security, Old Age Benefits, and other payroll taxes, and a ratable proportion of premiums on all Bonds and all insurance as may be required by any law or ordinance, or required by Engineer or Owner, or by them agreed to. Engineer may prescribe the form in which accounts of the "actual field cost" shall be kept and may also specify, in writing, before the Work commences, the method of doing the Work and the type and kind of machinery and equipment to be used, otherwise these matters shall be determined by Contractor. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Work Order or Change Order. The 15 percent of the "actual field cost" to be paid Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where Contractor's camp or field office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate this office shall be included in the "actual field cost." When Extra Work is performed by a subcontractor, the 15 percent will apply to the subcontractor only. The Contractor will be allowed 5 percent for overhead and profit.

No Claim for Extra Work of any kind will be allowed unless ordered in writing by Engineer. In case any requirements, response to request for information, response to a submittal or other communication made by Engineer or any other event appear to Contractor to involve Extra Work for which he should receive compensation, Contractor shall immediately, and **in any event within 30 calendar days after being notified of any such requirement, response or communication or after such event**, make written request to Engineer for written authorization there for. Such written request for written authorization shall set forth Contractor's belief of, basis for and amount of expected compensation. IN NO EVENT SHALL CONTRACTOR BEGIN PERFORMING THAT PORTION OF THE WORK AFFECTED BY SUCH REQUIREMENT, RESPONSE, OR COMMUNICATION PRIOR TO GIVING SUCH WRITTEN REQUEST FOR WRITTEN AUTHORIZATION TO THE ENGINEER. Any written request for written authorization not timely made by the Contractor shall be deemed a waiver by the Contractor of its right to assert and recover any additional compensation or otherwise on a Claim in respect of such request, response or communication. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefore, and Engineer insists upon its performance, Contractor shall proceed with the Work after making its written request for written authorization to Engineer and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). Engineer shall, within a reasonable time, render and deliver to both Owner and Contractor a written decision on all Claims as provided under Section 6.01 in these General Conditions.

- 7.03. ESTIMATED QUANTITIES. The estimated quantities of the various classes of Work to be done and material to be furnished under this Contract are approximate and are to be used only as a basis for estimating the probable cost of the Work and for comparing the Bids offered for the Work. It is understood and agreed that the actual amount of Work to be done and material to be furnished under this Contract may differ somewhat from these estimates, and that the basis for determining quantities for payment under this Contract shall be the actual amount of such Work done and the material incorporated.

Contractor agrees that he will make no Claim for damages, anticipated profits, or otherwise on account of any differences which may be found between the quantities of Work actually done or the material actually incorporated under this Contract and the estimated quantities contemplated and contained in the Bid.

Where the final quantity of Work performed by Contractor on "Major Unit Price Work" item differs by more than 25 percent from quantity of the item stated in the Contract, a party may request (subject to Owner's approval) an adjustment in the unit price, for the portion that differs by more than 25 percent, by a Change Order. Major Unit Price Work is defined as an individual unit price line item whose original total value i) is greater than five percent of original Contract Price, ii) becomes greater than five percent of original Contract Price as the result of an increase in quantity, or iii) is greater than or equal to \$100,000, whichever is least.

- 7.04. EXTENSION OF TIME. Subject to the remainder of this paragraph, should Contractor be delayed in the completion of the Work by any act or negligence of Owner or Engineer, or by any employee of either, or by other contractors employed by Owner, or by changes ordered in the Work, then, if the other requirements for an extension of time are met, an extension of time shall be allowed for completing the Work sufficient to compensate for the delay, the

amount of the extension to be the amount approved by Owner, based on the recommendation by Engineer; provided, however, that Contractor shall give Engineer notice in writing of the cause of such delay and the impact to the critical path of the schedule prior to the tenth day of the month following the month in which the delay occurred. Failure to file requests for extension of time within the time set forth in and otherwise as required by this paragraph shall constitute a waiver of any rights the Contractor may have had to such extensions of time. Contractor shall support its request for time extension with such information as required by Engineer. Approved extensions of time must be made in writing, signed by the Owner, Engineer, and Contractor.

Contractor will not be allowed time extensions that are due to (i) inclement weather (not including Force Majeure); (ii) non-availability of equipment or material, when the principal units of Work and tasks on the critical path are not in progress or are not delayed by the event of delay, interference, disruption, or hindrance; (iii) when at least seven (7) hours of available working time remain out of the working day; (iv) while materials are drying and it is possible for the Contractor to enclose the area and use drying devices; (v) when an event of delay, interference, disruption, or hindrance occurs on a day other than a working day or other day when the Contractor had not originally planned to work; (vi) when an event of delay, interference, disruption, or hindrance occurs after the expiration of the time for completion; (vii) to the extent the Contractor could have anticipated or alleviated the impact of the event of delay, interference, disruption, or hindrance through reasonable efforts; (viii) when events of concurrent delay overlap the claimed delay; and/or (ix) when an extension of time is precluded by any other provision of the Contract Documents.

- 7.05. HINDRANCES, INTERFERENCES, DISRUPTIONS, AND DELAYS. The Contractor shall receive no financial compensation for delay, interference, disruption, or hindrance at any time in the commencement or progress of the Work for any reason and for any period of time, by an act, omission or neglect, intentional or otherwise, of the Owner, Engineer or any other consultant or Contractor of the Owner, or of an employee of any of them; or by changes ordered in the Work; or by fire, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes that may justify delay. To the fullest extent allowed by applicable Laws and Regulations, in no event shall the Owner be liable to the Contractor or any subcontractor or supplier, any other person or any surety for or any employee or agent of any of them, for any damages arising out of or associated with any delay, interference, disruption, or hindrance to the Work, regardless of the source of the delay, interference, disruption, or hindrance, AND EVEN IF SUCH DELAY, HINDRANCE, DISRUPTION OR INTERFERENCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR OTHER FAULT, HOWEVER CHARACTERIZED, OF THE OWNER OR THE ENGINEER OR THE EMPLOYEES, REPRESENTATIVES OR AGENTS OF THE OWNER OR ENGINEER. The Contractor's sole remedy in any such case shall be an extension of time in such amount as allowed by the Section 7.04 of these General Conditions.
- 7.06. FILING CLAIMS. It is agreed that, unless specifically waived in the Contract Documents, all Claims shall be referred to Engineer for a decision. All Claims shall be in writing and

filed with Engineer within 30 calendar days of the event giving rise to such Claim, unless a specific provision of the Contract Documents provide a shorter period of time for such filing, in which case it shall occur within such shorter time. Written notice stating the general nature of each Claim and the amount or extent of the Claim, with supporting data, must be provided as a condition precedent to Contractor's exercise of any rights or remedies he may otherwise have under the Contract Documents. The Claim shall also be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes he is entitled as a result of said event. Engineer shall reply to such written Claims by Contractor and render his final decision in writing within 30 days of receipt of the Contractor's last submittal. In the event Engineer shall take no action, the Claim shall be deemed denied.

Contractor hereby confirms its willingness and ability to comply with the requirements of the Contract Documents for seeking an adjustment in price or time, damages or other relief and hereby agrees that the time periods, notice requirements and procedures set forth in the Contract Documents are reasonable time periods, notice requirements and procedures and that Owner will be prejudiced if Contractor fails to comply with such time periods, notice requirements and procedures. ACCORDINGLY, CONTRACTOR'S FAILURE TO COMPLY WITH THE TIME PERIODS, NOTICE REQUIREMENTS AND PROCEDURES OF THE CONTRACT DOCUMENTS WITH RESPECT TO A CLAIM FOR ADJUSTMENT IN PRICE OR TIME, DAMAGES OR OTHER RELIEF SHALL CONSTITUTE A WAIVER OF THE CLAIM, INCLUDING CLAIMS ARISING OUT OF OWNER'S NEGLIGENCE, BREACH OF CONTRACT OR OTHER FAULT OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

IT IS FURTHER AGREED THAT ACCEPTANCE BY CONTRACTOR OF THE FINAL PAYMENT SHALL BE A BAR TO ANY CLAIMS OR SUITS BY CONTRACTOR AGAINST OWNER FOR ANY MATTERS RELATED TO THIS CONTRACT, INCLUDING MATTERS ARISING OUT OF OWNER'S NEGLIGENCE, BREACH OF CONTRACT OR OTHER FAULT OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

ARTICLE VIII. TESTS AND INSPECTIONS/ DEFECTIVE WORK/ WARRANTY

- 8.01. TESTING AND INSPECTION. The Owner shall arrange and obtain all inspections and tests required by the Contract Documents; provided, however, that if initial testing fails, all retests will be at Contractor's sole expense. Such testing and inspection is for the sole benefit of Owner, and Owner makes no representation or warranty as to the accuracy of the results of any test or inspection. Contractor at its own expense shall provide such laboratory with all test specimens required by the Contract Documents. The Contractor shall notify the Engineer prior to manufacture or fabrication of items so that observation may be accomplished and furnish field samples of materials to Engineer for testing.
- 8.02. DEFECTS AND THEIR REMEDIES; WARRANTY. It is agreed that if the Work or any part thereof, or any material delivered to the Site for use in the Work or selected for the Work, shall be deemed by Engineer as unsuitable or not in conformity with the Contract Documents, Contractor shall, after receipt of written notice thereof from Engineer, forthwith remove such material and rebuild or otherwise remedy such Work so that it shall be in full accordance with this Contract.

It further is agreed that all Work or any part thereof, including equipment installed, shall be free from defects due to faulty workmanship or materials for period of one year from date of Final Completion, unless otherwise provided in a certificate of Substantial Completion approved by the Owner. Contractor shall notify Engineer in writing 30 days in advance of the expiration of such one-year warranty period, and Engineer shall thereafter schedule a final inspection of the Work prior to the expiration of the warranty period. Contractor's failure to notify the Owner of the expiration of the warranty period, as provided herein, shall extend the warranty period for successive 30 day periods until such written notice is received. Upon notice from Owner, Contractor shall repair defects in all construction that develop during the warranty period, or as noted on the final inspection report, at no cost to Owner. Neither final acceptance nor final payment nor any provision in the Contract Documents relieves Contractor of the above guarantee.

If observed by Owner, notice of the defects will be given by Owner to Contractor with reasonable promptness. Failure to repair or replace defect upon notice entitles Owner to repair or replace same and recover reasonable cost thereof from Contractor and/or his surety.

- 8.03. RIGHT OF ENTRY. Owner reserves the right to enter the property or location on which the Work herein contracted for is to be constructed or installed, by Engineer and such agent or agents as Owner may elect, for the purpose of examining, observing, or testing the Work, or for the purpose of constructing or installing such collateral Work as Owner may desire.

ARTICLE IX. PRICE FOR WORK/ PAYMENTS TO CONTRACTOR

- 9.01. PRICE FOR WORK. In consideration of the furnishing of all the necessary labor, equipment, and material and the completion of all Work by Contractor, and on the Final Completion of all Work and the delivery of all materials embraced in this Contract in full conformity with the Contract Documents, Owner agrees to pay Contractor the final Contract Price. Contractor hereby agrees to pay such prices as are necessary for furnishing all materials and all labor required for the aforesaid Work, including all expenses incurred by him, and for well and truly performing the same and the whole thereof in the manner prescribed by and in accordance with this Contract, including the attached Technical Specifications, and requirements of Engineer.

- 9.02. PROGRESS PAYMENTS. On or before 25th day of each month, the Contractor shall submit an application for progress payment to the Engineer showing the total value of the Work completed. Progress payments for unit price work will be based on the number of units completed. No payment shall be requested nor made for materials purchased or stored on-site that are not yet incorporated into the Work unless specifically authorized by the Owner. If requested, Contractor shall meet with the Engineer at the Site to verify quantity of Work completed.

Beginning with the second application for progress payment, each application shall include an affidavit and lien release of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations with respect to the prior application for payment.

Engineer shall promptly review each application for payment, including required submittals. Engineer shall provide to Owner a statement showing, as complete as practicable and based

upon Engineer's inspections, the total value of the Work completed by the Contractor together with Engineer's recommendation as to payment. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, such payments are not due and payable under the Contract Documents. Payments based on such interim statements are subject to adjustment and correction as set forth in the Contract Documents.

Unless otherwise provided herein, Owner shall pay Contractor the total amount of Engineer's statement, less 10 percent of the amount thereof, and further less all previous payments, and further less all sums that may be retained by Owner under the terms of this Contract. The stated 10 percent retainage may be retained until 30 calendar days after final payment is made. Payment shall be made by Owner on or before the 46th day from receipt of the monthly statement.

Owner may, at Owner's option, withhold part or all of any payment due the Contractor if i) any submittals, reports, Shop Drawings, samples, test reports, or Work progress not be timely or be behind schedule or any requirement of the Contractor as provided in the Contract not be performed or timely or up to date or as scheduled; ii) any Work be defective or not in complete compliance with this Contract or should Contractor otherwise fail to perform Work in accordance with the provisions of this Contract; iii) Owner has incurred damages, including, without limitation, any additional costs associated with design professionals, attorneys or other consultants, as a result of any action or inaction by Contractor not in accordance with the Contract; iv) claims have been made against Owner on account of Contractor's performance or furnishing of the Work; v) Contractor is in breach of the Contract Documents; vi) there is evidence that the Work cannot be completed for the unpaid balance of the Contract Price; vii) Contractor has failed to submit proper statements for payment with all required attachments and supporting documentation; viii) Contractor has failed to make payment to any tier of subcontractor or supplier; and ix) any other items entitling Owner to an offset against the amount recommended for payment. It is understood, however, that in case the whole Work be near completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the Contractor, the Owner may, at Owner's option and upon written recommendation of the Engineer, pay a reasonable and equitable portion of the retained percentage to the Contractor; or the Contractor, at the Owner's option, may be relieved of the obligation to fully complete the Work and, thereupon, the Contractor shall receive payment of the balance due him under the Contract, subject to the conditions stated in Section 10.01.

Partial payment shall not be construed as an acceptance of defective or non-conforming Work.

- 9.03. PAYMENT OF SUBCONTRACTOR/MATERIAL CLAIMS. Should Owner receive notice of any claim(s) of unpaid labor or materials (or damages) from subcontractors, material suppliers, or any other person or entity, Owner may, at its option, withhold part or all of any payment due the Contractor until Owner, in its discretion, is satisfied that such claim(s) have been fully resolved and paid by Contractor, or Owner may, at its option, pay such claim(s) using the withheld funds.
- 9.04. RIGHT OF SET-OFF. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract

Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or if the Contractor owes the Owner money for any other reason, then, for all purposes and at all times, without waiver or limitation of any of its other rights or remedies under this Contract and applicable Laws and Regulations, Owner shall have the right, but not the obligation, to deduct and withhold the amount of money, if any, that may ever be due from Contractor (or its surety) to Owner from any monies that Owner owes Contractor (or its surety), or to issue a written notice to the Contractor reducing the Contract Price by an amount equal to that which the Owner is entitled.

ARTICLE X. FINAL COMPLETION AND ACCEPTANCE

- 10.01. FINAL COMPLETION, ACCEPTANCE, AND PAYMENT. Upon completion of the Work, Contractor shall give the Engineer written notice that the Work has been fully and finally completed and must certify that the Work is complete and was built in conformance with the Plans, Technical Specifications, and other Contract Documents. Such written notice must be accompanied by all documentation called for in the Contract Documents, including but not limited to (i) the consent of surety to final payment; (ii) Contractor Affidavit for Final Payment and Bills Paid; and (iii) as-built drawings, as described in Section 5.29 of these General Conditions. Drawings will be reviewed by Engineer and returned to Contractor so that any adjustment required may be made.

Contractor shall also furnish like certifications from all subcontractors who performed Work on the Project. Subcontractor certifications shall be limited to that Work actually performed by the subcontractor. Such certifications shall be executed on the forms provided. These certifications must accompany the executed Contractor Affidavit for Final Payment and Bills Paid and are a condition precedent to final payment.

Within 10 calendar days after Engineer receives Contractor's written notice, certification(s), and required documentation, Engineer will schedule inspection by Engineer, Owner, and Regulatory Agencies; provided, however, that additional time shall be allowed for scheduling such inspections if required due to the Regulatory Agencies' availability or responsiveness. If the Work is found to be completed in accordance with the Contract Documents, including the Plans and Technical Specifications, and acceptable to the Engineer, Owner, and Regulatory Agencies, Engineer shall proceed to make final measurements and prepare a final statement of the value of all Work performed and materials furnished under the terms of the Contract Documents and shall submit the final statement to Contractor for approval. Upon receipt from the Contractor of the executed approved final statement and all other documents required by the Contract Documents for final payment, the Engineer shall issue to the Owner a certificate of completion and Contractor-approved final statement of the value of the Work performed. The Owner shall thereafter accept the Work and shall pay to the Contractor on or before the 46th day after the date of the certificate of completion the balance due Contractor under the terms of this Contract, provided he has fully performed his contractual obligations under the terms of this Contract.

The Owner shall be entitled to withhold from such final payment for any circumstance for which Owner is entitled to withhold pursuant to General Conditions. For example, but not by limitation, should Owner receive notice of any claim(s) of unpaid labor or materials (or damages) from subcontractors, material suppliers, or any other person or entity, Owner may,

at its option, withhold part or all of any of the final payments due the Contractor until Owner, in its discretion, is satisfied that such claim(s) have been fully resolved and paid by Contractor, or Owner may, at its option pay for such claims(s) using the withheld funds.

The 10 percent retainage may be held by Owner for 30 calendar days after the date of said payment, after which said retainage will be paid to Contractor in full, provided he has fully performed his contractual obligations under the terms of the Contract and Owner is not otherwise entitled to withhold payment.

It is understood that in the event that all Work has been completed, final payment less 10 percent retainage has been paid, and 30 calendar days have passed but, due to no fault or neglect on the part of Contractor, notification of Regulatory Agency acceptance has not been obtained, then Owner may, at Owner's option, pay Contractor a reasonable and equitable portion of the retainage; or Contractor, at Owner's option, may be relieved of its obligation to further perform hereunder, and thereupon, Contractor shall receive payment of the balance due it under the Contract subject to the conditions stated in this Section.

Neither final acceptance by Owner, nor the final payment, nor any provision in the Contract Documents, shall relieve Contractor of: (i) the obligation for fulfillment of any warranty that may be required in the Contract Documents, including the Technical Specifications; (ii) the obligation to repair defective Work or materials; (iii) Contractor's indemnification obligations under this Contract; or (iv) any of Contractor's continuing obligations.

- 10.02. OPERATION OF FACILITIES. The Owner reserves the right to operate new facilities during the construction period. Use of new facilities by the Owner during construction will not constitute final acceptance of the Work and will not constitute the date for start of any required warranties or guarantees. The Contractor will provide all necessary maintenance, including normal lubrication and adjustment, to new facilities operated by the Owner until final acceptance of the construction.

ARTICLE XI. SUSPENSION OF WORK/ TERMINATION/ DEFAULT

- 11.01. SUSPENSION OF WORK. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than sixty (60) consecutive calendar days by written notice to Contractor.
- 11.02. OWNER'S RIGHT TO CARRY OUT THE WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case the Owner may offset from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's or other consultant's additional services made necessary by such default, neglect or failure (the "Cost to Cure"). Such action by the Owner and Cost to Cure the Contractor are both subject to prior approval of the Engineer. If payments then or thereafter due the Contractor are less than the Cost to Cure, the Contractor shall pay the difference to the Owner.

11.03. TERMINATION FOR CONVENIENCE OF OWNER. Owner may terminate Contractor's performance under the Contract for Owner's convenience at any time upon written notice to Contractor, whether or not Contractor is in default and, in such event, Owner's only liability will be to pay Contractor the following amounts:

- a. The unpaid balance due Contractor for the Work actually performed and accepted, based on the schedules and tables, unit prices and lump sums enumerated in the Contract Documents; and
- b. Reasonable expenditures made and costs incurred by Contractor for the materials ordered by Contractor for the Work prior to the date of termination and not incorporated in the Work, less reasonable salvage or resale value, provided such materials conform to the Specifications, and for labor performed on any such materials prior to the date of termination and associated labor insurance and labor payroll taxes.

From the total of the items enumerated in items a and b above inclusive, there shall be deducted the total dollar amount of all claims of Owner against Contractor, including the total dollar amount of claims on account of delay or defects in materials and/or workmanship.

The amount payable under the provisions of this section, plus the sum of all amounts previously paid under the Contract, shall in no event exceed the Contract Price.

Contractor shall transfer and assign to Owner in accordance with Owner's instructions, all materials, supplies, Work in process, and other things for which Contractor is entitled to receive reimbursement hereunder, and all plans, drawings, working drawings, sketches, specifications, and information in connection with the Work, and shall take such action as may be necessary to secure to Owner, at Owner's election, the rights of Contractor under any or all orders and subcontracts made in connection with the Work.

If and as Owner so directs or authorizes, Contractor shall sell at a price approved by Owner, or retain at a price mutually agreeable, any such materials, supplies, Work in progress or other things as referred to above. The proceeds of any such sale or the agreed price shall be paid or credited to Owner in such manner as Owner may direct to reduce the amount payable by Owner.

If requested by Owner, Contractor shall endeavor to cancel any or all of its outstanding orders or subcontracts upon such terms as may be approved by Owner.

Upon the performance of the obligations described in this section by the respective parties, all obligations of the respective parties under the Contract shall be discharged, except such obligations as by their terms, express or implied, contemplate continued obligations after acceptance of the Work.

Nothing herein shall affect the right of Owner to terminate Contractor's performance as provided elsewhere in the Contract Documents.

11.04. TERMINATION FOR CAUSE AND EVENTS OF DEFAULT. An event of default includes, without limitation, any one or more of the following:

- a. A petition in bankruptcy is filed by or against Contractor, or Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the insolvency of Contractor or to take charge of the Work or any part thereof.
- b. Contractor fails or refuses to supply enough properly skilled workers or proper equipment, or fails to make prompt payment when due to subcontractors for materials, equipment or labor.
- c. Contractor disregards the Laws and Regulations or the instructions of Owner or of Engineer.
- d. Contractor breaches any of the provisions of the Contract Documents, or breaches any of its representations or warranties in the Contract Documents, or otherwise fails or refuses to perform or fulfill all or any part of its obligations under the Contract Documents.

If one or more of the identified events occur, Owner or Engineer will provide written notice to Contractor and Contractor's surety of its intent to terminate for cause. Owner will allow a minimum of 5 calendar days to cure deficiencies in performance, then in any such case, Owner may, by written notice to Contractor and its surety, declare Contractor in default under the Contract Documents and terminate Contractor's performance under the Contract and may at its option employ any remedies provided for in the Contract Documents or otherwise available at law or in equity.

Nothing contained herein shall be interpreted as enlarging Owner's legal duty to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or altering the status of Contractor as an independent contractor. Should Owner elect to terminate the performance of Contractor hereunder, then such termination shall not waive, extinguish or diminish the obligations and liabilities of the Contractor or its surety existing as of the termination date. Contractor shall submit and does hereby submit to the personal jurisdiction of the state or federal courts having subject matter jurisdiction and sitting in the county in which the Site is located, for the adjudication of any suit brought to enforce Owner's rights and remedies under the Contract.

- 11.05. REMEDIES FOR DEFAULT OF CONTRACTOR. In the event the Owner elects to terminate Contractor for cause, Owner shall have the right, but not the obligation, at its sole election and discretion, and without prejudice to any other right or remedy available to it, to take possession of the Work and the Site and use all or any part of Contractor's equipment, tools and materials to itself finish, or cause to be finished by another contract, the Work by whatever method Owner may deem expedient. Further, Contractor shall not be entitled to receive further payment until the Work achieves Final Completion. If the unpaid balance of the Contract Price exceeds the costs and expenses of terminating the Contract and finishing the Work, (including, without limitation, attorney's, engineering, surveying and other professionals' fees and costs, together with the costs of completing the Work), such excess shall be paid to Contractor. If such costs and expenses exceed the unpaid balance of the Contract Price, Contractor shall pay the difference to Owner. The amount to be paid to the Contractor or Owner, as applicable, shall be certified by the Engineer, upon application, and this obligation for payment shall survive termination of the Contract.

In the event Owner elects to make demand on Contractor's performance Bond, the Contractor's surety shall be obligated to complete or cause completion of the Work in strict conformity with the Contract, including Contract Times. If the Owner reasonably determines that the surety is not proceeding diligently and with promptness to complete its obligation hereunder, the Owner may provide the surety with written notice of the surety's failure to do so. If seven days after the surety receives said notice, the Owner still reasonably determines that the surety is not proceeding diligently and with promptness to complete its obligation hereunder, Owner may take possession of the Work and the Site and use all or any part of Contractor's equipment and materials to itself finish, or cause to be finished by another contractor, the Work by whatever method Owner may deem expedient as provided in the preceding paragraph.

ARTICLE XII. MISCELLANEOUS

- 12.01. NO THIRD-PARTY BENEFICIARIES. The Contract Documents shall not create any rights in third parties and no provision of the Contract Documents shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the Owner, the Indemnified Parties, and the Contractor. Without limiting the foregoing, the Owner shall have no obligation to pay or to see to the payment of any monies due to any of Contractor's subcontractors or material suppliers of every tier or to any other person or entity.
- 12.02. SEVERABILITY. Except as provided under Section 5.12 of these General Conditions, if any term, condition or provision of the Contract Documents, or the application thereof to any person or circumstance, shall ever be held to be void, voidable or unenforceable, then in each such event the remainder of the Contract Documents or the application of such term, condition or provision to any other person or any other circumstance (other than those as to which it shall have been held void, voidable or unenforceable) shall not be affected thereby, and each term, condition or provision of the Contract Documents shall remain valid and enforceable to the fullest extent permitted by Laws and Regulations.
- 12.03. NON-WAIVER OF RIGHTS. Any failure by the Owner at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the Contract Documents shall not constitute a waiver of the right to enforce or require the strict keeping of such terms or conditions and shall not affect or impair such terms or conditions in any way or the right of Owner at any time to avail itself of such remedies as it may have for any subsequent breach or breaches of any such term or condition or of any other term or condition of the Contract Documents, including, without limitation, the right to terminate. Notwithstanding any provision hereof, neither Owner's receipt of non-compliant bonds or non-compliant insurance certificates nor Owner's allowance of Contractor to proceed with the Work, shall be construed to relieve Contractor of its obligation to provide bonds and insurance in favor of Owner according to the requirements of these Contract Documents.

Contractor agrees that Owner shall not be precluded or estopped by any action taken or thing done, written or oral, including, but not limited to, inspections made, payments made, or final completion of the Work, from showing that the true and correct amount and character of the Work done and equipment and materials furnished by Contractor do not in fact conform to the Plans, Technical Specifications or other Contract Documents. Contractor also agrees that Owner shall not be precluded or estopped because of any action taken or not taken, from

demanding and recovering from Contractor any damages resulting therefrom or from the Contractor's other failure to comply with the Contract Documents.

In the event of termination by Owner of Contractor's performance under the Contract for convenience, on account of Force Majeure, or by reason of Contractor's default, no rights or remedies of Owner shall thereby be waived, nor shall any breach by Contractor of the provisions in the Contract Documents which has occurred or is continuing at the time of such termination be waived, regardless of whether or not default has been declared.

- 12.04. OWNER'S AUDIT RIGHTS. Owner's duly authorized representatives shall have access at all reasonable times to all Contractor's and subcontractor's personnel, job description, employment and qualification records, books, records, correspondence, instructions, plans, drawings, receipts, vouchers, data stored in computers, and memoranda of every description pertaining to Work for the purpose of auditing and verifying costs of Work or for any other reasonable purpose. Owner's representatives shall have the right to reproduce any of the aforesaid documents.

Contractor shall preserve and shall cause its subcontractors to preserve all the aforesaid documents for a period of five years after completion and acceptance of termination of Work.

If audit by Owner reveals charges or costs charged to or paid by Owner as costs or fees which are not proper or exceed the rates or amounts permitted under the Contract Documents for any such matters, the Owner shall be entitled upon demand for a refund from Contractor of all such amounts, plus interest thereon from the date of payment by Owner until the date of refund by Contractor at the rate of the lesser of (i) 18 percent per annum or (ii) the maximum rate allowed by law.

- 12.05. NO ASSIGNMENT. Contractor shall not be allowed to assign or otherwise convey all or any portion of this Contract without the express written consent of Owner.
- 12.06. CUMULATIVE RIGHTS AND REMEDIES. The rights and remedies of Owner provided in the Contract Documents shall be cumulative of and not in lieu of all other rights and remedies available to Owner at law or in equity. It is expressly agreed that exercise of a right or pursuit by Owner of any one or more of the remedies provided in the Contract Documents or otherwise available at law or in equity shall not constitute an election of remedies by Owner or forfeiture of any other right of Owner.

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ATTACHMENT A

TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Name of purchaser, firm, or agency	
Address (Street & number, P.O. box or route number)	Phone (Area code and number)
City, state, ZIP code	

I, the purchaser named above, claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice form:

Seller:

Street address: _____ City, state, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

Texas Tax Code, Section 151.311

I understand that I will be liable for payment of sales or use taxes which may become due for failure to comply with the provisions of the Tax Code: Limited Sales, Excise, and Use Tax Act; Municipal Sales and Use Tax Act; Sales and Use Taxes for Special Purpose Taxing Authorities; County Sales and Use Tax Act; County Health Services Sales and Use Tax; The Texas Health and Safety Code; Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate and, depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

Purchaser Sign here →	Title	Date
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NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

**THIS CERTIFICATE DOES NOT REQUIRE A
NUMBER TO BE VALID.**

SPECIAL CONDITIONS OF THE AGREEMENT
PART A1. INSURANCE.

- a. Procurement. Contractor shall procure and maintain in force and effect during the Work the insurance described in the Contract Documents, procure such endorsements as may be necessary to cause Contractor's insurance to comply with the Contract Documents, and shall obtain such other casualty insurance as Contractor may deem necessary for protection of potential liabilities or Contractor's property. If Contractor fails to procure and maintain in force the insurance required, Owner may, but is not required to, procure the same at Contractor's sole expense. In all events, Contractor shall be liable for all loss caused by its failure to comply with these requirements.

Provision of the required insurance coverages and the actual certificates is a condition precedent to the obligations of Owner under the Contract Documents, and if Contractor shall at any time fail to provide the required insurance coverages, such failure shall constitute a material breach of Contractor's obligations under this Contract.

Contractor agrees to procure and to maintain in full force and effect, at Contractor's sole expense, insurance of the types set forth below, underwritten by insurance companies satisfactory to Owner and having an A.M. Best's Rating of not less than "A- VII":

- i. Workers' Compensation and Employers' Liability. Contractor shall carry statutory Workers' Compensation Insurance covering Contractor's employees in compliance with all requirements of the Texas Workers' Compensation Act, as further described in these Special Conditions below. Contractor shall also carry Employer's Liability Insurance in an amount not less than the following:

Each Accident	\$1,000,000
Each Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000

- ii. General Liability Insurance. Contractor shall carry general liability insurance on a form no less broad than the coverage provided by a "Commercial General Liability Insurance" form promulgated by the Insurance Services Office, and containing language affording coverage for contractual liability, the products and completed operations hazards, broad form property damage liability, and the explosion, collapse and underground hazards, as respects all operations and work hereunder, for all liability arising out of injury to or death of one or more persons, and injury to or destruction of property, in any one occurrence, in amounts not less than:

General Aggregate	\$ 2,000,000
Products Comp/Ops Aggregate	\$ 1,000,000
Personal & Advertising Injury	\$ 1,000,000

Each Occurrence \$ 1,000,000

- iii. Automobile Liability Insurance. Contractor shall carry Automobile Liability Insurance on a form no less broad than the coverage provided by a Business Automobile Liability Insurance form promulgated by the Insurance Services Office, on all owned or hired autos, as well as non owned autos, in an amount not less than \$1,000,000 combined single limit, for all liability arising out of injury to or death of one or more persons, and injury to or destruction of property, in any one occurrence.
 - iv. Excess Liability Insurance. Contractor shall carry Excess Liability Insurance that follows the form of the underlying primary liability insurance required by Sections 1.a.ii and 1.a.iii, in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate. Such excess liability insurance shall name Owner and Engineer as additional insureds in accordance with Section 1.b.i, and shall contain language waiving or otherwise relinquishing any “other insurance” limitation or right of contribution by other insurance that may be maintained by Owner or Engineer.
 - v. Builder’s Risk Insurance. Contractor shall procure Builder’s Risk insurance for any projects or work that include above-ground improvements (including without limitation, water well(s), water plants(s), potable and non-potable water pump stations, wastewater treatment plant(s), but not including underground water, sanitary sewer and storm sewer lines) in the amount of the total Contract Price, and shall name Owner and Contractor as insureds, as their respective interests may appear. If Owner elects to request that Contractor obtain Builder’s Risk insurance through a broker designated by Owner, then Contractor shall procure such insurance as Owner may direct, and Owner shall reimburse Contractor the actual cost of the difference in premiums, if any, for such insurance without markup and the insurance offered by Contractor. In the event Owner elects to pursue a claim under any applicable Builder’s Risk Policy, Contractor shall cooperate with Owner, the insurer, and their agents and representatives in investigating the loss in question or in asserting or substantiating the claim or in investigating the loss in question.
 - vi. Pollution Liability. Insurance for preparatory work related to potentially contaminated areas, in the amount required by Owner.
 - vii. Crossings. Whenever Work under the Contract involves construction activities that require the Contractor’s employees, agents, subcontractors, equipment and/or materials to cross or temporarily occupy railroad, gas or other utility properties and tracks, the Contractor shall secure and maintain in his own name the types of insurance in the minimum amounts as required by owners of such properties issued by companies satisfactory to the Owner and the owner of such properties.
- b. Required Endorsements.
- i. Additional Insured. To the fullest extent allowed by applicable Laws and Regulations, Contractor shall name the Indemnified Parties as additional insureds to the same extent as Contractor is required to indemnify the Indemnified Parties

pursuant to the Contract Documents. Such additional insured coverage shall be to the full extent of the limits of liability on all policies of liability insurance (other than Worker's Compensation and Employers' Liability insurance) maintained in force or procured by Contractor during the Work, and shall cause such insurance to provide, if necessary by endorsement, that each such policy shall respond as primary insurance and shall not contribute with or apply as excess over any other valid and collectible other insurance that may be maintained by Owner or Engineer. In addition, Contractor shall cause the insurance required by Sections 1.a.ii, 1.a.iii, 1.a.iv and 1.a.v to provide or be endorsed to provide that such insurance applies separately to each insured against whom claim is made or suit is brought.

- ii. Waiver of Subrogation. Inasmuch as Owner and Contractor intend that all of Contractor's insured loss and liabilities fall upon Contractor's insurers, without recourse against the Indemnified Parties, Contractor agrees to cause of all its policies of insurance maintained in force or procured by Contractor during the Work to provide, if necessary by endorsement, that each such insurer fully waives subrogation against Owner and Engineer. The insurance as to which subrogation waiver is required includes, but is not limited to, that required by Sections 1.a.i, 1.a.ii, 1.a.iii, 1.a.iv and 1.a.v. Contractor hereby waives and releases all Claims it may have against the Indemnified Parties to the extent any of such Claims are covered by insurance required to be furnished by Contractor or any Subcontractors hereunder, whether or not Contractor actually obtains such insurance, and EVEN IF SUCH CLAIMS ARISE OUT OF, RELATE TO OR ARE BASED UPON THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT, OF AN INDEMNIFIED PARTY.
- iii. Notice of Modification/Cancellation. All policies for which any Indemnified Parties are named insureds or additional insureds shall be endorsed to require the insurer to provide such named insured and additional insureds with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or non-renewal of the insurance coverage required under this Contract. For policies on which an Indemnified Party is neither a named insured nor an additional insured, Contractor shall provide such Indemnified Party with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or non-renewal of the insurance coverage required under this Contract.
- c. Deductibles. Any and all deductibles, or self-insured retentions, of all insurance policies maintained by Contractor, including insurance required hereunder, shall be assumed by, for the account of, and at the Contractor's sole risk and expense, and shall not be billed to or payable by Owner.
- d. Certificates of and Proof of Insurance. Contractor shall furnish Owner with certificates of insurance showing Contractor's procurement of the insurance required hereunder, in compliance with Applicable Laws and Regulations. Contractor agrees to review each

certificate, and hereby warrants to Owner the accuracy of all information shown on each Certificate furnished. In addition, Contractor, upon request, shall promptly:

- i. Permit Owner to inspect the originals of all required insurance at the offices of Contractor or its insurance broker;
 - ii. Provide copies of all required insurance to Owner; and
 - iii. Authorize Owner to communicate directly (by telephone, email, or in person) with Contractor's insurance broker for the purpose of verifying Contractor's compliance with these requirements or to answer questions concerning Contractor's insurance.
- e. Claims-Made Insurance. If the insurance required hereunder is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and, (ii) such claims-made insurance shall not provide for a retroactive date later than the commencement of Contractor's performance hereunder.
- f. Insolvency of Insurer and Reinstatement of Impaired Limits. In the event of the insolvency of any insurer underwriting any insurance required hereunder, Contractor shall replace such insurance with insurance meeting the requirements hereof. In the event that the required aggregate limits of liability of any insurance required hereunder are reduced or impaired by 50% or more, then Contractor shall give Owner prompt notice of the impairment and promptly cause such impaired limits to be reinstated to the required limits.
- g. Subcontractors' Insurance. Contractor shall cause its subcontractors, including all persons hired by Contractor who are not Contractor's employees, who perform any part of the work hereunder, to procure and to maintain in full force and effect insurance of the types and amounts, and meeting the requirements described in Sections 1.a.i, 1.a.ii, 1.a.iii, 1.a.iv and 1.a.v and of 1.b.i and 1.b.ii above. In addition, subcontractors shall comply with Section 1.a.v, if applicable.
- h. Term of Required Insurance. All terms of these insurance requirements shall survive termination of this Contract and shall continue until thirty (30) calendar days after completion of all Work or services to be provided hereunder, including the performance of any warranty work. In addition, Contractor shall maintain in force and effect completed operations coverage under the insurance policies required by paragraphs 1.a.ii and 1.a.iv, and any "claims-made" coverage within paragraph 1.e, for a minimum of two (2) years after Final Completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.
- i. No Waiver by Owner. Contractor's failure to provide insurance as required hereunder, or Contractor's failure to supply certificates of insurance that comply with Section 1.d, above, or the failure of Owner to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of these provisions, or deficiencies in the insurance obtained, shall not constitute a waiver by Owner of any of the these insurance

requirements, or a waiver of any other terms and conditions of this Contract, including Contractor's obligations to defend, indemnify, and hold harmless Owner, as required herein.

- j. Minimum Limits. The foregoing insurance requirements are minimum requirements intended to benefit Owner and Engineer, shall not be interpreted to limit Contractor's liability to Owner in any manner whatsoever; and, are separate from and independent of Contractor's other obligations under this Contract, including Contractor's obligations to defend, indemnify and hold harmless Owner.

2. WORKER'S COMPENSATION INSURANCE COVERAGE.

a. Definitions:

1. Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 2. Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
 3. Persons providing services on the project ("subcontractor" in §406.096 of the Texas Labor Code) - 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.

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- e. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - f. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
 - g. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
 - h. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
 - i. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. obtain from each other person with whom it contracts, and provide to the contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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

BONDS. If required by the Invitation to Bidders, it is further agreed by the parties to this Contract that Contractor will execute a Performance, a Payment, and a Maintenance Bond, each in the sum of 100 percent of the Contract Price, for the satisfactory performance of the Work, the fulfillment of any guarantees required, and the prompt payment to all persons supplying labor and materials in the prosecution of the Work, in accordance with this Contract on the forms provided for this purpose; and it is agreed that this Contract shall not be in effect until such Bonds are furnished and approved by Owner. Upon increase of the Contract Price authorized by Change Order, Contractor shall immediately provide revised Bonds for such increased Contract Price. Contractor's failure to provide compliant Bonds may be grounds for immediate termination regardless of whether the Contractor has started work on the Project.

All Bonds shall be in the form prescribed by the Contract Documents except as required otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 370 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. Surety must have a minimum Best's Key Rating of "B+".

If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the rules and regulations of the Treasury Department

with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation.

For contracts over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law, or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. The person executing the Bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the Texas Department of Insurance.

The person executing the Bonds must be authorized by the surety company to execute the Bonds on behalf of the company in the amount required for the contract and such authorization must be recorded in the files of the Texas Department of Insurance. The Contract shall not be in effect until such bonds have been provided by the Contractor and accepted by the Owner.

If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements herein Contractor shall promptly notify Contractor, Owner and Engineer and shall, within 10 calendar days after the event giving rise to such notification, provide another Bond and surety to fulfill the required obligations.

3. PREVAILING WAGE RATE SCALE. Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall ascertain the general prevailing wage rate received by the classes of workers employed on projects similar to this Project and shall specify in the call for bids and in the Contract the minimum wage rates which shall be paid for each type of Worker. This statute further provides that the Contractor or subcontractors shall pay a penalty to the Owner of sixty dollars (\$60) for each Worker employed for each calendar day or part for the day that the Worker is paid less than the wage rates stipulated in the Contract. The Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract.

The statute also requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each Worker. These records shall be open to the inspection of the Owner.

The minimum wage rates that apply to this Contract are those shown in Attachment "A" to this section.

4. LIQUIDATED DAMAGES FOR DELAY/ECONOMIC DISINCENTIVE. The Contractor and the Owner agree that time is of the essence of this Contract. The Contractor and the Owner agree that a breach of this Contract by failure to complete the Work in the specified time will cause harm to the Owner, and further agree that the harm the Owner would sustain and the actual measure of damages the Owner would incur from the breach are incapable or very difficult of ascertainment. Therefore, the Contractor and the Owner agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the time limit(s) set in the Contract, or as extended under the provisions of these General Conditions (including, without limitation, due to a delay caused by Contractor's failure to comply with the

Contract Documents or due to Owner's termination of Contractor for default under the Contract Documents), Contractor shall be liable to Owner for liquidated damages in the amount of five hundred dollars (\$500) for each such calendar day, which sum the parties agree is a reasonable forecast of the damages the Owner will sustain per day that the Work remains uncompleted and in no way constitutes a penalty. Said \$500 per day shall also be considered an "economic disincentive for late completion of the Work" pursuant to Section 49.271(e), Texas Water Code. The Owner shall have the option to deduct and withhold said amount from any monies that the Owner owes the Contractor or its sureties or to recover such amount from the Contractor or the sureties on the Contractor's bond.

5. The section entitled "KEEPING PLANS AND SPECIFICATIONS ACCESSIBLE" of the General Conditions is hereby replaced as follows:

Contractor shall be furnished with three (3) copies of all Plans and Technical Specifications without expense to him, and shall keep one copy of each constantly accessible on the Site.

ATTACHMENT "A" - PREVAILING WAGE RATES

Worker Classifications	Rate
Asphalt Distributor Operator	\$14.06
Asphalt Paving Machine Operator	\$14.32
Asphalt Raker	\$12.36
Asphalt Shoveler	\$11.68
Broom or Sweeper Operator	\$12.68
Bulldozer Operator	\$11.81
Carpenter (Rough)	\$12.49
Concrete Finisher (Paving)	\$12.98
Concrete Finisher (Structures)	\$12.98
Concrete Paving Curbing, Machine Operator	\$11.71
Concrete Paving Finishing, Machine Operator	\$13.07
Concrete Paving Joint Sealer, Operator	\$11.00
Concrete Paving Saw Operator	\$13.99
Concrete Paving Spreader, Operator	\$10.44
Concrete Rubber	\$9.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	\$12.71
Crusher and Screed Plant Operator	\$11.29
Electrician	\$27.11
Flagger	\$10.33
Form Builder/Setter (Structures)	\$12.23
Form Liner (Paving & Curb)	\$12.34
Form Setter (Paving & Curb)	\$12.34
Foundation Drill Operator, (Crawler Mounted)	\$17.43
Foundation Drill Operator, (Truck Mounted)	\$15.89
Front End Loader Operator	\$13.17
Laborer, Common	\$11.02
Laborer, Utility	\$11.73
Manhole Builder	\$9.00
Mechanic	\$16.96
Milling Machine Operator, (Fine Grade)	\$13.53

Worker Classifications	Rate
Mixer Operator	\$10.33
Motor Grader Operator (Rough)	\$14.23
Motor Grader Operator	\$15.69
Oiler	\$12.12
Painter (Structures)	\$18.62
Pavement Marking Machine, Operator	\$11.18
Piledriverman	\$14.95
Pipelayer	\$12.12
Reinforcing Steel Setter, (Paving)	\$15.15
Reinforcing Steel Setter, (Structure)	\$14.39
Roller Operator, Pneumatic, (Self-Propelled)	\$11.57
Roller Operator, Steel Wheel, Flat Wheel/Tamping	\$11.57
Roller Operator, Steel Wheel, Plant Mix Pavement	\$11.92
Scraper Operator	\$13.47
Servicer	\$13.97
Sign Installer (PGM)	\$8.54
Slip Form Machine Operator	\$11.07
Spreader Box Operator	\$13.58
Structural Steel Worker	\$14.39
Tractor operator (Crawler Type)	\$13.68
Tractor operator, Pneumatic	\$10.07
Traveling Mixer Operator	\$11.00
Truck driver, Lowboy-Float	\$16.03
Truck driver, Single Axle, (Heavy)	\$11.46
Truck driver, Single Axle, (Light)	\$11.48
Truck Driver (Tandem Axel Semi-Trailer)	\$12.27
Work Zone Barricade Servicer	\$11.67

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

DOL Ref #TX20030048

**SPECIAL CONDITIONS OF THE AGREEMENT
PART B**

Name and Location of Project. Work covered by these Technical Specifications is entitled
“**Detention Pond Isolator & Area Inlet Repairs to serve SANTA FE HIGH SCHOOL**”,

1. Santa Fe, Galveston County, Texas.”
2. Description of Work.
 - a. Under this Contract, Contractor shall furnish all materials, appliances, tools, equipment, transportation, services, and all labor and superintendence necessary for the construction of the Work as described in these Technical Specifications and as shown on the Plans. The completed installation shall not lack any part that can be reasonably implied as necessary to its proper functioning or any subsidiary item that is customarily furnished, and Contractor shall deliver the installation to Owner in operating condition.
 - b. The Work, in general, under this Contract includes the purchase, installation, and construction of all structures, equipment, and materials, including appurtenances, as indicated on the Plans.

Major items of construction and services required are designated as follows:

- (1) Install and adjust waterlines, valves, valve boxes, flushing valves, fittings, and appurtenances,
- (2) Construct and adjust sanitary sewers, manholes, and appurtenances,
- (3) Construct and adjust storm sewers, manholes, and appurtenances,
- (4) Construct detention and overflow facilities,
- (5) Repair existing pavement affected,
- (5) Furnish and install all subsidiary items as necessary to complete the project,
- (6) Perform testing as specified on installed lines, and
- (7) Clean-up project area upon completion.

3. Technical Specifications.
 - a. Technical Specifications are of the abbreviated, simplified, or streamlined type and include incomplete sentences. The omission of words or phrases such as “Contractor shall,” “in conformity therewith,” “shall be,” “as noted on Plans,” “according to Plans,” “a,” “an,” “the,” and “all,” are intentional. Omitted words or phrases shall be supplied by inference in same manner as they are when a “note” occurs on Plans.
 - b. The Technical Specifications are interpreted to require that Contractor shall provide all items, articles, materials, operation or methods listed, mentioned, or scheduled either on Plans or specified herein, or both, including all labor, materials, equipment, and incidentals necessary and required for their completion.
 - c. Whenever the words “designated,” “submitted,” “observed,” or similar words or phrases are used, it shall be assumed that the word “Engineer” follows the verb as the object of the clause, such as “observed by Engineer.”

- d. All references to standard Technical Specifications or manufacturer's installation directions shall mean the latest edition thereof on the date BIDS are due unless specifically noted otherwise.
- e. Reference to technical society, organization, or body is made in Technical Specifications in accordance with following abbreviations:
- | | |
|--------|--|
| AASHTO | American Association of State Highway and Transportation Officials |
| ACI | American Concrete Institute |
| ASTM | American Society for Testing and Materials |
| AWWA | American Waterworks Association |
| FS | Federal Specifications |
| PCA | Portland Cement Association |
| IEEE | Institute of Electrical and Electronic Engineers |
| NEC | National Electric Code |
| UL | Underwriters' Laboratories |
| AISI | American Iron and Steel Institute |
| API | American Petroleum Institute |
| IPCEA | Insulated Power Cable Engineers Association |
| NEMA | National Electrical Manufacturers Association |
| AWS | American Welding Society |
| PCI | Prestressed Concrete Institute |
| AISC | American Institute of Steel Construction |
| ANSI | American National Standards Institute (Formerly ASA) |
- f. Some Technical Specification items cover construction requirements and materials in a comprehensive manner, and only pertinent portions of these items apply.
4. Manufacturer's Representative. When required by Technical Specifications provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.
5. Plans.

<u>Sheet No.</u>	<u>Title</u>
1.	Cover Sheet
2.	Notes
3.	Project Layout
4.	Inlet B-15 & Isolator Wier Wall Details
5.	Paving Additions at Inlet B-10 & Inlet A-7
6.	Details

Section 01100**SUMMARY OF WORK****1.0 GENERAL****1.01 SECTION INCLUDES**

- A A summary of the Work to be performed under this Contract, work by Owner, Owner furnished products, Work sequence, future Work, Contractor's use of Premises, and Owner occupancy.

1.02 WORK COVERED BY CONTRACT DOCUMENTS

- A Work of the Contract is for the construction of approximately: removing and reconstructing the upper portion of 10 area inlets and remediating sinkholes around them, and installation of an isolator wall in one area inlet.

1.03 WORK BY OWNER

- A None.

1.04 OWNER FURNISHED PRODUCTS

- A None.

1.05 WORK SEQUENCE

- A Contractor shall coordinate the Work with the Engineer and Owner as specified in Section 01310 – Coordination and Meetings.
- B Contractor to submit project schedule to Engineer & Owner for approval as specified in Section 01350 – Submittals.

1.06 FUTURE WORK

- A Developer will construct sidewalks separate from utility and paving contracts.

1.07 CONTRACTOR'S USE OF PREMISES

- A Comply with procedures for access to the site and Contractor's use of rights-of-way as specified in Section 01140 – Contractor's Use of Premises.
- B Contractor shall be responsible for all utilities required for construction.

1.08 OWNER OCCUPANCY

- A Cooperate with the Owner to minimize conflict, and to facilitate the Owner's operations. Coordinate Contractor's activities with Engineer.

B Schedule Work to accommodate this requirement.

2.0 PRODUCTS - Not Used

3.0 EXECUTION - Not Used

END OF SECTION

APPENDIX A

STORM WATER POLLUTION PREVENTION PLAN

STORM WATER POLLUTION PREVENTION PLAN

This Storm Water Pollution Prevention Plan (SWPPP) is prepared in accordance with the TPDES General Permit for Storm Water Discharges from Construction Sites. **A copy of this page shall be posted at the project site in addition to the Notice of Intent:**

PROJECT DESCRIPTION: Detention Pond Isolator & Area Inlet Repairs
to serve
SANTA FE HIGH SCHOOL
Santa Fe, Galveston County, Texas

 (Project Name)

Topography is relatively flat with a down slope in an easterly direction. The project consists of removing and reconstructing the upper portion of 10 area inlets and remediating sinkholes around them, and installation of an isolator wall in one area inlet. to serve approximately 61.5 acres of existing School District development.

Project Name and Location

Name: Detention Pond Isolator & Area Inlet Repairs
to serve
SANTA FE HIGH SCHOOL
Santa Fe, Galveston County, Texas

Location: Latitude: N 29°23'43.5"
Longitude: W 95°08'41.8"
Galveston County, Texas

Owner Name and Address

SANTA FE INDEPENDENT SCHOOL DISTRICT
4133 Warpath
P O Box 370,
Santa Fe, Texas 77510

Detention Pond Isolator & Area Inlet Repairs SWPPP PLAN
to serve
SANTA FE HIGH SCHOOL
Santa Fe, Galveston County, Texas

 (Project Name)

1. **SITE DESCRIPTION:**

A. Description of Construction Activity

The work includes but is not limited to furnishing and installing the following items: removing and reconstructing the upper portion of 10 area inlets and remediating sinkholes around them, and installation of an isolator wall in one area inlet.

B. Sequence of Major Activities

The project is expected to take approximately 1 month, depending on weather conditions.

The stabilized construction access, staging, and storage areas will be constructed prior to beginning construction of proposed paving and appurtenances

C. Estimated Total Site, Disturbed Area:

The total project site is approximately 61.5 acres. Disturbed vegetated areas that are to remain will be seeded to match that of original condition. The total disturbed area is approximately 0.25 acres. The total 61.5 acres project site drains to the existing Galveston County Water Company Canal.

D. Runoff Coefficient:

- 1) The existing runoff coefficient prior to beginning construction of the proposed project, "Ce", is approximately 0.59, see calculations below:

Existing Runoff Coeff.	Description	Percentage of Land
0.59	Flat, Developed School	61.5 Ac. = 100%

- 2) There will be no net import/export of excavated soils from the site. All excess excavated materials will be removed from the project. The developed runoff coefficient following construction of the proposed project, "Cd", is approximately 0.59, see calculations below:

Developed Runoff Coeff.	Description	Percentage of Land
1.00	Proposed Sidewalk	0.01 Ac. = 0.02%
0.59	Flat, Ex. Developed School	61.4 Ac. = 99.98%

$$0.02\% \times (1.00) + 99.98\% \times (0.59) = 0.59$$

E. Site Map:

See site construction plans.

F. Name of Receiving Water and Extent of Wetlands:

The site drains to Galveston County Water Company Canal. There are no wetlands on this project.

2. EROSION AND SEDIMENTATION CONTROLS

Major erosion and sediment controls used on this project.

A. Stabilization Practices

- 1) Stabilized construction exits will be provided at major access points using crushed stone.
- 2) The on-site staging and parking area will be stabilized using crushed stone.
- 3) At the completion of work, all disturbed areas that are not paved will be hydromulch seeded or sodded.
- 4) All disturbed areas which are to be free from construction activity for 21 days or more shall be stabilized with temporary seeding within 14 days of the end of the construction activity.

B. Structural Practices

- 1) Reinforced Filter Fabric Barriers will be placed across and perpendicular to the roadside ditches at intervals not to exceed 1,000' to collect sediment.
- 2) Filter fabric fences shall be constructed along disturbed that slope away from the construction area to collect sediment before runoff enters drainage ditches.
- 3) Stabilized construction exit with crushed stone will be established near the staging/parking area for trucks and equipment leaving the site. In the event wash water is used, the wash water will be routed to a sediment pit or trap prior to release into a drainage swale or storm sewer.
- 4) Water pumped from trenches during dewatering operations will be discharged into a sediment pit or trap with eventual discharge into the drainage swales or storm sewer.
- 5) Trench excavation spoils not immediately hauled off will be backfilled into the trenches in a continuous operation. Excavated material required for

backfilling will be placed next to the trenches, but no closer than half the depth of the trench, for safety reasons.

C. Storm Water Management

- 1) Reinforced Filter Fabric Barriers will be placed across and perpendicular to the roadside ditches where ditches enter/leave the project site to collect sediment to the extent practicable.

D. Other Controls

- 1) Waste Materials - All waste materials will be collected and stored in the dumpsters meeting all local and state solid waste management regulations prior to removal from site. The trash and debris will be hauled to an approved landfill site and no construction debris will be buried on site.
- 2) A stabilized construction entrance/exit will be provided to help reduce vehicle tracking of sediments.
- 3) Street sweeping will be done on a daily basis during the construction period on all paved street surfaces adjacent to the project site, and to the extent necessary to keep adjacent streets clean of construction debris and soils as per specification Section 01566 - Source Controls for Erosion and Sedimentation.
- 4) The proposed project will be in compliance with applicable state and local waste disposal and sanitary sewer regulations.
- 5) Wash water/concrete truck wash water, if used, will be directed to a sediment pit or trap with eventual discharge into drainage swales or storm sewers.

- E. There is no approved state or local site plan requirement for storm water management or erosion and sediment control.

3. MAINTENANCE:

- A. Maintenance and repair for all stabilization, erosion and sediment control measures will be conducted within 24 hours of inspection report (see Paragraph 4 below).
- B. Sediment will be removed from behind the filter fabric fences when it becomes about 1/3 the height of device.
- C. Sediment will be removed from sediment traps or basin when storage capacity has been approximately 50% filled.

- D. All temporary controls will be removed after the disturbed areas have been stabilized and a vegetative cover density of 70% is established.
- E. Any sediment in the storm sewer inlets will be removed.

4. **INSPECTIONS:**

- A. Each Contractor will designate a qualified person or persons to perform the following inspections:
 - 1) Disturbed areas and areas used for storage of materials that are exposed to precipitation will be inspected for evidence of, or the potential for, pollutants entering the drainage system.
 - 2) Erosion and sediment control measures identified in the plan will be observed to ensure that they are operating correctly.
 - 3) Where discharge locations or points are accessible, they will be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters.
 - 4) Locations where vehicles enter or exit the site will be inspected for evidence of off-site sediment tracking.

This inspection will be conducted by the responsible person at least once every 7 calendar days and within 24 hours after storm of 0.5 inch or greater.

After a portion of the site is finally stabilized, inspection will be conducted at least once every month.

- B. Based on the results of the inspection, the site description (Section 1) and control measures (Section 2) of the SWPPP will be revised as appropriate, but in no case later than 7 calendar days following the inspection.
- C. A report summarizing the scope of the inspection, names(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution plan, and actions taken in accordance with item "B" above will be made and retained as part of the storm water pollution prevention plan for at least three years from the date of the site is finally stabilized. The report will be signed in accordance with Part VI. G. of the TPDES General Permit.

Copies of the forms to be used for the Inspection and Maintenance report are included herein as a part of this SWPPP.

5. **NON-STORM WATER DISCHARGES:**

- A. All water discharged from fire hydrants and water lines will be discharged onto a impervious material (i.e., concrete pavement) and routed through an inlet protection barrier prior to entering storm sewer.
- B. Excess water from vehicle cleaning areas will be routed to sediment pit or traps prior to entrance into storm sewer.
- C. All excess water from dust control, temporary or permanent seeding, sodding, and landscaping will be routed to sediment traps or inlet protection barriers prior to routing into storm sewer.

6. **CONSTRUCTION SITE HOUSEKEEPING BEST MANAGEMENT PRACTICES (BMP'S):**

Spill Prevention

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to storm water runoff.

Good Housekeeping

The following good housekeeping practices will be followed on-site during the construction project.

- A. An effort will be made to store only enough product required to do the job.
- B. All materials stored on-site will be stored in a neat, orderly manner in the appropriate containers and, if possible, under a roof or other enclosure.
- C. Products will be kept in their original containers with the original manufacturer's label.
- D. Substances will not be mixed with one another unless recommended by the manufacturer.
- E. Whenever possible, all of a product will be used up before disposing of the container.
- F. Manufacturers recommendations for proper use and disposal will be followed.
- G. The site superintendent will inspect daily to ensure proper use and disposal of materials on-site.
- H. All spills, regardless of size, will be cleaned-up expediently and within the regulations of state and local rules and regulations.

- I. Reportable quantity spills will be reported to the State of Texas and the EPA immediately.
- J. All materials used to clean-up spills of fuels, lubricants, solvents, fertilizers, herbicides, and other related items will be disposed of off-site in appropriate hazardous waste landfill.
- K. Separate areas to be used for equipment fueling, maintenance, and lubrication will be designated. Area will contain within a berm to prevent the flow of material to storm water.
- L. On-site storage of raw or bulk material will be kept to a minimum. Any such materials will be surrounded with a filter fabric fence.

7. CERTIFICATIONS:

Certification forms required to be executed by the Contractor as required in the General Permit are provided herein. The Contractor and the City of Pearland are listed as co-permittees for the General Permit and each will be required to execute a Notice of Intent (NOI) form.

The Contractor shall complete and submit to the City of Pearland a Contractor/Sub-Contractor list of names and addresses which will identify the responsibilities for construction activity during the contract. Each sub-contractor's responsibility with regard to the Storm Water Pollution Prevention Plan will be identified. A copy of the names and address list is included herein.

8. TERMINATION OF COVERAGE:

Upon completion of the construction and after site stabilization has met all requirements and storm water discharges authorized by permit are eliminated, the City of Pearland and Contractor shall submit a Notice of Termination (NOT). A copy of the NOT form is included herein.

OPERATOR'S INFORMATION

Owner's Name and Address: SANTA FE INDEPENDENT SCHOOL DISTRICT

4133 Warpath
P O Box 370,
Santa Fe, Tx 77510

Telephone: 409-925-9200

Contractor's Names and Addresses:

General Contractor: _____

Telephone: _____

Site Superintendent: _____

Telephone: _____

Erosion Control and
Maintenance Inspection: _____

Telephone: _____

Subcontractor's Names and Addresses:

Telephone: _____

Telephone: _____

CERTIFICATION
FOR TPDES PERMITTING

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: (printed or typed)

_____ Eddie Kirst P.E. _____

Title:

_____ Pres. _____

Kirst Kosmoski, Inc.

Date: _____

CONTRACTOR'S / SUBCONTRACTOR'S CERTIFICATION

I certify under penalty of law that I understand the terms and conditions of the general Texas Pollutant Discharge Elimination System (TPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

Signature: _____
Name: (printed or typed) _____
Title: _____
Company: _____
Address: _____

Signature: _____
Name: (printed or typed) _____
Title: _____
Company: _____
Address: _____

Signature: _____
Name: (printed or typed) _____
Title: _____
Company: _____
Address: _____

**EROSION CONTROL CONTRACTOR'S
INSPECTION AND MAINTENANCE CERTIFICATION**

I certify under penalty of law that I understand the terms and conditions of the general Texas Pollutant Discharge Elimination System (TPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.

Signature: _____
Name: (printed or typed) _____
Title: _____
Company: _____
Address: _____
Date: _____

AUTHORIZATION TO INSPECT CONSTRUCTION PROJECT FOR COMPLIANCE WITH THE STORM WATER POLLUTION PREVENTION PLAN UNDER THE PROVISIONS OF TPDES CONSTRUCTION GENERAL PERMIT (TXR150000) FOR STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.

PROJECT DESCRIPTION

Project Name: Paving, Drainage, Illumination, and Appurtenances to serve DETENTION POND ISOLATOR & AREA INLET REPAIRS TO SERVE SANTA FE HIGH SCHOOL, Santa Fe, Galveston County, Texas.

Address: 4133 Warpath

City: Santa Fe State: Texas Area Code: 77510

Latitude: 29° 23' 43.5" Longitude: 95° 08' 41.8"

STATEMENT OF AUTHORIZATION

I, _____, as the _____ of _____
(print name) (title) (company name)

and authorized signatory under the provisions of paragraph VI.G.1 of the TPDES General Permit for Storm Water Discharges from Construction Activities to execute the certifications for the Storm Water Pollution Prevention Plan (SWPPP), Notice of Intent (NOI), Notice of Termination (NOT), and any other documentation required by the General Permit; and as the operator (General Contractor) with day-to-day operational control over the site activities for the above described construction project; in accordance with paragraph VI.G.2 of the General Permit, do hereby designate and authorize:

_____, the _____, for the project,
(print name) (title or position)

as the individual responsible for performing the required site inspections for compliance with the provisions of the SWPPP, completing and maintaining the associated inspection reports, and executing the required inspection certifications.

Signature: _____ Date: _____

Attachment: Qualifications of Inspector

STORM WATER POLLUTION PREVENTION PLAN
REPORT OF INSPECTION
[Page One]

Project: _____

Type of Inspection:
(check all that apply)

- Regular (7-day)
- Permanently Stabilized Areas (30-day)
- Storm Related (24-hour)
- Special:
 - Initial Inspection
 - Routine Maintenance Follow-Up
 - Storm Repair Follow-Up
 - SWPPP Modification Implementation Follow-Up
 - SWPPP Non-Compliance Follow-Up
 - Final Inspection

Results of Inspection:
(check all that apply)

- No Action Required
- Routine Maintenance Required
- Storm Related Repairs Required
- SWPPP Modifications Required

Remarks: _____

Next Inspection Date / Type:
(check one)

- Scheduled Inspection (7-day or 30-day)
- Routine Maintenance Follow-Up
- Storm Repair Follow-Up
- SWPPP Modification Implementation Follow-Up
- SWPPP Non-Compliance Follow-Up

Signature: _____ Date: _____

Attachment: Individual Inspection Forms

Note: This Report Totals _____ Pages.

STORM WATER POLLUTION PREVENTION PLAN
REPORT OF INSPECTION
[Final Page]

Project: _____

DETERMINATION OF COMPLIANCE

Determination of the Inspection; the Project Site is in: (check one)

_____ Compliance with the SWPPP

_____ Non-Compliance with the SWPPP

Remarks: _____

NOTE: For guidance in completing this section: If, for example, the site Erosion and Sedimentation Controls require only routine maintenance or storm related repairs, the Project is still in Compliance as long as these items are addressed per the appropriate provisions of the SWPPP. However, if for example, the SWPPP has not been implemented as scheduled on a portion of the site or if violations of Construction Site Housekeeping Best Management Practices are occurring, the Project is in Non-Compliance.

STATEMENT OF COMPLIANCE

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____ Date: _____

