



# 26-02-C - Prairie Creek Wastewater Treatment Plant - Aeration Basin Expansion

## Project Overview

Project Details	
<b>Reference ID</b>	26-02-C
<b>Project Name</b>	Prairie Creek Wastewater Treatment Plant - Aeration Basin Expansion
<b>Project Owner</b>	Kristi Byrd
<b>Project Type</b>	CSP
<b>Department</b>	Public Services
<b>Budget</b>	\$0.00 - \$0.00
<b>Project Description</b>	<p>The City of Lewisville is requesting competitive sealed proposals from qualified contractors for the Prairie Creek Wastewater Treatment Plant (PCWWTP) Aeration Basin Expansion project. This project consists of an expansion of the secondary treatment facilities at PCWWTP. All questions must be submitted on Bonfire in the questions and answers section. Award will be based on Local Government Code Chapter 2269. All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. The successful bidder will be required to certify compliance, if applicable.</p>
<b>Open Date</b>	Oct 18, 2025 12:00 PM CDT
<b>Intent to Bid Due</b>	Dec 16, 2025 10:00 AM CST
<b>Close Date</b>	Dec 16, 2025 10:00 AM CST

## Responses

Error: Check cell(s) B7

Status	#	Item	Quantity Required	Unit of Measure	Numeric	Total Cost	
					Unit Price		
Error: Missing value for 'Unit Price' in cell H7	#0-1	Mobilization and Demobilization (not greater than 3% of Total Price)	1	Lump Sum		-	
Error: Missing value for 'Unit Price' in cell H8	#0-2	Trench Safety and Shoring	1	Lump Sum		-	
Error: Missing value for 'Unit Price' in cell H9	#0-3	Stormwater Pollution Prevention Plan	1	Lump Sum		-	
Error: Missing value for 'Unit Price' in cell H10	#0-4	24-inch Diameter Drilled Concrete Pier, complete in place	2010	Vertical Linear Feet		-	
Error: Missing value for 'Unit Price' in cell H11	#0-5	Concrete Surface Repair – Type I (Thin) (Reference Area 10 Drawings and Section 03 01 30)	40	Square Feet		-	
Error: Missing value for 'Unit Price' in cell H12	#0-6	Concrete Surface Repair – Type II (Moderate) (Reference Area 10 Drawings and Section 03 01 30)	40	Square Feet		-	
Error: Missing value for 'Unit Price' in cell H13	#0-7	Concrete Surface Repair – Type III (Severe) (Reference Area 10 Drawings and Section 03 01 30)	20	Square Feet		-	
Error: Missing value for 'Unit Price' in cell H14	#0-8	Reinforcement Replacement (Reference Area 10 Drawings and Section 03 01 30)	50	Linear Feet		-	
Error: Missing value for 'Unit Price' in cell H15	#0-9	System Integration Services as required in Division 40 (not to include equipment and instruments)	1	Lump Sum		-	
Error: Missing value for 'Unit Price' in cell H16	#0-10	Construction of entire Project U2100 work including construction of treatment structures, yard piping, electrical improvements, and sitework but excluding all other Bid Items	1	Lump Sum		-	
Basket Total							\$ 0.00
Grand Total							\$ 0.00

**SPECIFICATIONS AND CONTRACT DOCUMENTS  
FOR THE CONSTRUCTION OF**

**PRAIRIE CREEK WASTEWATER TREATMENT  
PLANT  
AERATION BASIN EXPANSION**

**CSP #26-02-C**

**OCTOBER 2025**





**Prairie Creek Wastewater Treatment Plant  
Aeration Basin Expansion  
CSP #26-02-C**

**INTRODUCTION (See Special and Technical Specifications for details):**

The City of Lewisville is requesting competitive sealed proposals from qualified contractors for the Prairie Creek Wastewater Treatment Plant (PCWWTP) Aeration Basin Expansion project.

This project consists of an expansion of the secondary treatment facilities at PCWWTP to include:

- An aeration basin splitter structure
- Four (4) aeration basins
- A secondary clarifier distribution structure
- A blower building
- Improvements to the existing RAS/WAS pump station
- Demolition of existing facilities
- Associated yard piping, site/civil, electrical, and instrumentation/control improvements

**WARRANTY & BONDS**

- A. All work performed under this contract for the City of Lewisville shall be warranted for a period of two years. If within two years after acceptance of work, any of the work is found to be defective or not in accordance with the contract documents, the contractor shall correct it promptly after receipt of notice from the City.
- B. Payment, performance, and two-year maintenance bonds shall be required with this contract. It shall be made out for the total amount of the contract, and enforceable for two years from final acceptance of the project.

**BID BOND REQUIREMENTS**

Bidders are required to submit a Bid Bond (with proper Power of Attorney) from a surety licensed to do business in the State of Texas, payable without recourse to the City of Lewisville, in an amount not less than five (5%) percent of the total amount of the base bid submitted to insure that the

successful bidder will enter into a contract and execute all necessary bonds within ten (10) days after notice of award of the contract to them. **This bid security must be uploaded to Bonfire or included in the bid envelope along with the bid sheet for the bidder to be considered responsive.**

The successful bidder will be required to furnish the following bonds from a surety licensed to do business in the State of Texas. These bonds, along with proper insurance papers, will be incorporated as part of the final contract documents and will remain in effect until the completion and acceptance of the project. Maintenance bonds shall be in effect based on their stated term after final acceptance of the project:

A bid bond equal to 5% of the project amount is to be included with the sealed bid; a payment bond and performance bond at the project amount and a maintenance bond for two years from the date of the final acceptance.

All bidders are notified that the qualification statement provided in the bid documents must be completed and submitted with the bid proposal. Failure to include this completed form with your bid may cause your bid to be disqualified as non-responsive.

The City is not responsible for any costs associated with the preparation of the bid from any vendor. Also, should a vendor bid an alternate; any test costs to prove equality of product will be at the expense of the vendor, not the City of Lewisville.

Each bidder is expected to inspect the site of the work and to inform himself regarding all local conditions. Ignorance of existing conditions of the site will not be a basis for any changes after the award of the bid.

Bids cannot be altered or amended after the submission deadline. Any interlineation, alteration, or erasure made before opening time must be initialed by the signee of the bid, guaranteeing authenticity.

In conformance with applicable statutes utilizing Federal Davis Bacon Wage Rates as adopted by the General Services Commission, the general prevailing wage rates in the locality in which the work is to be performed have been ascertained and such rate shall be the minimum paid for labor employed on this project; unless federal monies are used, in which case, specific wage decisions will be listed as part of the overall bid documents.

The City of Lewisville reserves the right to reject any and all bids, in whole or in part; to waive any informality in any bid. Award will be issued on the basis of best value to the City.

## **INSURANCE**

Insurance shall be supplied by the awarded contractor within ten (10) days of notification of award, as detailed in this bid. Insurance must be approved by the City prior to the commencement of work and shall remain in effect throughout the entire duration of this project.

## **MISCELLANEOUS**

All forms requiring either a signature or information to be filled in are to be returned with your bid. In addition, the language contained in the attached form entitled Purchase Order Terms and Conditions is made part of this request for bid through reference herein.

## **REQUEST FOR PROPOSALS**

Proposals are to be submitted based on the specifications contained herein. Alternate proposals will also be considered, provided the alternatives are clearly explained. All deviations from the specifications must be clearly identified and explained.

No telephone, email, or fax proposals will be accepted. Proposals may be accepted if delivered in person or by U.S. Postal Service, Federal Express, UPS, etc. or uploaded to Bonfire. The City is not responsible for missing, lost, or late delivery. Any CSP responses received after the time set for opening will be returned to the bidder unopened.

The preparation of the proposal will be at the total expense of the bidder. There is no expressed or implied obligation for the City of Lewisville to reimburse responding bidders for any expense incurred in the preparation of proposals in response to this request.

The City reserves the right to reject all proposals, to consider alternatives, to waive any formalities and irregularities, and to re-solicit proposals. In addition, during the evaluation period, the City may, where it may serve the City's best interest, request additional information or clarifications from bidders, or allow corrections of errors or omissions.

Each bidder shall guarantee and honor its response to these specifications for a period of ninety (90) days, or until the City enters a contract with one of the bidders, whichever occurs first.

The CSP documents will be available to interested parties on Bonfire or may be picked up in person at the Purchasing office.

**All questions pertaining to this bid must be submitted in writing via Bonfire.**

Bids may be uploaded to Bonfire at <https://cityoflewisville.bonfirehub.com/portal> or a sealed CSP consisting of one (1) hard copy and one (1) PDF file on a USB flash drive, clearly marked with the CSP title and date.

## **CSP #26-02-C PCWWTP AERATION BASIN EXPANSION**

**Delivery address:**

City of Lewisville

Finance Administration – Purchasing Division

Attn: Kristi Byrd, Procurement Supervisor  
151 W. Church Street  
Lewisville, TX 75057

Regardless of the chosen delivery method, it is the sole responsibility of contractor to ensure their complete submittal is inside the Finance Administration Department – Purchasing Division before the required time. The City will not be responsible for, without limitation, any delays occasioned by third parties. Late or emailed submittals shall not be accepted, without exception.

### **PRE-PROPOSAL**

**A pre-proposal conference will be held at the date and time specified on Bonfire.** While attendance of the pre-proposal conference is not mandatory, it is recommended due to the nature of the project.

### **SITE VISIT**

A site visit will be held following the pre-proposal conference as listed on Bonfire. All proposers are highly encouraged to attend. All proposers are required to wear closed toe shoes and appropriate attire for a working site, and must not disturb any ongoing operations at the site. Transportation to the site will be the responsibility of each proposer.

There will be no access to the site other than during the scheduled visit as listed on Bonfire.



**LEWISVILLE**

Deep Roots. Broad Wings. Bright Future.

**CITY OF LEWISVILLE  
COMPETITIVE SEALED PROPOSAL  
#26-02-C  
PRAIRIE CREEK WASTEWATER TREATMENT PLANT (PCWWTP)  
AERATION BASIN EXPANSION**

## **1. INTRODUCTION**

### **1.1 Competitive Sealed Proposals**

The City of Lewisville shall use the procedures as authorized in Texas Government Code Chapter 2269 as described below to evaluate Competitive Sealed Proposals (CSPs). The City views the CSP as the framework to be used by the Proposer in preparing and submitting the proposal, and as an integral part of the final contractual agreement to be negotiated with the Proposer. It is important for the Proposer to become familiar with the requirements contained in the Instructions to Proposers as they will prevail in the event of any discrepancies or differences between project-related or contractual documents.

The contents of the successful Proposal acceptable to the City will become a part of the subsequent contractual documents. Failure of the Proposer to accept this obligation may result in the cancellation of any award. Any damages occurring to the City because of the Proposer's failure to adhere to the contract may be recovered from the Proposer.

### **1.2 Definition of Terms**

- “CSP” shall refer to this Request for Competitive Sealed Proposals.
- “Proposal” or “CSP” shall mean a written offer to provide the equipment and services in accordance with requirements specified herein.
- “Proposer” or “Bidder” or “Offeror” shall mean a person, firm or corporation who submits a Proposal to provide equipment, material, and/or services necessary in the performance of the requirements specified herein.
- “Lewisville”, “City”, “Purchaser”, or “Owner” shall refer to the City of Lewisville, Texas.
- “Furnish”, “provide”, “propose”, or “offer” shall mean to supply, equip, and deliver the specified equipment, material and/or services to the Owner.
- “Must”, “shall”, “will”, “is required”, and “are required” are terms that identify a mandatory

item or factor. Failure to comply with a mandatory item or factor may result in the elimination of the Proposer's Proposal from future consideration.

- "Agreement" or "Contract" shall refer to the contract that will be negotiated with the selected Proposer and agreed to by the Owner and Proposer for award.
- "Bid Proposal Form" shall refer to the cost table and may be referred to in other areas of the contract as contract bid schedule, proposal pricing, bid form, or bid proposal.

### 1.3 CSP Schedule

A. CSP project dates are available on Bonfire. It is the Contractor's responsibility to review the project dates and all public notices for changes to the CSP schedule.

### 1.4 Obligations of Proposers

Proposers are required to submit their Proposals upon the following express conditions:

- A. Proposers shall thoroughly examine all drawings, specifications, plans, instructions, and all other contract documents pertaining to this CSP.
- B. Proposers shall make all investigations necessary to thoroughly inform themselves regarding project site and facilities for delivery of materials or equipment and the performance of services as required by the CSP conditions.
- C. No plea of ignorance by the Proposer of conditions that exist or that may hereafter exist because of failure or omission on the part of the Proposer to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City.
- D. Proposal must comply with all Federal, state, county and local laws concerning these types of services.

### 1.5 Pre-Proposal Conference

The City will conduct a Pre-Proposal Conference for all interested parties. Attending the Pre-Proposal Conference is not mandatory but is **strongly recommended** for their own benefit.

### 1.6 Site Visit

The City will conduct a non-mandatory Site Visit for all interested parties to be scheduled immediately following the Pre-Proposal Conference. It is strongly recommended that proposers should attend the site visit. Directions will be provided to the site, however, proposers must arrange their own transportation.

### 1.7 Submittal of Proposal

- A. Proposals may be submitted through Bonfire at <https://cityoflewsville.bonfirehub.com/portal>. (preferred method) OR
- B. One (1) hard copy and one (1) digital copy of the proposal may be submitted to Purchasing no later than the date and time prescribed and at the place indicated in the advertisement or the Introduction and Bond Instructions Form. (alternative method)

- C. Hard Copy proposals shall be submitted in two (2) opaque sealed envelopes plainly marked on the outside with the Project Title, CSP Number, acknowledgment of any addenda, and the name and address of the Proposer.
  - 1. The first envelope shall be labeled "Proposal Pricing" and include:
    - i. The completed Bid Proposal Form described in Section 2.1A.
    - ii. A Bid Bond as described in Section 3.1.
    - iii. The completed Proposal Form, acknowledging all addenda.
  - 2. The second envelope shall include the following items:
    - i. All other required forms listed in Section 2.1.B, and not included in the first envelope.
    - ii. Complete Proposal Evaluation Criteria as described in Sections 2.1.C through 2.1.F.
  
- CI. Hard copy proposals must include (1) digital copy of the proposal on a flash drive, with documents separated in folders in the same format as listed in section C1 above.
- CII. Incomplete proposals will not be evaluated and will not be eligible for contract award.
- CIII. Regardless of the chosen delivery method, it is the sole responsibility of contractor to ensure their complete submittal is inside the Finance Administration Department – Purchasing Division before the required time. The City will not be responsible for, without limitation, any delays occasioned by third parties. Late or emailed submittals shall not be accepted, without exception. All packages to be marked with firm's name and CSP # 26-02-C.

**SPECIFICATIONS CONTINUE ON THE NEXT PAGE**

## **2. PROPOSAL EVALUATION AND SELECTION CRITERIA**

The statement of qualifications must be submitted with the proposal and include, as a minimum, the information as described in this section. Failure to submit the required information in the statement of qualifications may result in the owner considering the proposal non-responsive and result in rejection of the proposal by the owner. Offerors may be required to provide supplemental information if requested by the owner to clarify, enhance or supplement the information provided in the statement of qualifications.

Offerors must provide the information requested in the Statement of Qualifications using the forms attached to this Section. Information in these forms must be provided completely and in detail. The information in these forms will be used to make direct comparisons with the information provided by other Offerors. Failure to include the information completely and clearly may result in lower scores in the evaluations.

Information that cannot be totally incorporated in the form may be included in an appendix to the form. This appendix must be clearly referenced by appendix number in the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.

Offerors may provide supplemental information to the Statement of Qualifications such as organizational brochures or other marketing information to help demonstrate their ability to provide best value to the Owner. This information may not be submitted as a substitute to the information specifically requested in this Section or in the Statement of Qualifications forms. If this information is included as an appendix to the information requested in this Section, the reference must include the specific paragraph or section that applies to that question or item.

Owner, at its discretion, may also choose to conduct interviews with the top-ranking Offerors to provide the Offerors a better opportunity to demonstrate they can provide the best value to the Owner for this Project.

Should the Owner choose to conduct interviews with the top-ranking Offerors, they will be notified of:

The time and place for the interview.

Interview format and agenda.

Questions to prepare for the interview.

Individuals that are expected to participate in the interview as a minimum.

Failure to participate in the interview may result in disqualification from consideration for the Project.

### **EVALUATION CRITERIA**

The Owner will consider the qualifications of the Offerors and their consultants, in addition to the Contract Price for services, to determine which Proposal offers the best value to the Owner. The Proposals will be evaluated using the following criteria and weighting:

<b>Rating Category</b>	<b>Description</b>	<b>Weighting Value %</b>
<b>A</b>	<b>Proposed Contract Price</b>	<b>40</b>
<b>B</b>	<b>Experience and Qualifications of Offeror</b>	<b>20</b>
<b>C</b>	<b>Experience and Qualifications of Proposed Key Personnel</b>	<b>20</b>
<b>D</b>	<b>Offeror's Narrative Approach to This Project</b>	<b>20</b>
<b>Total</b>		<b>100</b>

The criteria and Proposal requirements are further defined as:

1. Rating Category A – Proposed Contract Price

- a. The Contract Price indicated in the Proposal Form. Attach the Proposal Form and all information required to be submitted with the Proposal.
- b. Financial: Provide recent financial statements, preferably audited, with this Proposal. Provide financial statements showing the name and address of the firm preparing the financial statements and the date of preparation. Additional financial information will not be required; however, Offerors may choose to report on the financial stability of their organization to demonstrate that they have the ability to complete the Project in a manner that will not impose undue efforts on the part of the Owner to evoke bonds to complete the Project or meet financial obligations. This is a pass/fail category only, no points are awarded for this section 1b.
- c. The following formula will be used to determine the number of points awarded for this category:

$$1. \text{ Score} = \left( \frac{\text{Lowest Contract Price of All Proposals Received}}{\text{Offeror's Proposed Contract Price}} \right) \times 40$$

2. Rating Category B – Experience and Qualifications of Offeror:

- a. General Information: Provide general information about the organization as required in Table 1 and Table 2 of this Section. Provide any additional information as required by the Construction Experience section of Table 2.
- b. Leadership: Describe the organizational structure and the qualifications of the management team as it relates to this Project in Table 3.
- c. Project Experience: Provide a list of projects completed by the Organization in the last 10 years using copies of Table 4.
- d. Safety: Provide information regarding the implementation of a project site safety program. This may be demonstrated by documentation of the Offerors safety program and statement regarding their commitment to safety. Indicators such as the EMR (Experience Modification Ratio) maybe used to demonstrate the effectiveness of the safety program.
- e. Claims Experience and Litigation History: List all claims or litigation involving construction project owners that have been filed within the last 5 years, or that are currently outstanding. Provide a brief description of the nature of each suit and when it is anticipated that the suit will be resolved.

3. Rating Category C – Experience and Qualifications of Proposed Key Personnel:

- a. Provide information on the managerial structure and the key personnel that will be actively working on this Project in Tables 5 through 9. Key personnel include the Project Manager, Project Superintendent, Safety Manager and Quality Control Manager.
  - b. If one or more of these key roles are to be filled by one individual, this information is to be provided with the list of proposed individuals. The Offeror is to provide a list of individuals from which the individual for any given position may be selected if the Offeror is not able to commit to one individual for the Project at the time the Proposal is submitted. Qualifications of these individuals will be considered in evaluating the qualifications of the Offeror.
  - c. The Offeror must provide the services of the proposed key personnel for the life of the Project as a condition of qualification. Failure to provide the proposed Key Personnel may result in the disqualification of the Offeror and may void the award of the Contract. The Project Superintendent must be dedicated to this Project full time for the duration of the Project.
  - d. Provide resumes (not to exceed two pages for each) of proposed key personnel with the Statement of Qualifications describing their education and experience. Include more detailed information on projects on which they have had significant involvement in the last 5 years, or that demonstrate their experience with similar projects. This list is to include the name and a current telephone number for references for each of these project assignments. Offerors are to include a list of the current project assignments for each of the individuals proposed, the anticipated completion date for this assignment and the percentage of the time they will have available to devote to this Project.
4. Rating Category D – Offeror’s Narrative Approach to This Project:
- a. Provide a narrative approach, not to exceed 10 pages, describing the Offeror’s approach to successfully completing this Project. At a minimum, the narrative must address the following topics:
    - a. Experience of Offeror with similar projects.
    - b. Approach to constructing, completing, and commissioning the Project. Provide understanding of unique challenges on this Project and how Offeror will address these challenges.
    - c. Ability to meet proposed time for construction, including demonstrated understanding of equipment lead times, proposed construction schedule, sequence of the work, and maintenance of plant operations.
      - 1. A **tentative bid schedule** must be included with the proposal submission. This schedule will be utilized by the City for **evaluation purposes**. Preliminary and finalized schedules will be due following execution as set forth in the EJCDC CMA-700 General Conditions included herein, as amended by the Supplementary Conditions.
    - d. Subcontractor and subcontractor management, including a list of all proposed subcontractors that will provide more than 10 percent of the work (based on contract amount) and the work to be provided by each listed subcontractor.
    - e. Quality management

- f. Change management
- g. Document control
- h. Communications with Owner, Construction Manager, and Engineer

### **3.0 ADDITIONAL INFORMATION FOR PROPOSERS**

#### **3.1 Bonds/Warranty**

All work performed under this contract for the City of Lewisville shall be warranted for a period of two (2) years. If within two years after acceptance of work, any of the work is found to be defective or not in accordance with the contract documents, the contractor shall correct it promptly after receipt of notice from the City.

A performance, payment and two (2) year maintenance bond shall be required with this contract. It shall be made out for the total amount of the contract, and enforceable for two (2) years from final acceptance of the project.

**A bid bond equal to five percent (5%) of the project amount is to be included within the sealed proposal. If you are providing documents via Bonfire, you must submit a copy of bid bond with your proposal documents online. The hard copy of the bid bond maybe requested after proposal opening.**

#### **3.2 Insurance**

Insurance shall be supplied by the awarded contractor within ten (10) days of notification of award, as detailed in the project documents available on Bonfire. Insurance must be approved by the City prior to the commencement of work and shall remain in effect throughout the entire duration of this project. Please note Explosion, Collapse, and Underground (XCU) coverage will be required for this contract.

#### **3.3 Procedural and Content Questions**

Any Proposer requiring further clarification of the CSP procedures, or the project requirements should submit specific questions in writing via Bonfire at: <https://cityoflewisville.bonfirehub.com/portal> for consideration. Only written responses from the City will be binding regarding inquiries requesting clarification or additional information. These City responses to any inquiry will be distributed simultaneously to all CSP document holders of record with the City, also via Bonfire. During the review of the CSP requirements and preparation of the Proposal, certain errors, omissions or ambiguities may be discovered. Any explanation, clarification, or interpretation desired by a Proposer regarding any part of this CSP or the procedures should be requested in writing via Bonfire. Oral explanations or instructions given before the award of the Contract are not binding.

#### **3.4 Exceptions to CSP Specifications and Addenda**

During the proposal process changes or corrections to the CSP requirements may be identified. Any interpretations, corrections, exceptions, or changes to the CSP requirements will be made by written addendum issued by the City. Addenda will be provided to all Proposers who are known to have received this CSP from the City via Bonfire. Only information supplied in writing by the City should be used in the preparation of proposals.

### **3.5 Disclosure of Proposal Contents**

- A. Proposals will be opened in a manner that avoids disclosure of the contents to competing Proposers and keeps the proposals secret during negotiations. Proposals will be afforded security sufficient to preclude disclosure of the contents prior to award or rejection action. All proposals are open for public inspection after the contract award, but trade secrets and confidential information in the proposals are not open for public inspection if such data is clearly identified as such. This identification will be done by individually marking each page with the words “Proprietary Information” on which such proprietary information is found. If the Proposer fails to identify proprietary information, they agree that by submission of their proposal that those sections shall be deemed non-proprietary and made available upon public request.
- B. Proposers are advised that the confidentiality of the proposals will be protected by the City to the extent permitted by law. Proposers should consider the implications of the Texas Open Records Act, particularly after the Proposal process has ceased and the contract has been awarded. While there is provision in the Texas Open Records Act to protect proprietary information, particularly under Section 3(9) and Section 3(10) of this act where the Proposer can meet certain evidentiary standards, Proposers are advised that a determination on whether those standards have been met will not be decided by the Purchasing Department of the City of Lewisville, but by the Office of the Attorney General of the State of Texas.

### **3.6 Cost of Proposal**

- A. This CSP does not commit the City to pay any costs incurred by any Proposer in preparation and/or submission of a proposal, or for procuring or contracting for the items to be furnished under the Proposal. All costs directly or indirectly related to responding to this CSP, including all costs incurred in providing supplementary documentation or presentation which may be required by the City, will be borne by the Proposer.
- B. Each Proposer will be responsible for all costs incurred in preparing or responding to this CSP. The Proposer agrees to bear all risks for loss, injury, or destruction of hardware, software or goods and materials (ordered or supplied as the result of the eventual contract) which might occur prior to delivery to the City, and such loss, injury, or destruction shall not release the Proposer from any obligations under the Proposal or any resulting contract.

### **3.7 Risk of Loss**

The Proposer agrees to bear all risks of loss, injury, or destruction of hardware, software or goods and materials (ordered or supplied as the result of the eventual contract) which might occur prior to delivery to the City, and such loss, injury, or destruction will not release the Proposer from any obligations under the Proposal or any resulting contract.

### **3.8 No Obligation**

This procurement in no manner obligates the City or any of its agencies to the eventual purchase, rental, or lease of any software, hardware or services offered until authorized by the City Council and confirmed by a written contract signed by an authorized representative of the City.

### **3.9 Rights to Proposal and Contractual Material**

All reports, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence, and related material submitted by the Proposer shall become property of the City upon receipt.

### **3.10 Use of City Logo**

The City of Lewisville's Logos and Images (hereinafter "Logo") are registered trademarks with the State of Texas Secretary of State and the City of Lewisville is the owner of all rights to the Logo. Unauthorized use of the Logo is strictly prohibited.

### **3.11 Proposal Offer Firm**

Proposals received in response to this CSP, including pricing information, will be considered firm for 90 days after Proposal opening date.

### **3.12 Termination**

The City reserves the right, at its sole and unqualified discretion, to cancel this CSP at any time prior to award of a contract. The City makes no warranty regarding this Proposal that a contract will be awarded to any Proposer.

### **3.13 Proposal Format Requirements**

- A. Proposal pages using the referenced tables and narrative descriptions as described in Section 2. Pages are to be 8-1/2 x 11 pages using a minimum font size of 10. Provide a tab to separate materials responding to each of the Categories described in Section 2, for each of the contents of both envelopes. All submissions, regardless of electronic or hardcopy must adhere to the above requirements.
- B. Additional information may be included in appendices attached to the Proposal. Each appendix must reference the section of the criteria if is in reference to.
- C. Provide a digital copy of the Proposal in Portable Document Format (PDF) on a flash drive. This digital copy shall exactly match the content of the printed copy of the Proposal. When creating the digital copy:
  1. Create PDF documents from native format files.
  2. Rotate pages so that the top of the document appears at the top of the file when opened in PDF viewing software.
  3. Submit PDF documents with adequate resolution to allow documents to be printed in a format equivalent to the original documents. Documents are to be scalable to allow printing on standard 8-1/2" x 11" or 11" x 17" paper.
  4. Submit color PDF documents if color is used in the printed version of the documents.

### **3.14 Signing of Proposals**

- A. Proposals must show the full firm name and address of the Proposer and be manually signed. The person signing the proposal must show title or authority to bind the firm in a contract. The submission and signature of a proposal will indicate the intention of the Proposer to adhere to the provisions in this CSP.
- B. Proposals which are signed for a partnership must be signed in the firm's name by at least one partner of the firm or by an attorney-in-fact. If signed by an attorney-in-fact, there

should be, attached to the proposal, a Power of Attorney evidencing authority to sign proposals, dated the same date as the proposal, and executed in accordance with legal requirements of the firm.

- C. Proposals which are signed for a corporation must have the correct corporate name thereon and signature of the authorized company official. The title of the office held by the person signing for the corporation must appear below the signature of the officer.
- D. Proposals which are signed by an individual doing business under a firm name must be signed in the name of the individual doing business under the proper firm's name

### **3.15 Withdrawal of Proposal**

A Proposer's Proposal may be withdrawn by a duly authorized representative of the Proposer at any time prior to the proposal submission deadline, upon presentation of acceptable identification.

### **3.16 Amending of Proposals**

A Proposer may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements of a previously submitted proposal and must be clearly identified as such in the transmittal letter. The City will not merge, collate, or assemble proposal materials.

### **3.17 Rejection of Proposals**

Proposals tendered or delivered after the official time designated for receipt of the proposal shall not be considered and will be returned unopened.

## **4.0 PROPOSAL EVALUATION PROCESS:**

- 4.1 Pre-Qualification of Proposers is not required to submit a Proposal.
- 4.2 Proposals will be opened publicly to identify the names of the Proposers and their respective proposed contract amounts.
- 4.3 The Purchasing team shall convene a Proposal Evaluation Committee (the Committee) for this project utilizing the Competitive Sealed Proposal method of procurement. Within forty-five (45) calendar days after opening the Proposals, the Committee shall evaluate all submitted proposals and rank order the responsive Proposals from highest to lowest score.
- 4.4 Following the opening of Proposals, the Committee shall meet to conduct a preliminary examination of each Proposal for compliance with the Evaluation Criteria provided herein. All Proposals will be reviewed for completeness and those found to be either incomplete or non-responsive will be rejected from further consideration. The Committee decision will be final. The Committee will evaluate only responsive and complete proposals.
- 4.5 After preliminary examination and ranking, an award may be made to the Proposer offering the best value, without discussion, clarification or modification, or the Committee may decide to further evaluate potentially favorable Proposals.
- 4.6 The Committee shall conduct thorough evaluations of all responsive Proposals to rank

each from best-to-least-desirable. The Committee will base its recommended ranking on the information provided in the Proposals, as well as reference checks, interviews, and/or personal knowledge, as determined by the Committee to be in the best interests of the City. The Committee may elect to conduct any of the following additional activities regarding any responsible Proposer:

- i. Proposer client reference checking
- ii. Proposer sub-contractor reference checking
- iii. Financial and insurance verifications
- iv. Proposer client site visits to inspect ongoing or completed work performed by the Proposer

**4.7** The Committee may make such investigation as is deemed necessary to determine the ability of the Proposer to provide the equipment, material, and/or services as required by this CSP and to determine the adequacy of the proposed equipment, material, and/or services. The Proposer shall furnish, upon request and in a timely manner, all such data and information requested for this purpose.

**4.8** Discussions may be conducted individually with Proposers who submit responsive proposals and who are determined reasonably qualified for award of a contract. Revisions and/or clarifications may be requested after proposal submission and before contract award to obtain best-and-final offers. The Committee will endeavor not to disclose any information derived from the Proposals submitted by competing firms in conducting such discussions.

**4.9** Proposers may be interviewed in person by the Committee. Selected Proposers will be notified of the date, time, and location of any interviews in advance, and every effort will be made to conduct interviews in a time that is mutually beneficial to the City evaluation team and the perspective Proposers.

**4.10** If the Owner determines that it is unable to reach a satisfactory agreement with the first ranked Proposer, the Owner will terminate discussions with that Proposer. The Owner will then proceed with negotiations with each successive Proposer as they appear in the order of ranking until an agreement is reached, or until the Owner has rejected all Proposals. After termination of discussions with any Proposer, Owner will not resume discussions with that Proposer.

**4.11** The Owner reserves the right to accept or reject any or all alternates or to accept any combination of alternates considered advantageous to the Owner.

**4.12** If a Contract is awarded, it will be awarded to the Proposer offering the best value to the Owner, based upon the published selection criteria, and upon its ranking evaluation. The Owner is not bound to accept the lowest priced Proposal if that Proposal is judged not to be the best value for the Owner, as determined by the Owner.

**4.13** Disqualification of Proposals

Proposers may be disqualified for any of the following reasons:

- A. The Proposer is involved in any litigation against the City.
- B. The Proposer is in arrears on an existing contract or has defaulted on a previous

contract with the City.

- C. The Proposer lacks financial stability.
- D. Proposer has failed to perform under previous or present contracts with the City.
- E. The Proposer failed to adhere to one or more of the provisions established in this CSP.
- F. The Proposer failed to submit its proposal in the format specified herein.
- G. Any attempt by the Proposer to negotiate or give information concerning the contents of its proposal to the City or its representatives other than as officially requested by the Purchasing Manager.
- H. If it is determined by the City that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the Proposer, or any agent or representative of the Proposer, to any officer or employee of the City with a view toward securing or amending, or the making of any determinations with respect to the CSP or contract.

#### **4.14 Alteration of Proposals**

Proposals may be rejected if they show any alteration of words or figures, additions not called for, conditional or uncalled-for alternate proposals, incomplete proposals, erasures, or irregularities of any kind, or contain any unbalanced values.

#### **4.15 Right to Waive Irregularities**

Proposals will be considered as being “irregular” if they show any omission, alterations of form, additions, or conditions not called for, or irregularities of any kind. The City reserves the right to waive minor irregularities in proposals. This right is at the sole discretion of the City.

#### **4.16 Award**

- A. Receipt of any proposal shall under no circumstances obligate City to accept the lowest Bid Proposal.
- B. The City reserves the right to reject any or all proposals submitted in response to this CSP. City reserves the right to reject any Proposal, if indication or review of any services or equipment proposed is deemed to have an unsatisfactory performance record or does not completely meet the requirements for the project.
- C. Until award of a Contract is made by the City, the City may re-advertise for new proposals, or to proceed with the work in any manner as may be considered in the best interest of the City.
- D. A purchase contract will be developed and executed with the selected Proposer.

#### **4.17 Sales and Use Tax**

- A. City or state sales taxes should generally not be included in the Contract Price as the Owner

qualifies as an exempt agency. Certain items such as rented equipment may be taxable even though the Owner is a tax-exempt agency. Assume responsibility for including any applicable sales taxes in the Contract Price and assumes responsibility for complying with all applicable statutes and rulings of the State of Texas Comptroller.

- B. It is the Owner's intent to have this Contract qualify as a "separated contract." In order for this contract to qualify:
1. Obtain a sales tax permit from the State of Texas Comptroller if awarded this Contract.
  2. Identify the dollar value of materials exempt from the sales tax. This information must be reported in the "Statement for Materials and Other Charges" on the Proposal Form. Proposals not showing the Statement for Materials and Other Charges may be considered non-responsive.

#### **4.18 Wage Rates**

This Contract is subject to Texas Government Code Chapter 2258 concerning payment of Prevailing Wage Rates. Offerors must pay not less than the minimum wage shown on this list and comply with all statutes and the ruling of the State Comptroller.

#### **4.19 Proposer Project Manager**

Upon award of contract, the Proposer shall assign a project manager who shall be the single point of contact for the Proposer and shall have the power to make decisions concerning all technical and implementation matters. Any proposal submission that lacks any of these components will not constitute a proposal, will not be evaluated, and will not be eligible for contract award.

**PROPOSAL**

City of Lewisville  
Purchasing Office  
151 West Church Street  
P.O. Box 299002  
Lewisville, Texas 75029-9002

**26-02-C PRAIRIE CREEK WASTEWATER TREATMENT PLANT (PCWWTP)  
AERATION BASIN EXPANSION  
PROJECT NO. U2100**

Proposal of \_\_\_\_\_  
(hereinafter called Bidder), a corporation organized and existing under the laws of the State of \_\_\_\_\_, a partnership, or an individual doing business as \_\_\_\_\_

\_\_\_\_\_  
(Strike out inapplicable terms).

To the City of Lewisville, Texas (Owner)

The undersigned Bidder, in response to the Notice to Bidders for the construction of the above project and in conformity with the bidding documents; having examined the plans, specifications, related documents and the site of the proposed work; being familiar with all of the conditions relating to the construction of the proposed project, including the availability of materials and labor, hereby proposes to furnish all labor, materials, supplies, equipment, staking, testing, traffic control, superintendence, etc., for the construction of the project in accordance with the plans, specifications, and contract documents at the unit prices proposed herein.

The undersigned Bidder proposes, acknowledges and agrees to construct the entire project as shown on the plans, fully in accordance with the requirements of the plans, specifications, and the contract documents for the prices included in this Proposal and fully understands and agrees that the various items of material, labor and construction not specifically enumerated and provided for herein are considered subsidiary to the several items for which direct payment is specifically provided. Further, the undersigned agrees that one such subsidiary item is the protection, adjustment, maintenance, repair or replacement of all underground lines and services, whether shown on the plans or not, all to the full satisfaction of the City Engineer in a timely manner.

The undersigned Bidder agrees to begin work under the contract on or before the date specified in the written Notice to Proceed, and to fully complete the project within **912 calendar days**. It is specifically stated and understood that the entire construction including clean up shall be completed within the above stated time.

The undersigned Bidder has contacted, within 168 hours (1 week) prior to the bid opening, the Office of the Public Services CIP Manager (972) 219-3686, and has determined that all Addenda are as follows:

Addendum No. 1 dated \_\_\_\_\_ (Signature)

Addendum No. 2 dated \_\_\_\_\_ (Signature)

Addendum No. 3 dated \_\_\_\_\_ (Signature)

The undersigned Bidder acknowledges that the Owner reserves the right to waive any informality and to reject any or all proposals.

The undersigned Bidder acknowledges and agrees that this Proposal shall be good and may not be withdrawn for 90 days from the date of bid opening.

The undersigned Bidder has shown unit prices and amounts and agrees that in the case of discrepancy, the unit prices shown in figures shall stand and that the amounts and total will be adjusted to correspond to the unit prices shown.

The undersigned Bidder agrees to execute the Agreement and furnish the required Performance, Payment and Maintenance Bonds within fifteen calendar days from the date of award of a contract by the City; and agrees that any delay in furnishing the signed Agreement and Bonds will result in liquidated damages being applied in accordance with the General Conditions.

The undersigned Bidder has attached and made a part of this Proposal a bid security in conformance with the Introduction and Bond instructions form.

**A 5% contingency may be included with the resulting contract and purchase order for this project. The contingency shall be used at the City's discretion and only upon written approval from the City. The amount listed as a contingency is not an obligation for payment from the City. Any unused contingency is retained by the City and is not payable to the Contractor.**

Submitted:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name - Typed or Printed)

\_\_\_\_\_  
(Title)

(Seal, if corporation)

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City/County/State/Zip Code)

\_\_\_\_\_  
(Telephone Number/Include Area Code)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Attest)

## STATEMENT OF QUALIFICATIONS

This Statement of Qualifications is offered by:

Business: \_\_\_\_\_  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Date: \_\_\_\_\_  
*(date signed)*

*(If Business is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

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

Phone: \_\_\_\_\_

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

\_\_\_\_\_

**Table 1 – General Information**

Organization doing business as			
Business address of principle office			
Telephone numbers			
Main number			
Fax number			
Website address			
Form of business (check one)	<input type="checkbox"/> A corporation	<input type="checkbox"/> A partnership	<input type="checkbox"/> An individual
<b>If a Corporation</b>			
Date of incorporation			
State of incorporation			
Chief Executive Manager's name			
President's name			
Vice President's name(s)			
Secretary's name			
Treasurer's name			
<b>If a Partnership</b>			
Date of organization			
State whether partnership is general or limited			
<b>If an Individual</b>			
Name			
Business address			
<b>Identify all individuals not previously named which exert a significant amount of business control over the organization</b>			
<b>Indicators of Organization Size</b>			
Average number of current full time employees		Average estimate of revenue for the current year	

**Table 2 – Organizational Experience**

Organization doing business as		
Business address of regional office		
Name of regional office manager		
Telephone numbers		
Main number		
Fax number		
Website address		
<b>Organization History</b>		
List of names that this organization currently, has or anticipates operating under over the history of the organization, including the names of related companies presently doing business:		
Names of organization	From date	To date
List of companies, firms or organizations that own any part of the organization.		
Name of companies, firms or organization.	Percent ownership	
<b>Construction Experience</b>		
Years' experience in projects similar to the proposed project:		
As a general contractor		As a joint venture partner
Has this or a predecessor organization ever defaulted on a project or failed to complete any work awarded to it?		
If yes provide full details in a separate attachment. See attachment No.		
Has this or a predecessor organization been released from a bid or proposal in the past ten years?		
If yes provide full details in a separate attachment. See attachment No.		
Has this or a predecessor organization ever been disqualification as a bidder or proposer by any local, state, or federal agency within the last 5 years?		
If yes provide full details in a separate attachment. See attachment No.		
Is this organization or your proposed surety currently in any litigation or contemplating litigation?		
If yes provide full details in a separate attachment. See attachment No.		
Has this or a predecessor organization ever refused to construct or refused to provide materials defined in the contract documents?		
If yes provide full details in a separate attachment. See attachment No.		

**Table 3 – Organizational Structure**

Organization doing business as:		
<b>Proposed project organization</b>		
Provide a brief description of the managerial structure of the organization and illustrate with an organizational chart. Include the title and names of key personnel. Include this chart as an attachment to this description. See attachment No.		
Provide a brief description of the experience and qualifications of the organization's management team, including officers that will be directly involved in the project. Describe the individuals that are authorized to execute Contract Documents, Change Orders or receive payment for the organization. Include a copy of a board resolution or other documentation as appropriate for the structure of the company authorizing these individuals to conduct business on behalf of the organization. See attachment No.		
<b>Surety References</b>		
Name:		Telephone (main number):
Mailing address (principal place of business):		Telephone (for notice of claim):
		Local Agent for Surety:
		Name: _____
Physical address(principal place of business):		Address: _____
		_____
		_____
		Telephone: _____
Surety is a corporation organized and existing under the laws of the state of: _____.		
Is surety authorized to provide surety bonds in the state of Texas? _____.		
Is surety listed in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury? _____		

**Table 4 – Current Projects and Project Completed within the last 10 Years**

Project owner				Project name		
General description of project:						
Project cost				Date project completed		
Key project personnel	Project manager		Project superintendent		Safety manager	Quality control manager
Name						
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)						
	Name	Title/ position	Organization		Telephone	Email
Owner						
Designer						
Construction manager						
<hr/>						
Project owner				Project name		
General description of project:						
Project cost				Date project completed		
Key project personnel	Project manager		Project superintendent		Safety manager	Quality control manager
Name						
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)						
	Name	Title/ position	Organization		Telephone	Email
Owner						
Designer						
Construction manager						
<hr/>						
Project owner				Project name		
General description of project:						
Project cost				Date project completed		
Key project personnel	Project manager		Project superintendent		Safety manager	Quality control manager
Name						
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)						
	Name	Title/ position	Organization		Telephone	Email
Owner						
Designer						
Construction manager						

**Table 5 – Proposed Key Personnel**

Organization doing business as:		
<b>Proposed project organization</b>		
Provide a brief description of the managerial structure of the organization and illustrate with an organizational chart. Include the title and names of key personnel. Include this chart as an attachment to this description. See attachment No.		
Provide a brief description of the managerial structure proposed for this project and illustrate with an organizational chart. Include the title and names of proposed key personnel and alternates. Include this chart as an attachment to this description. See attachment No.		
<b>Experience of Key Personnel</b>		
Provide information on the key personnel proposed for this project that will provide the following key functions. Provide information for candidates for each of these positions on the pages for each of these key personnel. Also provide biographical information for each primary and alternate candidate as an attachment. The biographical information must include the following as a minimum: technical experience, managerial experience, education and formal training, work history which describes project experience, including the roles and responsibilities for each assignment, and primary language. Additional information highlighting experience which makes them the best candidate for the assignment should also be included.		
Role	Primary candidate	Alternate candidate
Project manager		
Project superintendent		
Project safety manager		
Quality control manager		
If key personnel are to fulfill more than one of the roles listed above, provide a written narrative describing how much time will be devoted to each function, their qualifications to fulfill each role and the percentage of their time that will be devoted to each role. If the individual is not to be devoted solely to this project, indicate how time it to be divided between this project and their other assignments.		

**Table 6 – Proposed Project Managers**

Organization doing business as			
<b>Primary candidate</b>			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	
<b>Alternate candidate</b>			
Name of individual			
Years of experience as project manager			
Years of experience with this organization			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	

**Table 7 – Proposed Project Superintendent**

Organization doing business as			
<b>Primary candidate</b>			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as superintendent			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	
<b>Alternate candidate</b>			
Name of individual			
Years of experience as project superintendent			
Years of experience with this organization			
Number of similar projects as superintendent			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	

**Table 8 – Proposed Project Safety Manager**

Organization doing business as			
<b>Primary candidate</b>			
Name of individual			
Years of experience as project safety manager			
Years of experience with this organization			
Number of similar projects as safety manager			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	
<b>Alternate candidate</b>			
Name of individual			
Years of experience as project safety manager			
Years of experience with this organization			
Number of similar projects as safety manager			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	

**Table 9 – Proposed Project Quality Control Manager**

Organization doing business as			
<b>Primary candidate</b>			
Name of individual			
Years of experience as quality control manager			
Years of experience with this organization			
Number of similar projects as quality manager			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	
<b>Alternate candidate</b>			
Name of individual			
Years of experience as quality control manager			
Years of experience with this organization			
Number of similar projects as quality manager			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ Position		Title/ Position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on Project		Candidate role on Project	

**CITY OF LEWISVILLE  
PURCHASING DIVISION**

**BOND REQUIREMENTS AND RETAINAGE**

**BONDS**

The successful bidder will be required to furnish the following bonds from a surety licensed to do business in the State of Texas. These bonds, along with proper insurance papers, will be incorporated as part of the final contract documents and will remain in effect until the completion and acceptance of the project. Maintenance bonds shall be in effect based on their stated term after final acceptance of the project:

Project amount \$10,001 to \$24,999 – a payment bond at the project amount and a maintenance bond for one year from the date of final payment.

Project amount \$25,000 to \$99,999 – a payment bond at the project amount and a maintenance bond for two years from the date of the final payment.

Project amount \$100,000 and greater – a bid bond equal to five percent (5%) of the project amount is to be included with the sealed bid; a payment bond and performance bond at the project amount and a maintenance bond for two years from the date of the final payment.

**RETAINAGE**

Retainage will be based on the following: Fifteen percent (15%) retainage for contracts up to \$25,000; ten percent (10%) retainage for contracts more than \$25,000 and less than \$400,000; five percent (5%) retainage for contracts in excess of \$400,000.

**PERFORMANCE BOND**

**STATE OF TEXAS  
COUNTY OF DENTON**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, as Principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as Surety on bonds for Principal, are held and firmly bound unto the City of Lewisville (Owner), in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

**WHEREAS**, the Principal has entered into a certain written contract (Contract) with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to construct:

**25-82-C Prairie Creek Wastewater Treatment Plant  
Aeration Basin II**

which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said Contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation 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.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By:

\_\_\_\_\_  
By

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

\_\_\_\_\_  
Title

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

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

The name and address of the Resident Agent of Surety is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PAYMENT BOND**

**STATE OF TEXAS  
COUNTY OF DENTON**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_, as Principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as Surety on bonds for Principal, are held and firmly bound unto the City of Lewisville (Owner), in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

**WHEREAS**, the Principal has entered into a certain written contract (Contract) with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ to construct:

**25-82-C Prairie Creek Wastewater Treatment Plant Aeration Basin II**

which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said Contract, then, this obligation shall be void; otherwise to remain in full force and effect;

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, shall in anyway affect its obligation 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.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Principal

---

Surety

---

By:

---

By

---

Title:

---

Title

---

Address:

---

Address:

---

The name and address of the Resident Agent of Surety is:

---

---

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**MAINTENANCE BOND**

**Bond No.** \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS:**

That we, \_\_\_\_\_  
(hereinafter called **Principal**), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and authorized to do a surety business in the State of Texas, (hereinafter called **Surety**), are held and firmly bound unto the City of Lewisville, Texas (hereinafter called the **City**) in the full and just sum of \_\_\_\_\_, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said **Principal** has performed \_\_\_\_\_ **improvements**, which have been or are about to be completed and accepted by the **City** for the project known as:

**25-82-C Prairie Creek Wastewater Treatment Plant  
Aeration Basin II**

AND WHEREAS, it is required that the **Principal** should guarantee the project from defects caused by faulty or defective materials, workmanship, or design for a period of two years from and after the date of acceptance of the completed project by the **City**.

NOW, THEREFORE, if the **Principal** shall for a period of two years from and after the date of acceptance of the completed project by the **City** replace any and all defects arising in said work whether resulting from faulty or defective materials, workmanship, or design, then the above obligation shall be null and void; otherwise the obligation shall remain in full force and effect for two years from the date of acceptance of the completed project by the **City**.

The **City** shall notify the **Principal** in writing of any defects for which the **Principal** is responsible and shall specify in said notice a reasonable time within which the **Principal** shall have to correct said defects. If the **Principal** fails to correct said defects within the time specified in said notice, the **City**, in its discretion, may permit the **Surety** to correct said defects. If the **City** allows the **Surety** to

correct said defects, the **Surety** shall have sixty (60) days thereafter within which to take such action as it deems necessary to insure performance of the **Principal's** obligation.

If such defects are not corrected after the time period specified in the notice or after the expiration of the sixty (60) day time period, whichever is applicable, the **City** shall have the right to correct the defects, and the **Principal** and **Surety**, jointly and severally, shall pay all costs and expenses incurred by the **City** in correcting the defects, including, but not limited to, the engineer, legal and other costs, together with any damages either direct or consequential, which the **City** sustains, or may sustain, on account of the **Principal's** failure to correct the defects. In addition, the **City** shall have the right to contract for the correction of said defects and, upon acceptance of a bid in accordance with the **City's** normal bidding process, the **Principal** and **Surety** shall become immediately liable for the amount of the bid. In the event that the **City** commences legal proceedings for the collection thereof, interest shall accrue on said amount at the rate of six (6) percent per annum, beginning at the commencement of said legal proceedings.

If the City commences suit for collection of any sums due hereunder, the **Principal** and **Surety**, jointly and severally, agree to pay all costs and expenses incurred by the **City**, including, but not limited to, attorney's fees.

IN WITNESS WHEREOF, the parties have caused this instrument to be signed and sealed by their respective authorized officers this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**Principal:** \_\_\_\_\_

**Surety:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

\_\_\_\_\_, *Attorney-in-Fact*

**Address:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Witness as to Principal**

\_\_\_\_\_

**CITY OF LEWISVILLE  
PURCHASING DIVISION**

**INSTRUCTIONS TO BIDDERS**

**INSTRUCTIONS:** These instructions apply to all bids and become a part of the terms and conditions of any bid submitted.

**BIDS** must not be faxed, but are to be submitted to the City in one of the following manners:

- A. **Electronic Receipt:** Bidders are encouraged to submit bids to the City through Bonfire. The City is a member of this electronic bidding platform and the submittal of bids to the City is at no cost to the bidder. The internet site is [www.gobonfire.com](http://www.gobonfire.com).

**or**

- B. **Paper Bid Receipt:** Paper bids may be submitted to the City. Bidders are to submit the original and one PDF copy of the bid on a flash drive in a sealed envelope to the Purchasing Division prior to response due date/time. The sealed envelope is to be marked on the outside with the bidder's name, address, the bid invitation number, and closing date recorded on the bottom left corner of the envelope.

Address to:

City of Lewisville  
Finance Administration - Purchasing Division  
151 W. Church St.  
Lewisville, Texas 75057

Sealed bids must be submitted in sufficient time as to be received and time stamped at the above location on or before the published bid date and time shown on the bid invitation. Bids received after submission deadline shall be returned unopened and will be considered void and unacceptable. The City of Lewisville is not responsible for lateness of mail carrier, etc.

**BID:** The bidder should quote its lowest and best price, F.O.B. destination on each item bid. If delivery and shipping quantities affect unit bid price, multiple bids may be made so as to indicate "price break" quantities in order for the City to determine maximum economic benefits. Pricing for paper bids shall be entered on the Bid Sheet in ink or typewritten. Totals shall be entered in the "Total Price" column of the Bid Sheet. In all cases of discrepancy between unit price and extended price, the unit price will be presumed to be correct.

**MAKE-MODEL** Items must be the best and latest model available of the type specified. If the bid invitation indicates a specific brand of product, the brand listed is deemed to be descriptive and not restrictive and is used to indicate the type and quality level desired for comparison purposes. Bidders may offer an approved equal to the brand listed, unless otherwise noted. The City shall make the final determination as to the brand offered being an approved equal to the brand listed. A Complete catalog or brochure showing in detail the item offered must accompany the bid.

**SPLIT-AWARD:** Bidders may furnish pricing for all or any portion of the bid invitation. Unless the bidder specifies otherwise in his bid, the City may award the contract for any item or group of items shown on the bid invitation.

**BID FORMS:** Bids submitted on other than City forms, whether electronic or paper, or with different terms or provisions may not be considered as responsive bids.

Bids must be held firm for ninety (90) days to allow for evaluation unless otherwise noted in the bid document.

**F.O.B./DAMAGE:** Quotations shall be bid F.O.B. Inside Delivery, Municipal Facility, Lewisville, Texas, and shall include all delivery and packaging costs. The City of Lewisville assumes no liability for goods delivered in damaged or unacceptable condition. The successful bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.

**INVOICES:** Invoices must be submitted by the successful bidder in duplicate to the City of Lewisville Accounts Payable, P O Box 299002, Lewisville, TX 75029-9002 or may be emailed to: [accountspayable\\_col@cityoflewisville.com](mailto:accountspayable_col@cityoflewisville.com).

**TAXES:** The City of Lewisville is exempt from Federal Manufacturer's Excise, and State Sales taxes. TAX MUST NOT BE INCLUDED IN BID. Tax exemption certificates will be executed by the City and furnished upon request.

**PRICING:** Bids should be firm. If the bidder, however, believes it necessary to base its price on price adjustment, such a bid may be considered, but only as an alternate bid.

**PAYMENT TERMS:** Payment terms are net 30 days after the goods are provided or services are completed, as required, or a correct invoice is received, whichever is later.

**DELIVERY PROMISE - PENALTIES:** Bids MUST show the number of calendar days required to place the materials in the possession of the City. DO NOT quote shipping dates. Consistent failure of a bidder to meet his delivery promises without valid reason may be cause for removal from the Bidder's List. When Delivery delays can be foreseen, the bidder shall give prior notice to the Purchasing Division which shall have the right to extend the delivery due date if reasons for delay appear acceptable. Default in promised delivery, without acceptable reasons, or failure to meet specifications, authorizes the Purchasing Division to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting bidder.

**PACKAGING:** Unless otherwise indicated, items will be new, unused, and in first class condition in containers suitable for damage-free delivery and storage.

**CORRESPONDENCE:** The bid number must appear on ALL correspondence, inquiries, etc. pertaining to the bid.

**DELIVERY TIMES:** Deliveries will be acceptable only during normal working hours at the designated City Municipal Facility.

**PATENT RIGHTS:** The Vendor agrees to indemnify and hold the City harmless from any and all claims involving patent right infringement or copyrights on goods supplied.

**EVALUATION:** Response to the specification in this bid is of primary importance in determining the lowest responsible bid.

**BID AWARD:** Bids will be awarded either on Lowest Responsible Bid or Best Value. The Criteria used to determine Best Value is as follows:

- Purchase Price
- The reputation of the bidder and of the bidder's goods and service
- The quality of the bidder's goods or services
- The extent to which the goods or services meet the municipality's needs.
- The bidder's past relationship with the municipality.
- The impact on the ability of the city to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities.

The total long-term cost to the city to acquire the bidders good or services (Life Cycle Costing).

Any other relevant factors that a private business would consider in selecting a bidder.

**FUNDING:** The City of Lewisville is a home-rule municipal government operated and funded on an October 1 to September 30 Fiscal Year; accordingly, the City reserves the right to terminate, without liability to the City any contract for which funding is not available.

**RESERVATIONS:** The City expressly reserves the right to:

- A. Waive as an informality, minor deviations from specifications.
- B. Waive any defect, irregularity or informality in any bid or bidding procedure.
- C. Reject or cancel any or all bids.
- D. Reissue a bid invitation.
- E. Extend the bid opening time and date.
- F. Procure any item by other means.
- G. Increase or decrease the quantity specified in the bid invitation, unless the Bidder specifies otherwise.
- H. Consider and accept an alternate bid as provided herein when most advantageous
- I. to the City.

**ASSIGNMENT:** The successful bidder shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City.

**AUDIT:** The City of Lewisville reserves the right to audit the records and performance of the successful bidder during the term of the contract and for three years after the contract is completed.

**PROTESTS:** All protests regarding the bid solicitation process must be submitted in writing to the City Purchasing Manager within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties with the bidding process.

This limitation does not include protests relating to staff recommendations as to award of this bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary.

Failure to Protest within the time allotted shall constitute a waiver of any protest.

**ALTERING BIDS:** Bid cannot be altered or amended after submission deadline. Any interlineation, or alteration made before opening time for sealed bids must be initialed by the signer of the bid, guaranteeing authenticity.

**CHANGE ORDERS:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the City of Lewisville.

**ADDENDA:** Any interpretations, corrections or changes to this Invitation for Bid and Specifications will be made by ADDENDA. Sole authority to issue addenda shall be vested in the City of Lewisville. Bidders shall acknowledge receipt of all addenda on bid form.

**MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS:** A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must meet the following requirements:

- Have adequate financial resources, or the ability to obtain such resources as required;
- Be able to comply with the required or proposed delivery schedule;
- Have a satisfactory record of performance;
- Have a satisfactory record of integrity and ethics;
- Be otherwise qualified and eligible to receive an award; and
- The City of Lewisville may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.

**BIDDER SHALL PROVIDE** with this bid response, all documentation required. Failure to provide this information may result in rejection of bid.

**SUCCESSFUL BIDDER SHALL** defend, indemnify and save harmless the City of Lewisville and all its officers, agents and employees and all entities, their officers, agents and employees who are participating in this contract from all suits, actions, or other claims of any character,

name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award. Successful bidder shall pay any judgment with cost which may be obtained against the City of Lewisville and participating entities growing out of such injury or damages.

**TERMINATION FOR DEFAULT:** The City of Lewisville reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the contract immediately in the event the successful bidder fails to 1) meet delivery schedules, or 2) otherwise perform in accordance with these specifications. Breach of contract or default authorizes the City to award to another bidder. Purchase elsewhere and charge the full increase in cost and handling to the defaulting successful bidder.

**TESTING:** Testing may be performed at the request of the City without expense to the City.

**REMEDIES:** The successful bidder and City of Lewisville agree that each party have all rights, duties, and remedies available as stated in the Uniform Commercial Code.

**VENUE:** This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Denton County, Texas.

**SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial products and practices are to prevail. All interpretations of the specifications in this bid shall be made on the basis of this statement.

**DEVIATIONS** from specifications and alternate bids must be clearly shown on the bid form with complete information attached to form. They may or may not be considered.

**NO EMPLOYEE** of the City of Lewisville who has a financial interest in a prospective vendor shall participate in submitting a bid or proposal to conduct work for the City.

**NO EMPLOYEE** of the City of Lewisville shall receive any compensation for or as a result of a contract for goods or services purchased by the City if that employee was in a position to influence the City with respect to the contract.

**ELIGIBLE BIDDER:** Bidders are limited to those persons or firms who are qualified and engaged in a full-time business and can assume liabilities for any performance or warranty service required.

**REJECTED ITEM(S):** Item(s) that are rejected for failure to meet prescribed minimum specifications shall be returned to the supplier at no cost to the City of Lewisville.

**INDEMNITY:** The City of Lewisville will not accept a contract that contains any provision causing the City of Lewisville to indemnify the vendor for any reason.

**VENDOR AGREEMENT:** Any vendor agreements (service, maintenance, etc.) to be signed by the City of Lewisville must be submitted with your bid.

## EXHIBIT A

### PURCHASE ORDER TERMS & CONDITIONS

**Seller and Buyer agree to comply with the following terms and conditions. These Terms and Conditions along with the purchase order shall constitute a contract between the Seller and Buyer upon the Seller issuing an invoice and/or providing any of the goods and services described in the purchase order. In the event of a conflict between these Terms and Conditions and a separate written agreement between the Seller and Buyer, the terms of the separate written agreement shall prevail.**

1. SELLER TO PACKAGE GOODS: Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase order release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED: Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

3. TITLE AND RISK OF LOSS: The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.

4. DELIVERY TERMS AND TRANSPORTATION CHARGES: F.O.B. Inside Delivery, Municipal Facility, Lewisville, Texas, and shall include all delivery and packaging costs. The Buyer assumes no liability for goods delivered in damaged or unacceptable condition. The Seller shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by Seller of damage.

5. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the Seller may notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

6. PLACE OF DELIVERY: The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications", hereof. The terms of this contract are "no arrival, no sale".

7. INVOICES AND PAYMENTS: (a) Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, should be attached to the invoice. Mail to: City of Lewisville Accounts Payable, PO Box 299002 Lewisville, Texas 75029-9002. Payments shall be made thirty days after the goods are delivered to the Buyer, or a correct invoice is received, whichever is later. Suppliers should keep the Accounts Payable Office advised of any changes in remittance addresses. (b) Buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer. (c) Do not include Federal Excise, State or City Sales Tax. Buyer shall furnish tax exemption certificate, if required.

8. GRATUITIES: The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of the City of Lewisville with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

9. SPECIAL TOOLS AND TEST EQUIPMENT: If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

10. WARRANTY PRICE: (a) The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. (b) The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

11. WARRANTY PRODUCTS: Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

12. SAFETY WARRANTY: Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.

13. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS: As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this contract will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within two weeks after the signing of this contract. If Buyer does not receive notice and is subsequently held liable for the infringement of the like, Seller will save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.

14. RIGHT OF INSPECTION: Buyer shall have the right to inspect the goods at delivery before accepting them.

15. CANCELLATION: Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

16. TERMINATION: The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Clause 15, herein.

17. FORCE MAJEURE: If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the

obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

18. ASSIGNMENT DELEGATION: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

19. WAIVER: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

20. MODIFICATIONS: This contract may be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents. This shall include any change orders.

21. INTERPRETATION PAROLE EVIDENCE: This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

22. APPLICABLE LAW: This contract shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this contract.

23. ADVERTISING: Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

24. RIGHT TO ASSURANCE: Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

25. VENUE: Both parties agree that venue for any litigation arising from this contract shall lie in Denton County, Texas.

26. DISCLOSURE: Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](http://ethics.state.tx.us), must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code

Seller should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

27. INDEPENDENT CONTRACTOR: Seller shall be considered an independent contractor and not an agent, servant, employee, or representative of Buyer in the performance of the work. No term or provision herein or act of the Seller shall be construed as changing that status.

28. TERMINATION FOR DEFAULT: Buyer reserves the right to enforce the performance of any Purchase Order in any manner prescribed by law or deemed to be in the best interest of Buyer in the event of breach or default. The Buyer reserves the right to terminate any purchase order and/or agreement with the Seller in the event the Seller fails to: (a) meet delivery schedules, or (b) otherwise perform in accordance with these terms and conditions.

29. PROTESTS: All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code

Post-award protests must be submitted in written form to the City Manager within five (5) working days after award. The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest.

**30. INDEMNIFICATION: SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD BUYER, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY SELLER'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY SELLER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF BUYER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE SELLER AND BUYER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO BUYER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

31. SEVERABILITY: In case any one or more of the provisions contained in these Terms and Conditions shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and these Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

32. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C 1324a): The Buyer supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Seller and its subcontractors shall at all times during the term of the contract with the Buyer comply with the requirements of IRCA and shall notify the Buyer within fifteen (15) working days of receiving notice of a violation of IRCA. The Seller also warrants that it has not had an IRCA violation within the last five (5) years. The Buyer may terminate a contract with the Seller if the Buyer determines that (a) the Seller or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Seller or its subcontractors fail to timely notify the Buyer of an IRCA violation.

33. ADA COMPLIANCE: All goods and services provided to the Buyer must be compliant with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Seller will be required to certify compliance, if required under the law or otherwise required by the Buyer.

34. PROTECTION OF RESIDENT WORKERS: The Buyer actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Seller shall establish appropriate procedures and controls so no services under the contract will be performed by any worker who is not legally eligible to perform such services or employment. The Buyer reserves the right to audit Seller's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the contract. The audit will be at the Buyer's expense.

35. TEXAS GOVERNMENT CODE CHAPTER 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Consultant affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

36. TEXAS GOVERNMENT CODE CHAPTER 2271. Pursuant to Texas Government Code Chapter 2271, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Consultant employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.

37. TEXAS GOVERNMENT CODE CHAPTER 2274. Pursuant to Texas Government Code Chapter 2274, Consultant verifies the following:

- A. Consultant: (1) does not boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.
- B. Consultant: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Consultant employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2274.

**CITY OF LEWISVILLE  
PURCHASING DIVISION**

**STATE RECIPROCAL REQUIREMENT**

The City of Lewisville, as a governmental agency of the State of Texas, may not award a contract for general construction, improvements, services or public works projects or purchases of supplies, materials, or equipment to a non-resident bidder unless the non-resident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract in the state in which the non-resident's principal place of business is located (Section 2252.002 of the Government Code). Bidder shall answer all the following questions by encircling the appropriate response or completing the blank provided.

1. Where is your principal place of business? \_\_\_\_\_
  
2. Only if your principal place of business is not in the state of Texas, please indicate:
  - A. In which state is your principal place of business located? \_\_\_\_\_
  
  - B. Does that state favor resident bidders (bidders in your state) by some dollar increment or percentage?  YES  NO
  
  - C. If "YES", what is that dollar increment or percentage? \_\_\_\_\_

**NON-COLLUSION STATEMENT**

The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firms, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employer or agent to any other person engaged in this type of business prior to the official opening of this bid.

Vendor:			
Address:			
City, State, Zip:			
Phone:			
Email:			
Bidder (Print Name):			
Bidder Signature:			
Job Title:			
Signature of company official authorizing this bid:			
Company Official (Print name):			
Job Title:			

**CITY OF LEWISVILLE  
PURCHASING DIVISION**

**ADDITIONAL TERMS**

**ANTI-LOBBYING PROVISION**

During the period between proposal / sealed bid submission date and the contract award, proposers, including their agents and representatives, shall not directly discuss or promote their proposal with any member of the City of Lewisville City Council or City staff except during City-Sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

This provision is not meant to preclude offerors from discussing other matters with City Council members or City staff. This policy is intended to create a level playing field for all potential offerors, assure that contract decisions are made in public, and to protect the integrity of the RFP / Bid Evaluation process. Violation of this provision may result in rejection of the offeror's proposal.

**LAWS AND ORDINANCES**

Laws and Ordinances: The Contractor shall always observe and comply with all Federal, State and local laws, ordinances and regulations which in any manner affect the Contract or the work and shall indemnify and save harmless the City against any claim arising from the violation of any such laws, ordinances and regulations whether by the Contractor or his employees.

**PROTECTION OF RESIDENT WORKERS**

Protection of Resident Workers: The City of Lewisville actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor and its Subcontractors shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Contractor's or Subcontractor's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services or manufacturing products under the Contract Documents. The audit will be at the City's expense.

**IMMIGRATION REFORM AND CONTROL ACT**

Immigration Reform and Control Act (8 U.S.C. §1324a): The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of

Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Contractor if the City determines that (a) the Contractor or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Contractor fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Contractor or its Subcontractors fail to timely notify the City of an IRCA violation.

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

***PROPOSER'S ACCEPTANCE OF EVALUATION METHODOLOGY***

**WAIVER OF CLAIMS: EACH PROPOSER BY SUBMISSION OF A RESPONSE TO THIS REQUEST FOR PROPOSALS ("RFP") WAIVES ANY CLAIMS IT HAS OR MAY HAVE AGAINST THE OWNER, ITS EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, AND THE MEMBERS OF OWNER'S GOVERNING BODY, CONNECTED WITH OR ARISING OUT OF THIS RFP, INCLUDING THE ADMINISTRATION OF THE RFP AND THE RFP EVALUATION. SUBMISSION OF A PROPOSAL INDICATES PROPOSER'S ACCEPTANCE OF THE EVALUATION TECHNIQUE AND PROPOSER'S RECOGNITION THAT SOME SUBJECTIVE JUDGMENTS MUST BE MADE BY THE OWNER DURING THE EVALUATION OF PROPOSALS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH PROPOSER ACKNOWLEDGES THAT THE BASIS OF SELECTION AND THE EVALUATIONS SHALL BE MADE PUBLIC AFTER THE CONTRACT IS AWARDED AND WAIVES ANY CLAIM IT HAS OR MAY HAVE AGAINST THE ABOVE-NAMED PERSONS, DUE TO INFORMATION CONTAINED IN SUCH EVALUATIONS.**

**Firm Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Authorized Signature:**

\_\_\_\_\_

**Printed Name:**

\_\_\_\_\_



## Lewisville 2025 - Sustainability

Lewisville City Council unanimously adopted the Lewisville 2025 plan on July 14, 2014. The plan was developed after more than a year of public input and discussion that garnered hundreds of ideas and suggestions. That input was studied extensively by the Lewisville 2025 Steering Committee, City staff and professional consultants and formulated into the Lewisville 2025 plan. The plan provides a clear shared vision for the kind of community Lewisville wants to be when it turns 100 years old in 2025: a place that people choose to live, work and visit.

Lewisville 2025 identifies nine “Big Moves” to guide the community’s efforts toward being a thriving, desirable community. One of these Big Moves is sustainability. Lewisville defines sustainability in this way:

*Limited resources, such as land, water, energy, clean air, natural assets, and public funds are used efficiently to provide a desirable quality of life and business climate today without reducing Lewisville’s ability to provide the desired quality of life and business climate for success of future generations.*

The Purchasing Division’s goal is to support and encourage sustainable management practices through the purchase and use of materials, products and services that demonstrate environmental stewardship as well as fiscal and social responsibility. To that end, Lewisville will consider environmental factors such as but not limited to, recycled content, product life cycle, waste reduction, energy efficiency, toxicity, water consumption, and human health impacts when making purchasing recommendations. To assist City staff with evaluating these factors, prospective vendors may be required to provide specific information about their products and services that addresses environmental impacts.

<b>Does Product or Service?</b>	<b>Yes</b>	<b>No</b>	<b>Details</b>
<b>Reduce energy consumption</b>			
<b>Reduce toxicity, including emissions</b>			
<b>Reduce waste</b>			
<b>Contain recyclable materials</b>			
<b>Reduce water consumption</b>			
<b>List other environmental impacts</b>			

*Attach supporting documentation if needed*

# VENDOR SUPPLEMENTAL INFORMATION

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*The following information is required for contract development.*

1. In what state was your business formed? \_\_\_\_\_

2. Provide the following information for the person authorized to execute contracts on behalf of your organization:

Name \_\_\_\_\_ Title \_\_\_\_\_  
Email Address \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

3. Provide the following information for the contact person authorized to implement this contract on behalf of your organization:

Name \_\_\_\_\_ Title \_\_\_\_\_  
Email Address \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

4. Provide the following information for the person authorized to receive notices and communications regarding this contract on behalf of your organization:

Name \_\_\_\_\_ Title \_\_\_\_\_  
Email Address \_\_\_\_\_ Telephone No. \_\_\_\_\_  
\*Physical Business Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

*\*Notices and communications will be mailed to this physical address*

5. Select and complete one of the following:

a.  **Sole Proprietorship**  
i. Legal name of Sole Proprietor: \_\_\_\_\_  
ii. Physical business address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

b.  **General Partnership**  
i. Legal name of Partnership: \_\_\_\_\_  
ii. Physical business address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

## VENDOR SUPPLEMENTAL INFORMATION

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- c.  **Limited Partnership**
- i. Legal name of Limited Partnership: \_\_\_\_\_
- ii. General Partner(s):
- If a legal entity, name of the entity: \_\_\_\_\_
  - If an individual, name of the individual: \_\_\_\_\_
- iii. Physical business address: \_\_\_\_\_
- City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- d.  **Corporation**
- i. Legal name of Corporation: \_\_\_\_\_
- ii. Physical business address \_\_\_\_\_
- City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- e.  **Limited Liability Company**
- i. Legal name of Limited Liability Company: \_\_\_\_\_
- ii. Physical business address \_\_\_\_\_
- City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- f.  **Other Entity (not listed)**
- i. Legal name and type of Company: \_\_\_\_\_
- ii. Physical business address \_\_\_\_\_
- City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

6. Does your business have 10 or more full-time employees?  No  Yes

7. a. Are you a publicly traded business?  No  Yes – where traded: \_\_\_\_\_

b. Are you a wholly owned subsidiary of a publicly traded business?  No  Yes – which publicly traded business: \_\_\_\_\_

8. a. Is your business registered with the Texas Secretary of State?  No  Yes

b. If yes, please provide records or screenshot(s) from the Texas Secretary of State's website reflecting the name or names for which your business has been registered.

In signing this form, I acknowledge that I have read the above and state that the information contained therein is true and correct.

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

Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_

# CITY OF LEWISVILLE, TEXAS

## CONSTRUCTION AGREEMENT

Project: Prairie Creek Wastewater Treatment Plant (PCWWTP) Aeration Basin Expansion (the “Project”).

This Construction Agreement (the “Agreement”) is made on \_\_\_\_\_, 2025, between the **City of Lewisville** (the “City”) and \_\_\_\_\_, a \_\_\_\_\_ authorized to do business in the state of Texas (the “Contractor”) (collectively, the “Parties”).

1. Services. Construction of an expansion of the secondary treatment facilities at the Prairie Creek WWTP to include aeration basin splitter structure; four (4) aeration basins; secondary clarifier distribution structure; blower building; improvements to the existing RAS/WAS pump station; demolition of existing facilities; and associated yard piping, site/civil, electrical, and instrumentation/control improvements in strict accordance with the specifications attached hereto as **Exhibit A** (the “Specifications”), the PCWWTP Aeration Basin Expansion Plans attached hereto as **Exhibit B** (the “Plans”), and this Agreement, and at the 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 Services, in accordance with the conditions and prices stated in the Contractor’s Proposal (the “Proposal”) attached hereto as **Exhibit C**, and in accordance with the Specifications (**Exhibit A**) and Plans (**Exhibit B**), as prepared by the City and attached hereto. The Contractor will perform all Services in a good and professional manner and in accordance with industry standards. The Contractor is responsible for constructing a final product that is fully functional and fit for its intended purposes, and meets all requirements set forth in the Agreement, the Specifications (**Exhibit A**), and the Plans (**Exhibit B**). The City will be the sole judge of the acceptability of all work and services performed under this Agreement.

The City shall perform such services as outlined in the Specifications (**Exhibit A**), if any.

2. Effective Date; Completion of Services. The effective date of this Agreement (the “Effective Date”) shall be the date upon which this Agreement is executed by an authorized representative of both Parties. The Contractor hereby agrees to commence work within ten (10) calendar days after the date of the written notice to commence work, to reach Substantial Completion (as defined in the Specifications – **Exhibit A**) within 821 consecutive calendar days after the date of the written notice to commence work, and reach Final Completion (as defined in the Specifications – **Exhibit A**) within 912 consecutive calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the Specifications (**Exhibit A**).N

3. Agreement Documents. The Agreement shall include the following documents, and this Agreement does hereby expressly incorporate same herein as if set forth verbatim in this Agreement:
  - A. This Agreement
  - B. The Specifications (**Exhibit A**) and Plans (**Exhibit B**)
  - C. The Proposal (**Exhibit C**)
  - D. The Articles of Agreement (**Exhibit D**)

To the extent that any exhibit is in conflict with provisions of this Agreement or each other, the provisions of this **Agreement**, then and the provisions of **Exhibit D** then the provisions of **Exhibit A** and **Exhibit B** jointly, then **Exhibit C** shall prevail in the order listed, except as specifically provided for in Section 29 of this Agreement. In **Exhibits A, B, and D**, all references to “Owner” shall mean “City.”

4. Confidential Information. To the extent allowed by law, the City will safeguard and keep from release any documents marked “proprietary” or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
5. Pricing. The City agrees to pay the Contractor in current funds the price or prices shown in the Proposal (**Exhibit C**).
6. Payment. Payments will be subject to the terms outlined in the Specifications (**Exhibit A**) and the Articles of Agreement (**Exhibit D**). The City shall remit payment within thirty (30) days after receipt of an invoice, in accordance with the Texas Prompt Payment Act (Tex. Gov’t Code Ch. 2251). All original invoices are to be sent to the City of Lewisville, Attention: AP Division, 151 West Church Street, Lewisville, Texas 75057 or P.O. Box 299002, 75029-9002.
7. Change Orders. Any changes to the Services that change the Agreement price or the Agreement time, as specified herein, must be authorized by the City in writing PRIOR to commencement of said work, as provided for in the Specifications (**Exhibit A**). Any work performed without the City’s prior written consent will be at the sole expense of the Contractor.
8. Subcontractors. If subcontractors are used, the subcontractor will be directed and supervised solely by the Contractor, as provided for in the Specifications (**Exhibit A**). The Contractor shall require the subcontractor to hold the same insurance as required of the Contractor under this Agreement.
9. Right of Inspection and Required Repairs. The City shall have the right to observe or cause to be observed and check or cause to be checked all ongoing work in sufficient detail to determine if the Services are proceeding satisfactorily. The City shall have the right to inspect or cause to be inspected all Services completed before accepting them and making payments in accordance

with this Agreement, as provided for in the Specifications (**Exhibit A**). Should any portion of the completed Services fail to meet the requirements of the City, the Contractor shall repair or replace items failing to meet requirement until items can be demonstrated to comply.

10. Termination. This Agreement may be terminated by the City under the terms outlined in the Specifications (**Exhibit A**).
11. Insurance. During the period of this Agreement, the Contractor will maintain, at its expense, insurance with limits not less than those prescribed in the Specifications (**Exhibit A**). All insurance must be submitted to the City at the time required by the Specifications (**Exhibit A**).
12. Bonds and Warranties. The Contractor shall provide bonds and warranties as required by the Specifications (**Exhibit A**) and at the time set forth therein.
13. Retainage. The Services shall be considered substantially complete for the purposes of retainage when Substantial Completion as defined in the Specifications is reached. The City will release all or a portion of the retainage for substantially completed portions of the Services or fully completed and accepted portions of the Services as provided for in the Specifications (**Exhibit A**).
14. Worker's Compensation. The Contractor shall abide by the workers compensation requirements outlined in the Specifications (**Exhibit A**).
15. Independent Contractor. Contractor shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the work and Services. No term or provision herein or act of the City shall be construed as changing that status.
16. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including, but not limited to the Immigration Reform and Control Act (IRCA).
17. Governing Law and Venue. Venue and governing law shall be as provided for in the Specifications (**Exhibit A**).
18. Arbitration. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
19. Tax Exempt Status. The City is exempt from and shall not pay state and local sales and use taxes on labor and materials incorporated into the Project. If necessary, it is the responsibility of the Contractor to obtain from the State Comptroller's Office a sales tax permit, resale certificate, and exemption certificate that will enable the Contractor to buy any materials for the Services and

then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

- 20. Entire Agreement. This Agreement and its exhibits contain the entire agreement of the parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Contractor, and amendments may be made thereto as set forth in the Specifications (**Exhibit A**).
- 21. Assignment. This Agreement may not be assigned except as provided for in the Specifications (**Exhibit A**).
- 22. Governmental Immunity. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.
- 23. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to City, to: City of Lewisville  
Attn: Earl Whitaker, Purchasing Manager  
151 W. Church Street  
Lewisville, Texas 75057

- 24. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 25. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

26. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
27. Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, order of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.
28. Waiver. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.
29. **INDEMNIFICATION.** CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY,

**SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONTRACTOR'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON OR ENTITY. ANY INDEMNIFICATION AGREED TO BY THE CITY IS ONLY TO THE EXTENT ALLOWED BY LAW. NOTWITHSTANDING ANY PRIORITY OF DOCUMENTS PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL THIS SECTION LIMIT ANY INDEMNIFICATION, HOLD HARMLESS, OR DEFENSE REQUIRED OF CONTRACTOR IN THE EXHIBITS HERETO.**

30. Immigration Reform and Control Act (8 U.S.C. 1324a). The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Contractor if the City determines that (a) the Contractor or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Contractor fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Contractor or its Subcontractors fail to timely notify the City of an IRCA violation.
31. ADA Compliance. All goods and services provided to the City must be compliant with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Contractor will be required to certify compliance, if required under the law or otherwise required by the City.
32. Protection of Resident Workers. The City actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9) for every worker

performing services under the Agreement. The Contractor and its Subcontractors shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit Contractor's or Subcontractor's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services or manufacturing products under the Contract Documents. The audit will be at the City's expense.

33. Advertising. Contractor shall not advertise or publish, without the City's prior consent, the fact that the Contractor has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
34. Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](http://ethics.state.tx.us), must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An offense under Chapter 176 is a Class C misdemeanor.

Contractor should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirement of Chapter 176.

35. Preservation of Contracting Information. In accordance with Section 552.372 of the Texas Government Code, if this Agreement has a stated expenditure of at least \$1,000,000.00 in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1,000,000.00 in public funds for the purchase of goods or services by the City during the City's fiscal year, the Contractor shall:
- A. Preserve all contracting information related to this Agreement for the duration of this Agreement;
  - B. Promptly provide to the City any contracting information related to this Agreement that is in the custody or possession of the Contractor on request of the City; and
  - C. On completion of this Agreement, either:
    - i. Provide at no cost to the City all contracting information related to this Agreement that is in the custody or possession of the Contractor, or

- ii. Preserve the contracting information related to this Agreement as follows:
  - 1. Construction projects: permanently
  - 2. All other projects: four (4) years following completion of the Agreement.

For the purposes of this section, “contracting information” shall have the meaning given in Section 552.003 of the Texas Government Code.

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

- 36. Texas Government Code Chapter 2271. Pursuant to Texas Government Code Chapter 2271, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Contractor employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.
- 37. Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that is it not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.
- 38. Texas Government Code Chapter 2274. Pursuant to Texas Government Code Chapter 2274, Contractor verifies the following:
  - A. Contractor: (1) does not boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.
  - B. Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Contractor employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2274.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

**CITY OF LEWISVILLE, TEXAS**  
Approved by the Lewisville City  
Council \_\_\_\_\_

**CONTRACTOR:**  
[CONTRACTOR NAME]

By: \_\_\_\_\_  
Claire Powell, City Manager

By: \_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_

Date:

[ADDRESS]

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Federal Tax ID Number

Attest: \_\_\_\_\_  
Jennifer Ippolito, City Secretary

Attest: \_\_\_\_\_

**CITY OF LEWISVILLE**  
151 West Church Street  
Lewisville, Texas 75057

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, City Attorney

## EXHIBIT D

### ARTICLES OF AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

The Standard Specifications for this project are set forth in the EJCDC® CMA 700, Standard General Conditions of the Construction Contract—Construction Manager as Advisor Series (2021), as such may be amended by the Supplementary Conditions (the “General Conditions”). Terms used in these Articles of Agreement have the meanings stated in the General Conditions and the Supplementary Conditions, as well as the Agreement by and between the City of Lewisville (“Owner”) and [name of contracting entity] (“Contractor”) to which these Articles of Agreement are attached (the “Contract”). In case of conflict between the terms and conditions set forth herein and the General Conditions, this document shall control.

Owner and Contractor hereby agree as follows:

#### ARTICLE 1 – DAMAGES FOR BREACH

##### 1.01 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion—Contractor shall pay Owner for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete, in accordance with the following table:

Days Late	Liquidated Damages Per Day
Days 1-7	\$2,500
Days 8-14	\$3,000
Days 15-30	\$3,500
Each Day After 30 Days	\$3,500

2. Completion of Remaining Work—After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$2,500 for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

## **ARTICLE 2—CONTRACT PRICE**

- 2.01 As part of the lump sum price for all work, all specific cash allowances are included in the lump sum in accordance with Paragraph 13.02 of the General Conditions.

## **ARTICLE 3—PAYMENT PROCEDURES**

### **3.01 Submittal and Processing of Payments**

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Construction Manager as provided in the General Conditions.

### **3.02 Progress Payments; Retainage**

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment within thirty (30) days after the date of receipt of each properly submitted Application for Payment during performance of the Work as provided herein below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

- a. 95 percent of the value of the Work completed (with the balance being retainage).

If 50 percent or more of the Work has been completed, as determined by Construction Manager and Engineer, and if the character and progress of the Work have been satisfactory to Owner, Construction Manager, and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner, Construction Manager, and Engineer, there will be no additional retainage; and

- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Construction Manager's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### **3.03 Final Payment**

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

### **3.04 Consent of Surety**

- A. Owner will not make final payment or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

## **ARTICLE 4—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **4.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
  6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  9. Contractor has given Construction Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Construction Manager is acceptable to Contractor.
  10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 4.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 4.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 4.03 Standard General Conditions

- A. Owner stipulates that Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT— CONSTRUCTION MANAGER AS ADVISOR SERIES

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT— CONSTRUCTION MANAGER AS ADVISOR SERIES

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 Defined Terms

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

10. Claim
  - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting a decision rendered by Construction Manager, in consultation with Engineer, concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents, or regarding a Change Proposal; or seeking other relief with respect to the terms of the Contract.
  - b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Construction Manager's decision, in consultation with Engineer, regarding a Change Proposal.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.3, concerning disputes arising after Construction Manager has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
11. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. Construction Manager—The individual or entity named as Construction Manager in the Agreement. The Construction Manager provides construction management services to the Owner, as an advisor and representative.
13. Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.
14. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.
15. Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
16. Contract Times—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
17. Contractor—The individual or entity with which Owner has contracted for performance of the Work.
18. Cost of the Work—See Paragraph 13.01 for definition.
19. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
20. Effective Date of the Contract—The date, indicated in the Agreement, on which the Contract becomes effective.

21. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
22. Electronic Means—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
23. Engineer—The individual or entity that had primary responsibility for preparing or furnishing the Drawings and Specifications and is named as Engineer in the Agreement.
24. Field Order—A written order issued by Construction Manager which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
25. Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
26. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
27. Liens—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
28. Milestone—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
29. Notice of Award—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
30. Notice to Proceed—A written notice to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

31. Owner—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
32. Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
33. Project—The total undertaking to be accomplished for Owner by construction managers, engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
34. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. Schedule of Submittals—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for review of the submittals.
36. Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. Submittal—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Construction Manager, or that is indicated as a Submittal in the Schedule of Submittals accepted by Construction Manager. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether approved or accepted by Construction Manager or Engineer, are

not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.
43. Successful Bidder—The Bidder to which the Owner makes an award of contract.
44. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.
45. Supplier—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. Technical Data
  - a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. Unit Price Work—Work to be paid for based on unit prices.
49. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result

of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. Work Change Directive—A written directive issued by Construction Manager to Contractor on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

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

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Contract Price or Contract Times—References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2—PRELIMINARY MATTERS**

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

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

### **2.02 Copies of Documents**

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

available to Contractor for review. Owner may delegate the responsibilities under this provision to Construction Manager.

### 2.03 Before Starting Construction

- A. Preliminary Schedules—Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Construction Manager for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

### 2.04 Preconstruction Conference; Designation of Authorized Representatives

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

### 2.05 Acceptance of Schedules

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

3. Contractor's Schedule of Values will be acceptable to Construction Manager as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

#### 2.06 Electronic Transmittals

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

### **ARTICLE 3—CONTRACT DOCUMENTS—INTENT, REQUIREMENTS, REUSE**

#### 3.01 Intent

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

of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner, Construction Manager, or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 Reference Standards

#### A. Standards Specifications, Codes, Laws and Regulations

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

### 3.03 Reporting and Resolving Discrepancies

#### A. Reporting Discrepancies

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

3. Contractor shall not be liable to Owner, Construction Manager, or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.
- B. Resolving Discrepancies
1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
    - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
    - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
- 3.04 Interpretation of the Contract Documents
- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Construction Manager in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the performance or acceptability of the Work under the Contract Documents, as soon as possible after such matters arise.
  - B. Construction Manager will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, and if appropriate initiate a change to the Contract Documents. Construction Manager’s written clarification, interpretation, or decision (1) will be based, when applicable, on consultation with Engineer, and (2) will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- 3.05 Reuse of Documents
- A. Contractor and its Subcontractors and Suppliers shall not:
    1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
    2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner’s express written consent, or violate any copyrights pertaining to such Contract Documents.
  - B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

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

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

### 4.02 Starting the Work

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

### 4.03 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Construction Manager whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

### 4.04 Progress Schedule

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

### 4.05 Delays in Contractor's Progress

- A. If Owner, Construction Manager, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. Abnormal weather conditions;
  3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed because of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Construction Manager may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and

an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

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

### **5.01 Availability of Lands**

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **5.02 Use of Site and Other Areas**

- A. Limitation on Use of Site and Other Areas
  - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  - 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise;

(b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Construction Manager, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Construction Manager, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. Removal of Debris During Performance of the Work—During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. Cleaning—Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading of Structures—Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

#### 5.03 Subsurface and Physical Conditions

- A. Reports and Drawings—The Supplementary Conditions identify:
  - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
  - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
  - 3. Technical Data contained in such reports and drawings.
- B. Underground Facilities—Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. Reliance by Contractor on Technical Data—Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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

5.04 Differing Subsurface or Physical Conditions

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

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

- B. Construction Manager’s Review—After receipt of written notice as required by the preceding paragraph, Construction Manager, in consultation with Engineer, will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor’s resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Construction Manager’s findings, conclusions, and recommendations.

- C. Owner's Statement to Contractor Regarding Site Condition—After receipt of Owner's response and instructions regarding Construction Manager's written findings, conclusions, and recommendations, Construction Manager will issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and informing Contractor of Construction Manager's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.
- D. Early Resumption of Work—If at any time Construction Manager, in consultation with Engineer, determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Construction Manager's review or Construction Manager's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then Construction Manager may instruct Contractor to resume such Work.
- E. Possible Price and Times Adjustments
  - 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  - 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
    - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
  - 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  - 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days

after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

- F. Underground Facilities; Hazardous Environmental Conditions—Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 Underground Facilities

- A. Contractor's Responsibilities—Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
  - 1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  - 2. complying with applicable state and local utility damage prevention Laws and Regulations;
  - 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during construction;
  - 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  - 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. Notice by Contractor—If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Construction Manager in writing regarding such Underground Facility.
- C. Construction Manager's Review
  - 1. Construction Manager will:
    - a. promptly review the Underground Facility in consultation with Engineer, and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
    - b. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary, issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
    - c. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to

reflect and document the consequences of the existence or location of the Underground Facility; and

- d. advise Owner and Engineer in writing of Construction Manager's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. Construction Manager's Statement to Contractor Regarding Underground Facility—After receipt of Owner's response to and recommendations regarding Construction Manager's written findings, conclusions, and recommendations, Construction Manager shall issue a written statement to Contractor regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and informing Contractor of Construction Manager's written findings, conclusions, and recommendations, as revised based on Owner's response and instructions.
- E. Early Resumption of Work—If at any time Construction Manager, in consultation with Engineer, determines that Work in connection with the Underground Facility may resume prior to completion of Construction Manager's review or Construction Manager's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then Construction Manager may instruct Contractor to resume such Work.
- F. Possible Price and Times Adjustments
  1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
    - c. Contractor gave the notice required in Paragraph 5.05.B.
  2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available

records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

- A. Reports and Drawings—The Supplementary Conditions identify:
1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
  2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
  3. Technical Data contained in such reports and drawings.
- B. Reliance by Contractor on Technical Data Authorized—Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner, Construction Manager, or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in

any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner, Construction Manager, and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Construction Manager and Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Construction Manager and Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, Construction Manager, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Construction Manager, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of construction managers engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 6—BONDS AND INSURANCE**

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

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Construction Manager in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 Insurance—General Provisions

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not adequate to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.

- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Construction Manager, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner, Construction Manager, and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to Construction Manager and each other insured.

### 6.03 Contractor's Insurance

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

### 6.04 Builder's Risk and Other Property Insurance

- A. Builder's Risk—Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

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

#### 6.05 Property Losses; Subrogation

- A. The builder’s risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Construction Manager, Engineer, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
  - 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Construction Manager, Engineer, all individuals or entities identified in the Supplementary Conditions as builder’s risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

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

#### 6.06 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account,

and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

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

### **7.01 Contractor's Means and Methods of Construction**

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

### **7.02 Supervision and Superintendence**

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

### **7.03 Labor; Working Hours**

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

#### 7.04 Services, Materials, and Equipment

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

#### 7.05 “Or Equals”

- A. Contractor’s Request; Governing Criteria—Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Construction Manager authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Construction Manager, in consultation with Engineer, determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Construction Manager will deem it an “or equal” item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Construction Manager, in consultation with Engineer, determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) has a proven record of performance and availability of responsive service; and
      - 4) is not objectionable to Owner.

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

#### 7.06 Substitutes

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

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

evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Construction Manager and Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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

#### 7.07 Concerning Subcontractors and Suppliers

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Construction Manager a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner, Construction Manager, and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Construction Manager, Engineer, or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.08 Patent Fees and Royalties

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

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### 7.09 Permits

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

#### 7.10 Taxes

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

#### 7.11 Laws and Regulations

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

## 7.12 Record Documents

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

## 7.13 Safety and Protection

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

Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner, Construction Manager, and Engineer of the specific requirements of Contractor's safety program with which Owner's, Construction Manager's, and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Construction Manager has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 Hazard Communication Programs

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

#### 7.15 Emergencies

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

#### 7.16 Submittals

- A. Shop Drawing and Sample Requirements
  - 1. Before submitting a Shop Drawing or Sample, Contractor shall:
    - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. determine and verify:
      - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

- 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
      - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
    - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
  2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
  3. With each Shop Drawing or Sample, Contractor shall give Construction Manager specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. Submittal Procedures for Shop Drawings and Samples—Contractor shall label and submit Shop Drawings and Samples to Construction Manager for review by Engineer in accordance with the accepted Schedule of Submittals.
  1. Shop Drawings
    - a. Contractor shall submit the number of copies required in the Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the services, materials, and equipment Contractor proposes to provide, and to enable the information to be reviewed for the limited purposes required by Paragraph 7.16.C.
  2. Samples
    - a. Contractor shall submit the number of Samples required in the Specifications.
    - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Construction Manager may require to enable Engineer to review the Sample for the limited purposes required by Paragraph 7.16.C.
  3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's approval (if any) of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. Engineer's Review of Shop Drawings and Samples
  1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the

design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval (if any) will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
  3. Engineer's review and approval (if any) of a separate item as such will not indicate approval of the assembly in which the item functions.
  4. Engineer's review and approval (if any) of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Construction Manager, in consultation with Engineer, will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
  5. Engineer's review and approval (if any) of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
  6. Engineer's review and approval (if any) of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
  7. Neither receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
  8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.
- D. Resubmittal Procedures for Shop Drawings and Samples
1. Contractor shall make required corrections and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for on previous Submittals.
  2. Contractor shall furnish required Shop Drawing and Sample submittals with adequate information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

- E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs
  - 1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to Construction Manager in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. A timely review will be made of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
    - d. If any such Submittal is not accepted, Contractor shall confer with Construction Manager regarding the reason for the non-acceptance and resubmit an acceptable document.
  - 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs—Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

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

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Construction Manager and Engineer are entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.

- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Construction Manager or Engineer;
  2. Recommendation by Construction Manager or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Construction Manager or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Construction Manager;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 Indemnification

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

payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### 7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Construction Manager with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Construction Manager, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Construction Manager.
- D. Owner, Construction Manager, and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

### ARTICLE 8—OTHER WORK AT THE SITE

#### 8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also

arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Construction Manager and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Construction Manager in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this Article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

## 8.02 Coordination

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

### 8.03 Legal Relationships

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, Construction Manager, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner, Construction Manager, and Engineer, and their officers, directors, members, partners, employees, agents, consultants and subcontractors from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of construction managers, engineers,

architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER’S RESPONSIBILITIES**

### 9.01 Communications to Contractor

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

### 9.02 Replacement of Construction Manager or Engineer

- A. Owner may at its discretion appoint a construction manager to replace Construction Manager, provided Contractor makes no reasonable objection to the replacement construction manager. The replacement construction manager’s status under the Contract Documents shall be that of the former Construction Manager.
- B. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer’s status under the Contract Documents will be that of the former Engineer.

### 9.03 Furnish Data

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

### 9.04 Pay When Due

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

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

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

### 9.06 Insurance

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

### 9.07 Change Orders

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

### 9.08 Inspections, Tests, and Approvals

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

### 9.09 Limitations on Owner’s Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or

the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 Undisclosed Hazardous Environmental Condition

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

9.11 Evidence of Financial Arrangements

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

9.12 Safety Programs

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

**ARTICLE 10—CONSTRUCTION MANAGER'S AND ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 Owner's Representative

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

10.02 Visits to Site

- A. Construction Manager will observe the Work on a regular basis. Construction Manager will check the quality, quantity, and progress of the Work; implement Owner's quality assurance program; and administer the Contract as Owner's representative.
- B. Engineer will make visits to the Site at appropriate stages of construction to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Engineer will not make exhaustive or continuous inspections at the Site to check the quality or quantity of the Work. Engineer will report to Construction Manager regarding information obtained during such Site visits and observations.
- C. Construction Manager's and Engineer's visits and observations are subject to all the limitations on Construction Manager's and Engineer's authority and responsibility set forth in Paragraph 10.05. Particularly, but without limitation, during or as a result of Construction Manager's and Engineer's visits or observations of Contractor's Work, neither Construction Manager nor Engineer will supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Determinations for Unit Price Work

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

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work; Exercise of Authority

- A. Construction Manager will render decisions regarding the requirements of the Contract Documents, and judge the quality and acceptability of the Work, pursuant to the specific procedures set forth herein for interpretations, Change Proposals, Applications for Payment, and acceptance of the Work.
  - 1. Before rendering such decisions or judgments, and before exercising its authority with respect to differing subsurface or physical conditions, Underground Facilities, “or equal” and substitute requests, emergencies, Field Orders, and similar matters, Construction Manager will consult with Engineer as to all matters in question involving (a) the design (as set forth in the Drawings, Specifications, or otherwise), (b) the quality or acceptability of the Work under the Contract Documents, or (c) other engineering matters.
  - 2. With respect to such matters, Construction Manager’s decisions and judgments as rendered will be in accord with Engineer’s professional analysis, opinions, recommendations, and conclusions.
- B. In rendering such decisions and judgments, exercising such authority, or providing professional analysis, opinions, recommendations, or conclusions underlying such decisions and judgments, neither Construction Manager nor Engineer will show partiality to Owner or Contractor, and neither Construction Manager nor Engineer will be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, analysis, opinions, recommendations, conclusions, decisions, or judgments conducted or rendered in good faith.
- C. Construction Manager may at any time request that Contractor furnish proposed changes to Contract Price and Contract Times that would result from specified proposed changes to the Contract Documents.

10.05 Limitations on Construction Manager’s and Engineer’s Authority and Responsibilities

- A. Neither Construction Manager’s nor Engineer’s authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Construction Manager or Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Construction Manager or Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Construction Manager or Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Neither Construction Manager nor Engineer will supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance

of the Work. Neither Construction Manager nor Engineer will be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Neither Construction Manager nor Engineer will be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Construction Manager's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of the Contract Documents, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

#### 10.06 Compliance with Safety Program

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

### **ARTICLE 11—CHANGES TO THE CONTRACT**

#### 11.01 Amending and Supplementing the Contract

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

#### 11.02 Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

#### 11.03 Work Change Directives

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
  1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 Field Orders

- A. Construction Manager, in consultation with Engineer, may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times. Such changes will be accomplished by a Field Order and will be binding on Owner and on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

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

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 Unauthorized Changes in the Work

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

#### 11.07 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. Contractor's Fee—When applicable, the Contractor's fee for overhead and profit will be determined as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
    - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier

Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

- d. No fee will be payable based on costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 Change of Contract Times

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

#### 11.09 Change Proposals

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

- b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

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

3. Construction Manager's Initial Review—Construction Manager, in consultation with Engineer, will advise Owner regarding the Change Proposal and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Construction Manager concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Construction Manager may request that Contractor submit such additional supporting data by a date specified by Construction Manager, prior to Construction Manager beginning its full review of the Change Proposal.
  4. Construction Manager's Full Review and Action on the Change Proposal—Upon receipt of Contractor's supporting data (including any additional data requested by Construction Manager), Construction Manager, in consultation with Engineer, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Construction Manager does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Construction Manager's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  5. Binding Decision—Construction Manager's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. Post-Completion—Contractor shall not submit any Change Proposals after Construction Manager issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 Notification to Surety

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

### **ARTICLE 12—CLAIMS**

#### 12.01 Claims

- A. Claims Process—The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
  1. Appeals by Owner or Contractor of Construction Manager's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  3. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Construction Manager has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. Submittal of Claim—The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to Construction Manager and Engineer, for their information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor’s knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. Review and Resolution—The party receiving a Claim shall review it thoroughly and consider its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Construction Manager and Engineer.
- D. Mediation
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  3. Owner and Contractor shall each pay one-half of the mediator’s fees and costs.
- E. Partial Approval—If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim—If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results—If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a

Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

### **13.01 Cost of the Work**

- A. Purposes for Determination of Cost of the Work—The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined based on Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. Costs Included—Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned based on their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Construction Manager, which bids,

if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to construction managers, engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
    - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
  - c. Construction Equipment Rental
    - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
    - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
    - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. Costs Excluded—The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  2. The cost of purchasing, renting, or furnishing small tools and hand tools.
  3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  6. Expenses incurred in preparing and advancing Claims.
  7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

1. When the Work is performed based on cost-plus-a-fee, then:
  - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
  - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price based on Cost of the Work, Contractor's fee will be determined as follows:
    - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
    - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

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

13.02 Allowances

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

- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Construction Manager to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Construction Manager will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Construction Manager will review with Contractor the Construction Manager's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Construction Manager's written decision thereon will be final and binding (except as modified by Construction Manager to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. Adjustments in Unit Price
  1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
  3. Adjusted unit prices will apply to all units of that item.

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

### 14.01 Access to Work

- A. Owner, Construction Manager, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and

advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

#### 14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Construction Manager timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Construction Manager the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. to attain acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

#### 14.03 Defective Work

- A. Contractor's Obligation—It is Contractor's obligation to ensure that the Work is not defective.

- B. Construction Manager's Authority—Construction Manager has the authority to determine, in consultation with Engineer, whether Work is defective, and to reject defective Work.
- C. Notice of Defects—Prompt written notice of all defective Work of which Owner, Construction Manager, or Engineer has actual knowledge will be given to Contractor.
- D. Correction, or Removal and Replacement—Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Construction Manager has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. Preservation of Warranties—When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. Costs and Damages—In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 Acceptance of Defective Work

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

#### 14.05 Uncovering Work

- A. Construction Manager has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Construction Manager, then Contractor shall, if requested by Construction Manager, uncover such Work for Construction Manager's or Engineer's observation, and then replace the covering, all at Contractor's expense.

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

#### 14.06 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 Owner May Correct Defective Work

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

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

### **15.01 Progress Payments**

- A. Basis for Progress Payments—The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Construction Manager. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
  1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Construction Manager for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
  2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. Review of Applications
  1. Construction Manager will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Construction Manager's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Construction Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Construction Manager to Owner, based on Construction Manager's (a) observations of the executed Work, (b) consultations with Engineer, and (c) review of the Application for Payment and the accompanying data and schedules, that to the best of Construction Manager's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager's responsibility to observe the Work.
3. By recommending any such payment Construction Manager will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Construction Manager in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Construction Manager's review of Contractor's Work for the purposes of recommending payments nor Construction Manager's recommendation of any payment, including final payment, will impose responsibility on Construction Manager:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Construction Manager may refuse to recommend the whole or any part of any payment if, in Construction Manager's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Construction Manager will recommend reductions in payment (set-offs) necessary in Construction Manager's opinion to protect Owner from loss because:
    - a. the Work is defective, requiring correction or replacement;
    - b. the Contract Price has been reduced by Change Orders;
    - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
    - e. Construction Manager has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due
1. Ten days after presentation of the Application for Payment to Owner with Construction Manager's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- E. Reductions in Payment by Owner
1. In addition to any reductions in payment (set-offs) recommended by Construction Manager, Owner is entitled to impose a set-off against payment based on any of the following:
    - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
    - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
    - c. Contractor has failed to provide and maintain required bonds or insurance;
    - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
    - e. Owner has incurred extra charges for construction management or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests, and inspections, or return visits to manufacturing or assembly facilities;
    - f. The Work is defective, requiring correction or replacement;
    - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
    - h. The Contract Price has been reduced by Change Orders;
    - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

- j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items which entitle Owner to a set-off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Construction Manager, Owner will give Contractor immediate written notice (with a copy to Construction Manager) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  - 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 Contractor's Warranty of Title

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

#### 15.03 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Construction Manager in writing that the entire Work is substantially complete and request that Construction Manager issue a certificate of Substantial Completion. Contractor shall at the same time submit to Construction Manager the Contractor's proposed punch list of items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, Construction Manager, and Engineer will inspect the Work to determine the status of completion. If the Work is not determined to be substantially complete, Construction Manager will notify Contractor in writing, giving the reasons for the determination.
- C. If the Work is deemed substantially complete, Construction Manager will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Construction Manager will attach to the certificate Construction Manager's proposed punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Construction Manager as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Construction Manager, with Engineer's express approval, concludes that the Work is not substantially complete, Construction Manager will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not

substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Construction Manager, in consultation with Engineer, concludes that the Work is substantially complete, then Construction Manager will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Construction Manager believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 Partial Use or Occupancy

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Construction Manager, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, Construction Manager and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
  - 2. At any time, Contractor may notify Owner and Construction Manager in writing that Contractor considers any such part of the Work substantially complete and request Construction Manager to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, Construction Manager and Engineer will inspect that part of the Work to determine its status of completion. If Construction Manager, in consultation with Engineer, does not consider that part of the Work to be substantially complete, Construction Manager will notify Owner and Contractor in writing, giving the reasons for its determination. If

Construction Manager, in consultation with the Engineer, considers that part of the Work to be substantially complete, then for that part of the Work the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion, the division of responsibility, and access.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 Final Inspection

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

#### 15.06 Final Payment

##### A. Application for Final Payment

1. After Contractor has, in the opinion of Construction Manager, in consultation with Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects or will so pass upon final payment.
  - d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner

at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

- B. Construction Manager's Review of Final Application and Recommendation of Payment—If, on the basis of Construction Manager's observation of the Work during construction and final inspection, consultation with Engineer regarding completion, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Construction Manager is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Construction Manager will, within 10 days after receipt of the final Application for Payment, indicate in writing Construction Manager's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Construction Manager's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Construction Manager will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. Notice of Acceptability—In support of its recommendation of payment of the final Application for Payment, Construction Manager, with Engineer's express approval, will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. Completion of Work—The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Construction Manager's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. Final Payment Becomes Due—Upon receipt from Construction Manager of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Construction Manager for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Construction Manager.

#### 15.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim or appealed under the provisions of Article 17.

#### 15.08 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the

Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;
  2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of construction managers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 Owner May Suspend Work**

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Construction Manager. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an

adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

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

thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 Owner May Terminate for Convenience

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

#### 16.04 Contractor May Stop Work or Terminate

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

## **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

### **17.01 Methods and Procedures**

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

## **ARTICLE 18—MISCELLANEOUS**

### **18.01 Giving Notice**

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

### **18.02 Computation of Times**

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

### **18.03 Cumulative Remedies**

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if

repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 Limitation of Damages

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

18.05 No Waiver

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

18.06 Survival of Obligations

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

18.07 Controlling Law

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

18.08 Assignment of Contract

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

18.09 Successors and Assigns

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

18.10 Headings

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

**SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT—  
CONSTRUCTION MANAGER AS ADVISOR SERIES**

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# SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT— CONSTRUCTION MANAGER AS ADVISOR SERIES

These Supplementary Conditions amend or supplement EJCDC® CMA-700, Standard General Conditions of the Construction Contract—Construction Manager as Advisor Series (2021). The General Conditions remain in full force and effect except as amended.

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

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

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### SC-1.01 Defined Terms

- A. In Paragraph 1.01.A, in the first sentence replace "Contract Documents" with "Contract Documents, except the Agreement."
- B. In Paragraph 1.01.A.3, replace "Construction Manager" with "Owner, Construction Manager, and Engineer."
- C. Delete Paragraph 1.01.A.4 entirely and insert the following in its place:
  4. Proposal—The documents submitted by an Offeror to establish the proposed Contract Price and Contract Times and provide other information and certifications as required by the Proposal Requirements. The term "Bid" shall have the same meaning as "Proposal" when used elsewhere in these Contract Documents.
- D. Delete Paragraph 1.01.A.5 entirely and insert the following in its place:
  5. Offeror—The individual or entity who submits a Proposal directly to the Owner. The term "Bidder" shall have the same meaning as "Offeror" when used elsewhere in these Contract Documents.
- E. Delete Paragraph 1.01.A.6 entirely and insert the following in its place:
  6. Proposal Documents—The Proposal Requirements, the proposed Contract Documents, and Addenda. The term "Bidding Documents" shall have the same meaning as "Proposal Documents" when used elsewhere in these Contract Documents.
- F. Delete Paragraph 1.01.A.7 entirely and insert the following in its place:
  7. Proposal Requirements—The Request for Proposals, Instructions to Offerors, Proposal Security, Proposal Form and attachments, and required certifications and affidavits. The term "Bidding Requirements" shall have the same meaning as "Proposal Requirements" when used elsewhere in these Contract Documents.
- G. In Paragraph 1.01.A.9, replace "Construction Manager" with "Owner."

- H. Change the following in Paragraph 1.01.A.10:
  - 1. In Paragraph 1.01.A.10.a, replace “Construction Manager, in consultation with Engineer,” with “Owner, in consultation with Construction Manager and Engineer,”.
  - 2. In Paragraph 1.01.A.10.b, replace “Construction Manager’s decision, in consultation with Engineer,” with “Owner’s decision, in consultation with Construction Manager and Engineer,”.
- I. In Paragraph 1.01.A.19, add the following to the end of the sentence: “, also referred to in the Contract Documents as Plans.”
- J. Delete Paragraph 1.01.A.31 entirely and insert the following in its place:
  - 31. Owner – The City of Lewisville, Texas.
- K. Delete Paragraph 1.01.A.43 entirely and insert the following in its place:
  - 43. Successful Offeror—The Offeror to which Owner awards the Contract. The term “Successful Bidder” shall have the same meaning as “Successful Offeror” when used elsewhere in these Contract Documents.
- L. In Paragraph 1.01.A.44, add the following to the end of the sentence: “, attached to the Agreement as an exhibit.”
- M. Add a new Paragraph 1.01.A.51:
  - 51. Proposal Security—The financial security in the form of a bid bond, or other form approved by the Owner, provided by Offeror at the time the Proposal is submitted and held by Owner until the Agreement is executed and the evidence of insurance, performance, payment, and other bonds required by the Contract Documents are provided.

## **ARTICLE 2—PRELIMINARY MATTERS**

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

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

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

## 2.02 Copies of Documents

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

- A. Owner shall furnish to Contractor one copy in electronic portable document format (PDF) of conformed Contract Documents incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully signed counterpart of the Agreement). Contractor may make as many prints of the documents as needed for construction. Engineer will not provide printed or hard copies to the Contractor.

## 2.05 Acceptance of Schedules

SC-2.05 In the first sentence of Paragraph 2.05.A.1, replace "Construction Manager" with "Owner."

### **ARTICLE 3—CONTRACT DOCUMENTS—INTENT, REQUIREMENTS, REUSE**

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

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

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

4.01 Commencement of Contract Times; Notice to Proceed

SC-4.01 Delete the last sentence in Paragraph 4.01.A.

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

5.01 Availability of Lands

SC-5.01 Delete Paragraph 5.01.B in its entirety.

5.03 Subsurface and Physical Conditions

SC-5.03 Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following table lists the reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Geotechnical Engineering Study, Lewisville WWTP Aeration Basin Expansion, Kleinfelder, Inc.	July 17, 2024	Appendix B (Boring Logs, Testing Data)
Geotechnical Engineering Data Report, Prairie Creek Aeration Basin Expansion, Kleinfelder, Inc.	May 16, 2025	Appendix A (Boring Logs, Testing Data)
SUE Data, the Rios Group	July 11, 2023	Pothole Results
SUE Data; Archer Western Construction	August 19, 2024	Pothole Results
Potholing Report, Bulldog Services	April 29, 2025	Pothole Results

- F. The following table lists the drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
None		

5.06 Hazardous Environmental Conditions

SC-5.06 Amend this section as follows:

- A. Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The following table lists the reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely:

Report Title	Date of Report	Technical Data
Asbestos Inspection Report, Avanco Environmental, Inc.	June 3, 2024	Asbestos testing of facilities scheduled for demolition
Lead-Based Paint Inspection, Itech Environmental Services	June 1, 2024	Lead-based paint inspection of facilities scheduled for demolition

- B. Delete Paragraph 5.06.I in its entirety.

## ARTICLE 6—BONDS AND INSURANCE

6.02 Insurance – General Provisions

SC-6.02.N Replace the first sentence in Paragraph 6.02.N with the following: “Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, non-renewed, or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Owner.”

### 6.03 Contractor’s Insurance

SC-6.03.B Supplement Paragraph 6.03.B with the following provisions after Paragraph 6.03.B.5:

6. Only deductibles applicable to property damage are acceptable; if applicable, they must be shown on the certificate of insurance and approved by Texas.
7. “Claims made” policies will not be accepted.
8. Upon request, certified copies of all insurance policies shall be furnished to the Owner.

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. Other Additional Insureds—As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability and automobile liability policies must include as additional insureds (in addition to Owner, Construction Manager, and Engineer) the following:
  1. The Owner, its officers, officials, employees, boards/commissions and volunteers are to be added as “Additional Insured” as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers. It is agreed that the business auto policy under “Who is an Insured” automatically provides liability coverage in favor of the Owner. The coverage shall include defense of claims against the Owner as additional insured.
  2. The Contractor’s insurance coverage shall be primary and non-contributory insurance as respects the Owner, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
  3. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Owner, its officers, officials, and employees, Boards and Commissions or volunteers.
  4. The vendor’s insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured’s liability.
- E. Workers’ Compensation and Employer’s Liability—Contractor shall purchase and maintain workers’ compensation and employer’s liability insurance, including, as applicable, United States Longshoreman and Harbor Workers’ Compensation Act, Jones Act, stop-gap employer’s liability coverage for monopolistic states, and foreign voluntary workers’ compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions). A waiver of subrogation is required, and the policy must show coverage for the state of Texas.

<b>Workers' Compensation and Related Policies</b>	<b>Policy limits of not less than:</b>
<b>Workers' Compensation</b>	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
<b>Employer's Liability</b>	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000

- F. Commercial General Liability—Claims Covered—Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
  2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. Commercial General Liability—Form and Content—Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.
  6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
  8. A waiver of subrogation specific to the Owner should be included and endorsed to the policy.
  9. A copy of the schedule of forms must be submitted to confirm the coverage meets the requirements.
- H. Commercial General Liability—Excluded Content—The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
  2. Any exclusion for water intrusion or water damage.
  3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
  4. Any exclusion of coverage relating to earth subsidence or movement.
  5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
  6. Any limitation or exclusion based on the nature of Contractor’s work.
  7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- I. Commercial General Liability—Minimum Policy Limits

<b>Commercial General Liability</b>	<b>Policy limits of not less than:</b>
General Aggregate	\$7,000,000
Products—Completed Operations Aggregate	\$7,000,000
Personal and Advertising Injury	\$6,000,000
Bodily Injury and Property Damage—Each Occurrence	\$6,000,000

- J. Automobile Liability—Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis. An additional insured endorsement and waiver of subrogation should be endorsed to the policy naming the Owner.

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
Combined Single Limit (Bodily Injury and Property Damage)	\$6,000,000

- K. Umbrella or Excess Liability—Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

<b>Excess or Umbrella Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence	\$5,000,000
General Aggregate	\$10,000,000

- L. Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements—Contractor may meet the policy limits specified for employer’s liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy’s policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$3,000,000 after accounting for partial attribution of its limits to underlying policies, as allowed above.
- M. Contractor’s Pollution Liability Insurance—Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor’s operations and completed operations. This insurance must be maintained for no less than three years after final completion.

<b>Contractor’s Pollution Liability</b>	<b>Policy limits of not less than:</b>
Each Occurrence/Claim	\$5,000,000

- N. Contractor’s Professional Liability Insurance—If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

<b>Contractor’s Professional Liability</b>	<b>Policy limits of not less than:</b>
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

## 6.04 Builder's Risk and Other Property Insurance

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- F. Builder's Risk Requirements—The builder's risk insurance must:
1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).
    - a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
    - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor. Upon notification that the Builder's Risk policy does not or cannot afford such coverage, Contractor shall secure such coverage the form of which and material terms shall be mutually agreed to by the parties prior to any work being performed.
  2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
  3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, construction managers, engineers, and architects).
  4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
  5. extend to cover damage or loss to insured property while in transit.

6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties required to be insured will be referred to collectively as "insureds."
11. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:
  - a. Pre-purchased, Owner-furnished electrical items to include: motor control center, switchboard, and padmount transformer; purchase value of \$777,980.

6.05 Property Losses; q

SC-6.05 Delete Paragraph 6.05.A.1, Paragraph 6.05.B.1, and Paragraph 6.05.C entirely.

**ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

7.02 Supervision and Superintendence

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

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

7.05 "Or Equals"

SC-7.05 Replace all references to "Construction Manager" with "Engineer." Delete all occurrences of "in consultation with Engineer." Engineer will evaluate and determine all "or-equal" requests.

7.06 Substitutes

SC-7.06 Replace all references to "Construction Manager" with "Engineer." Delete all occurrences of "in consultation with Engineer." Engineer will evaluate and determine all substitution requests.

7.08 Patent Fees and Royalties

SC-7.08.B Delete Paragraph 7.08.B in its entirety.

#### 7.10 Taxes

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

- A. Owner is exempt from payment of sales and compensating use taxes of the State of Texas and of cities and counties thereof on all materials to be incorporated into the Work.
  - 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
  - 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

#### 7.11 Laws and Regulations

SC-7.11.B Add the following sentence to the end of Paragraph 7.11.B: "Nothing in this section shall be construed to require Contractor to indemnify or hold harmless the Engineer in any manner which would be considered void or unenforceable under Tex. Civ. Prac. and Rem. Code Sec. 130.002, as it exists or may be amended."

#### 7.16 Submittals

SC-7.16.E.1 Delete in its entirety Paragraph 7.16.E.1.b, and replace with the following:

- b. Engineer will provide timely review of such Submittals in accordance with the Schedule of Submittals accepted by Engineer. When Engineer deems such Submittals to be not in conformance with the Contract Documents, Engineer will furnish to Contractor written indication of such non-acceptance. When such Submittals are acceptable, Engineer's acceptance will be indicated in accordance with Specifications Section 01 33 00 – Submittal Procedures.

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

No suggested Supplementary Conditions in this Article.

### **ARTICLE 9—OWNER'S RESPONSIBILITIES**

No suggested Supplementary Conditions in this Article.

### **ARTICLE 10—CONSTRUCTION MANAGER'S AND ENGINEER'S STATUS DURING CONSTRUCTION**

10.05 Limitations on Construction Manager's and Engineer's Authority and Responsibilities

SC-10.05.D In the first sentence, replace “Construction Manager’s” with “Construction Manager’s and Engineer’s.”

## **ARTICLE 11—CHANGES TO THE CONTRACT**

### 11.01 Amending and Supplementing the Contract

SC-11.01 Add the following paragraph after Paragraph 11.01.C:

- D. Notwithstanding any provision herein or anywhere in the Agreement, the amending or supplementation of the Contract must be in compliance with all applicable Laws and Regulations, and all requirements placed upon Owner herein are understood to be to the extent permitted by Law and Regulations.

### 11.09 Change Proposals

SC-11.09.B.4 Delete in its entirety Paragraph 11.09.B.4, and replace with the following:

4. Construction Manager’s Full Review and Action on the Change Proposal—Upon receipt of Contractor’s supporting data (including any additional data requested by Construction Manager), Construction Manager, in consultation with Engineer, will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor’s supporting data, provide a recommendation to Owner. Owner will either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Construction Manager and Contractor. If Owner does not take action on the Change Proposal within 30 days, then Contractor may at any time thereafter submit a letter to Owner indicating that as a result of Owner’s inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

SC-11.09.B.5 Delete in its entirety Paragraph 11.09.B.5.

## **ARTICLE 12—CLAIMS**

### 12.01 Claims

SC-12.01.A.1 Delete in its entirety Paragraph 12.01.A.1, and replace with the following:

1. Appeals by Contractor of Owner’s decisions regarding Change Proposals;

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES, UNIT PRICE WORK**

### 13.03 Unit Price Work

SC-13.03.D Delete in its entirety Paragraph 13.03.D, and replace with the following:

- D. Construction Manager will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Construction Manager will review with Contractor the Construction Manager’s preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

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

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

No suggested Supplementary Conditions in this Article.

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

##### 15.01 Progress Payments

SC-15.01.A In the first sentence of Paragraph 15.01.A, replace "Construction Manager" with "Construction Manager, Engineer, and Owner."

SC-15.01.D Amend the first word of Paragraph 15.01.D.1 by striking out "Ten" and replacing with "Thirty (30)".

##### 15.03 Substantial Completion

SC-15.03 Delete in its entirety Paragraph 15.03.C, and replace with the following:

- C. If the Work is deemed substantially complete, Construction Manager will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Construction Manager will attach to the certificate Construction Manager's proposed punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Construction Manager as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Construction Manager, with Engineer's express approval, concludes that the Work is not substantially complete, Construction Manager will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons for the conclusion. If Owner does not object to the provisions of the certificate, then Construction Manager will, on behalf of Owner, within said 14 days, execute and deliver to Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Owner believes justified after consultation with Construction Manager and Engineer.

##### 15.04 Partial Use or Occupancy

SC-15.04 Delete in its entirety Paragraph 15.04.A.2, and replace with the following:

2. At any time, Contractor may notify Owner and Construction Manager in writing that Contractor considers any such part of the Work substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

15.08 Correction Period

SC-15.08 Add the following new Paragraph 15.08.G:

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be two years.

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

No suggested Supplementary Conditions in this Article.

**ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES**

No suggested Supplementary Conditions in this Article.

**ARTICLE 18—MISCELLANEOUS**

No suggested Supplementary Conditions in this Article.



November 25, 2025

## Addendum #1

### #26-02-C Prairie Creek Wastewater Treatment Plant – Aeration Basin Expansion Project

TO: ALL PROSPECTIVE BIDDERS AND PLAN HOLDERS

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of the Prairie Creek Wastewater Treatment Plant Aeration Basin Expansion Project, advertised on October 18, 2025, as fully and completely as if the same were fully set forth herein:

#### CHANGES TO SPECIFICATIONS:

1. SECTION 01 29 76

- Add Item 1.4 as follows:

“1.4 SCHEDULE OF PAYMENTS FOR CONSTRUCTION

A. Submit a schedule indicating the anticipated schedule of payments to be made by the Owner. Schedule shall indicate:

1. The Application for Payment number
2. Date the request is to be submitted
3. Anticipated amount of payment to be requested.
4. The schedule shall be reconciled with activities in the Construction Progress Schedule and the Schedule of Values.

5. Submit the initial schedule of payments with the Preliminary Schedules as defined in Article 2.03 of the General Conditions.

B. Update the Schedule of Payments for Construction at least quarterly as necessary to provide a reasonably accurate indication of the funds that the Owner will need to have available to make payment to the Contractor for the Work performed. Submit each updated Schedule of Payments together with the relevant Contractor’s Pay Application.”

2. SECTION 33 05 61

- Add Item 2.1/A/5. “Epoxy Coating:”
- Add Item 2.1/A/5/a. “Warren Environmental 301-14 High Performance Epoxy or approved equal:”
- Item 2.2/D/2/ replace with “Exterior vertical wall surfaces.”
- Item 2.2/D/2/a. Delete text “and interior”.
- Add Item 2.2/D/3. “Interior surfaces:”



- Add Item 2.2/D/3/a. “High performance, high build epoxy for all interior surfaces. Spray apply 100% solids epoxy containing no VOC’s with a minimum thickness of 150 mils in a single application.”
3. SECTION 40 05 00
- Items 3.10/A/1/c/ 1), 3.10/B/1/c/ 1), 3.10/D/1/c/ 2), 3.10/E/1/c/ 2),  
Replace each paragraph with:  
“Push-on, and mechanical joints (ductile iron): See Section 40 05 19.”
  - Item 3.10/B/2/a/ 2) d) Replace item with “Coating: Bituminous.”
  - Item 3.10/E/2/b/ 2) a) revise to state “Materials: PVC, DR18, **PR235**.”
4. SECTION 40 05 19
- Item 2.2/A/3/d/ append to paragraph “as specified in Section 40 05 00.”
  - Add Item 2.2/D/2/b. “SBR per AWWA/ANSI C111/A21.11 is also acceptable for applications other than potable water having chloramines.”
5. SECTION 40 05 23
- Delete Item 2.1/H including subparagraphs 1-2.
  - Add Item 2.1/G/8. “Temperature Rating: 300°F, minimum.”
6. SECTION 40 05 59
- Add Item 2.1/A/4/d. “Waterman.”
7. SECTION 40 05 64
- Item 2.3/C/1. Revise to state “Body: ASTM A351 Type 304 stainless steel, Grade **CF8**.”
8. SECTION 43 11 23
- Item 2.14/A/5/c/ c) Replace with “100/1000 Mbps twisted pair ports (RJ45) as required for communication with devices as depicted in the Contract Documents. 16 port minimum for MCP. 4 port minimum for LCPs.”
  - Item 2.14/A/5/c/ c) 1. Revise to “at least one spare 100/1000 MBit/s port ...”
  - Item 2.14/C/4 Relace paragraph with: “Power supply: 120VAC/60 Hz/1ph, 20 amp from skid-mounted / vendor-furnished control power transformer (480V to 120V). Vendor shall also furnish any 24VDC power supplies needed for any vendor-furnished internal components or field devices that may require 24VDC.”
9. SECTION 43 25 13
- Add Item 2.1/A/1/e. “Cornell.”

CHANGES TO DRAWINGS:

10. DRAWING 00Y631
- Revise “HMI WORK STATION 1” in Existing SCADA Room from black line type to gray line type to clarify no work required there.



**GENERAL CLARIFICATIONS TO BIDDERS (Questions submitted via pre-proposal meeting or Bonfire):**

The inlet pressure losses at blower inlet flange shall not exceed 0.2 psi. There is an alarm triggered in blower local control panel before it reaches 0.2 psi so the dirty filters can be cleaned or replaced. It is highly recommended to update pressure values as following: e. Atmospheric Pressure: 14.45 psia f. Inlet Pressure at blower inlet flange: 14.25 psia

No change to inlet design pressure. Alarm setpoints may be discussed during construction and shop drawings.

To have fair evaluation on both air cooled and glycol cooled blowers, we request that make-up air be acceptable for blowers cooled by glycol.

Make-up air is not acceptable for blowers cooled by glycol.

Unlike other blower suppliers, our turbo blower is equipped with an integrated dual filtration (pre-filter and main filter) system and silencer at blower inlet flange box. Please confirm if an external inlet filter silencer is still required for our blowers.

An external filter silencer is still required.

20" discharge is oversized based on our blower performance calculation. We recommend 16" discharge isolation valve for our blower system. Please advise if it is acceptable.

Not acceptable. Note that 16" discharge check valves are allowed per Section 43 11 23/2.11/F.

Section 40 67 63 is pertaining to MCP UPS. Blower UPS integral to blower enclosure will be as per blower supplier's standard.

For Turbo Blowers: Per Section 43 11 23/2.14/A/7/b, UPS for Blower Local Control Panels may be Manufacturer Standard.



Our standard power supply to LCP and power switch is 24VDC.

See related addendum specification change above.

Please confirm if 8 port ethernet switch for blower LCP is acceptable.

8 port ethernet switch is acceptable for blower LCP. See related addendum specification change above.

Our standard painting for carbon steel enclosures is Zinc primer and powder coated with a total dry film thickness of 4 mils dft. Please consider accepting manufacturer's standard coating to avoid unnecessary cost increase.

Section 43 11 23/2.15/A/5 states "Powder coating, 4 mils minimum total dry film thickness, is an acceptable alternative to the above painting system."

Please confirm that blower LCP equipped with PLC can directly communicate with Plant Control System for staging blowers while blower LCP equipped with microprocessor shall be supplied with MCP to communicate with Plant Control System

Regarding Turbo Blowers: Not acceptable. MCP is required.

Piping system 10, potable water, calls for buried C900 to be DR18 PR165. Is this to be DR18 PR235 or DR25 PR165?

See addendum change above to Specification 40 05 00.



Piping systems 2,3,9, & 10 call for rubber under their respective general specification sections for mechanical and push-on joints. 40 05 19 lists mechanical joint gaskets to be EPDM. Are push-on and mechanical joint gaskets for these systems to be EPDM?

See addendum changes above to Specifications 40 05 00 and 40 05 19.

Piping system 3 is the only buried DI that lists zinc with bituminous for the coating (assumed to be for pipe and fittings). Please confirm that this is the only piping system requiring arc spray zinc.

See addendum change above to Specification 40 05 00.

Elastomeric bellows in section 40 05 23 are listed as EPDM, but 40 05 23 2.1H lists FKM and references 40 05 00, which also lists FKM. For these bellows, are they to be provided per spec except with FKM instead of EPDM?

See related addendum changes above to Section 40 05 23. FKM gasket requirements in Section 40 05 00 do not apply to elastomeric bellows type expansion joints.

In 40 05 64, are the HP BFV bodies to be 304ss or CF8M(316ss)?

See related addendum changes above to Section 40 05 64.

For the yard piping tie-ins referenced in 01 14 16, where the existing piping material is not identified, are we to assume the existing piping is the same type of pipe as the proposed?

Where existing piping material is not identified, Contractor should assume adapters to existing piping material will be required.

Can a prevailing wage scale be provided?

Prevailing wages do not apply to this project.



Regarding the Davit Cranes at the Aeration Basin. Do we need to provide a davit crane at each davit crane base, or do we just need to provide one davit crane that will be moved around to where it needs to be used at?

There are no requirements for additional davit cranes besides one (1) crane furnished by propeller pump manufacturer. See related requirements here:

See Drawings 21D102 and 21D103, Note 4 "CONTRACTOR-FURNISHED DAVIT CRANE BASES SHALL BE COMPATIBLE WITH DAVIT CRANE FURNISHED BY SECTION 43 23 24 VENDOR.

Section 43 23 24/2.5/G/1. (Propeller Pumps Manufacturer) "Provide one portable davit crane ..."

Section 43 23 24/2.5/G/3/5 "Contractor shall furnish additional davit crane bases compatible with vendor-furnished davit crane at locations shown as "Contractor furnished" on the Areas 21 and 22 drawings.

The Bid form show a Bid Item of "Reinforcement Replacement (Reference area 10 drawings and section 03 01 30) but there is not a pay item description of this bid item. Does this need to be a separate bid item, or can it be in the entire project bid item?

This is required to be a separate bid item. See Section 01 22 00/1.5/F for related details.

Do the insurance requirements stated in the supplemental conditions apply to subcontractors as well?

Refer to General Conditions §7.07.

Part 2.2D in Specification 33 05 61 specifies black mastic asphalt compound to be applied on both the interior and exterior wall surfaces of manholes. Note 2 for Detail 1 on Sheet 99C564 calls for 150 mils of 100% epoxy to be sprayed on interior. Please clarify intentions.

See related addendum changes above to Section 33 05 61.



We are hereby requesting the approval to use AWWA 153 MJ Fittings on all sizes for buried applications. Spec Section 40 05 00 3.0 Piping Schedules has the AWWA MJ C153 fittings allowed 3" thru 16" however 40 05 19 2.2 3.d has no size limitations. Please be advised the AWWA C153 MJ Fittings are much more common and readily available than the C110 version. Therefore, please allow AWWA C153 MJ Fittings to be used on all sizes for buried applications. Thank you.

C110 standard MJ Fittings are required where indicated in Section 40 05 00. See related addendum changes above to Section 40 05 19.

Is there sludge removal required for this project? If so, which structures and what are the estimated volumes?

Sludge removal is required per Section 01 14 16/1.5/B/6. Note also list there of structures not requiring sludge removal by Contractor.

Can Waterman be named as an approved manufacturer in the Fabricated Stainless Steel Slide Gates Specification (40 05 59).

See related specification change above.

Please confirm the requirement for HMI Workstation 1 as shown on 00Y631. If required, please provide a specification.

There is no work at HMI Workstation 1 in this project. See above addendum change.

Please confirm the current SCADA/HMI system software running on the existing HMI workstation at this facility.

Proficy iFix 5.9 is the SCADA system software.



Can you please post the pre-proposal/site walk sign sheets?

The City makes pre-proposal sheets available only with the release of Addendum #1. See Addendum #1. There is no sign-in sheet for the site visit.

Is an estimated cost available?

The opinion of probable construction cost is in the range of \$67 to \$70 million US Dollars.

Is a prebid meeting and site visit sign in sheet available?

The City makes pre-proposal sheets available only with the release of Addendum #1. See Addendum #1. There is no sign-in sheet for the site visit.

Could you please provide a soils report for this project?

Geotechnical reports are now available on Bonfire.

Can you extend the question deadline to November 26th?

Addressed elsewhere in this Addendum.

On File 12 - Vendor Submittal Information Form, #8b - can you clarify if you are requiring a Certificate of Good Standing with the Texas SOS website or other type of documentation?

The City will accept multiple documents as proof of your entity being a registered business for the State of Texas. You may provide a Certificate of Fact, Certificate of Good Standing, Certificate of Filing, or a screenshot from the website that shows your filing status and full approved business name.



Can you provide the electronic CAD files with Proposed and Existing grades ?

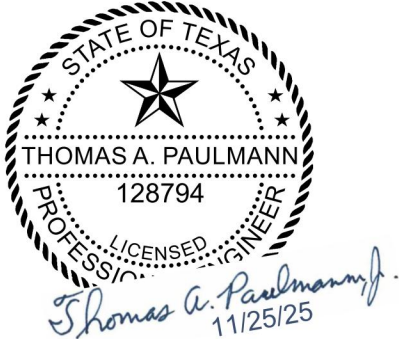
Electronic CAD files will be provided to the successful Proposer, if desired, following Award of the Project.



All items in conflict with this Addendum are hereby deleted.

THIS ADDENDUM IS MADE PART OF THE REQUEST FOR PROPOSALS AND SHALL BE ACKNOWLEDGED IN THE PROPOSAL FORM.

HDR ENGINEERING, INC.



Thomas Paulmann, P.E.  
Engineer  
Texas Firm Registration No. F-754



December 10, 2025

## Addendum #2

### #26-02-C Prairie Creek Wastewater Treatment Plant – Aeration Basin Expansion Project

**TO: ALL PROSPECTIVE BIDDERS AND PLAN HOLDERS**

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of the Prairie Creek Wastewater Treatment Plant Aeration Basin Expansion Project, advertised on October 18, 2025, as fully and completely as if the same were fully set forth herein:

#### CHANGES TO SPECIFICATIONS:

1. SECTION 40 73 00
  - Add Item 2.2/A/1/d. “Ashcroft (Model B4)”
2. SECTION 46 51 33
  - Add Item 2.1/A/3. “Aquarius Technologies”

#### CHANGES TO DRAWINGS:

3. DRAWING 00C762
  - Add Keynote 9 callout on Section 2 at east structural pipe support tower (STA. 1+25.37).
  - Add Keynote 9: “FURNISH TWO X TXDOT STANDARD SIGNS - W12-2A PER TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES. EACH SIGN SHALL INDICATE CLEARANCE (STATED VALUE 3” LESS THAN ACTUAL MINIMUM CLEARANCE) OVER ROADWAY OF 36”-AA PIPE. MOUNT ON NORTH AND SOUTH SIDES OF EAST PIPE SUPPORT TOWER. FURNISH SUPPORT BRACKETS IN MATERIALS AND FINISH TO MATCH SUPPORT TOWER AND HARDWARE IN 316 SST MATERIALS.
  - Section 2 support callout “ “H” SLIEE SUPPORT” revise to “ “H” SLIDE SUPPORT”.
  - Section 2 callout “STRUCTURAL PIPE SUPPORT TOWER SEE DETAILS ON 99S506 AND 99S507” revise to “STRUCTURAL PIPE SUPPORT TOWER SEE DETAILS ON 99S508 THROUGH 99S510”



4. DRAWINGS 31D101, 31D301, 31D302

- Revise drawings as indicated in attached drawings 31D101, 31D301, 31D302.

5. DRAWING 60X102

- Revise Keynote 1 text excerpt from “DEMOLISHED TO 5’ BELOW FINAL GRADE” to “DEMOLISHED TO 5’ BELOW EXISTING GRADE”.



**GENERAL CLARIFICATIONS TO BIDDERS (Questions submitted via Bonfire):**

For this project, will the City be directly responsible for contracting the Construction Materials Testing (CMT) laboratory, or should the contractor include CMT services within their scope and procure the testing lab themselves?

The City will hire the CMT laboratory for any code-required Special Inspections as described in Section 01 45 33, §1.4. Per Section 03 05 05, §1.2, the Contractor is required to hire a testing agency to perform preconstruction testing of materials and mixes proposed by the Contractor to indicate compliance with the Contract Documents and as required per the Contractor's QA/QC plan.

Can Hydro Gate be named as an approved manufacturer in the Fabricated Stainless Steel Slide Gates Specification (40 05 59)?

Hydro Gate offering has not been evaluated.

Will Ashcroft Pressure Switches be acceptable to be consistent with Gauges and Seals listed?

See above specification revision.

There are three conditions that are required to be hit by the pumps: Primary Condition: 1860 gpm at 31 ft, min 81% efficiency, NPSHr less than 9.5 ft, secondary Condition: 1740 gpm at 33 ft, min 81% efficiency, NPSHr less than 9.5 ft, and runout Condition: 2650 gpm at 20 ft, min 73% efficiency, NPSHr less than 15 ft. Is it required for the pump to hit all three conditions at full speed, or would utilizing a VFD be acceptable in order to hit each?

It is acceptable to use a VFD to turndown between primary or secondary conditions.



With KSB's proposed Sewatec K 200-402, we cannot guarantee that the pump will not overload a 20 HP motor over the entire curve at full speed. At the runout condition, we are expecting a higher head than what is specified, approximately 23 ft, hence the required HP is slightly higher. We would like to propose to use the VFD to slow the pump down and hit the Runout Condition at reduced speeds. This will keep the power under 20 HP. Would that route be acceptable?

Not acceptable.

KSB's efficiency at primary and secondary conditions will be less than the specified 81% at 79.9% and 79.4%, respectively. Additionally, seals will be KSB standard tandem seals with oil bath (enclosed bearing frame). No throat bushing will be used which will require no external flush on the seals and no shaft sleeve is required due to the tandem seals. Lastly, KSB will have a sphere size of 3.1" vs the specified 4.0". Will these changes be acceptable in order to allow KSB to participate in the bid? Efficiency at primary and secondary conditions will be less than 81%. Efficiency at runout condition will be less than 73% Seals will be KSB standard tandem seals with oil bath (enclosed bearing frame). No throat bushing will be used. This also means that they don't need external flush on the seals, which could save the contractor some money. No shaft sleeve is required due to the tandem seals. Wear rings will be wear resistant duplex SS and will not have 50 BHN difference Suction will be 8" in lieu of specified 10" Sphere size of 3.1" vs. a specified 4.0" Centerline discharge vs. tangential discharge shown on drawings.

Not acceptable.

Is there a laydown / Stockpile area for excess waste materials from excavation ?

Coordinate with Owner and RPR during construction.

Is there a place on site to waste the Rock , Sand and other filter media from the Existing tank demolition ?

Contractor to dispose offsite per Note 4 on Drawing 60X102 and per Section 01 41 00 Demolition, §3.3/B/.



are there any known Contaminated Soils at the Demo locations ?

The Owner is not aware of contaminated soils at the demolition locations.

Per Sheet 60X101- for Trickling Filter 2, What is the intent of removing additional 5 feet of existing soils under the Slab for ONLY half of the structure ?

60X101, Note 2, describes "DEMOLISH STRUCTURE TO 5-FT BELOW EXISTING GRADE NOTED ON CIVIL DRAWINGS". Existing grades around these structures are shown on 00C140I. Removal of additional soils below the structure is not mentioned. Full-depth removal of east portion of structure is required for installation of WAS and ABI piping shown on Civil Yard Piping drawings 00C163I and 00C163.

Please provide limits structure than can be Buried per Note 6 on sheet 60X101 .Please Explain the Sequence required to Demo Final Clarifier 2.

Note 5 on 60X101 states "DEMOLISH ENTIRE STRUCTURE TO 3-FT BELOW EXISTING GRADE NOTED ON CIVIL DRAWINGS ... DEMOLISH NORTH HALF OF THE STRUCTURE COMPLETELY INCLUDING BASE SLAB AND UNDERDRAIN SYSTEM ... BURYING REMAINING CONCRETE STRUCTURE." The sequence to demolish Final Clarifier No. 2 is intended to avoid undermining the plant road south of the structure.

Drawings show a 4" mudslab beneath 24"-36" flexbase caps. Given the weight of the flexbase, the mudslab may crack and lose integrity. Please confirm design intent.

Mudslab location is correct as shown. Design intent of mudslab is to protect the exposed soils against disturbance or excessive drying.



Site Layout 00C120 shows north existing asphalt as Proposed Asphalt Replacement per Detail 1/99C502 . Please confirm this is the correct detail for Asphalt paving.

This area is where the 36" RAS line will be installed, and pavement will need to be demoed and replaced for the installation. Detail 1/99C502 is the correct detail for areas of asphalt replacement. All proposed new asphalt paving should reference detail 2/99C503.

Is there a laydown area for Office Field Trailers with Utility Hookup ?

The field immediately west of the sludge drying beds is available for Contractor trailers and general laydown, see the stabilized construction entrance / exit indicated on 00C103.

See Section 01 51 05, §1.2, regarding temporary utilities.

Referring to Sheet 60X101, Note 1 requires removal of the structure to 5 feet below Existing grade. However, Sheet 60X102, Note 1 requires removal of the structure to 5 feet below Final grade. Please clarify which condition governs the removal depth.

See related Drawing change above.

Please provide a drawing for the existing Trickling Filter Tanks and Clarifier that shows BOTH existing Grades and Final grades, including existing wall elevations and slab-on-grade elevations. We are not able to identify the limits of demolition and the limits of structures that may be abandoned and buried in place

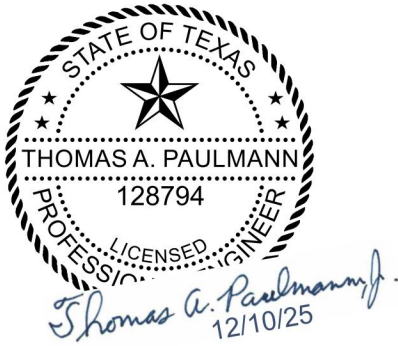
Existing grades are shown on drawing 00C140I and final grades are shown on drawings 00C141 through 00C144. Wall elevations are shown on 60X103 and 60X104.



All items in conflict with this Addendum are hereby deleted.

THIS ADDENDUM IS MADE PART OF THE REQUEST FOR PROPOSALS AND SHALL BE ACKNOWLEDGED IN THE PROPOSAL FORM.

HDR ENGINEERING, INC.

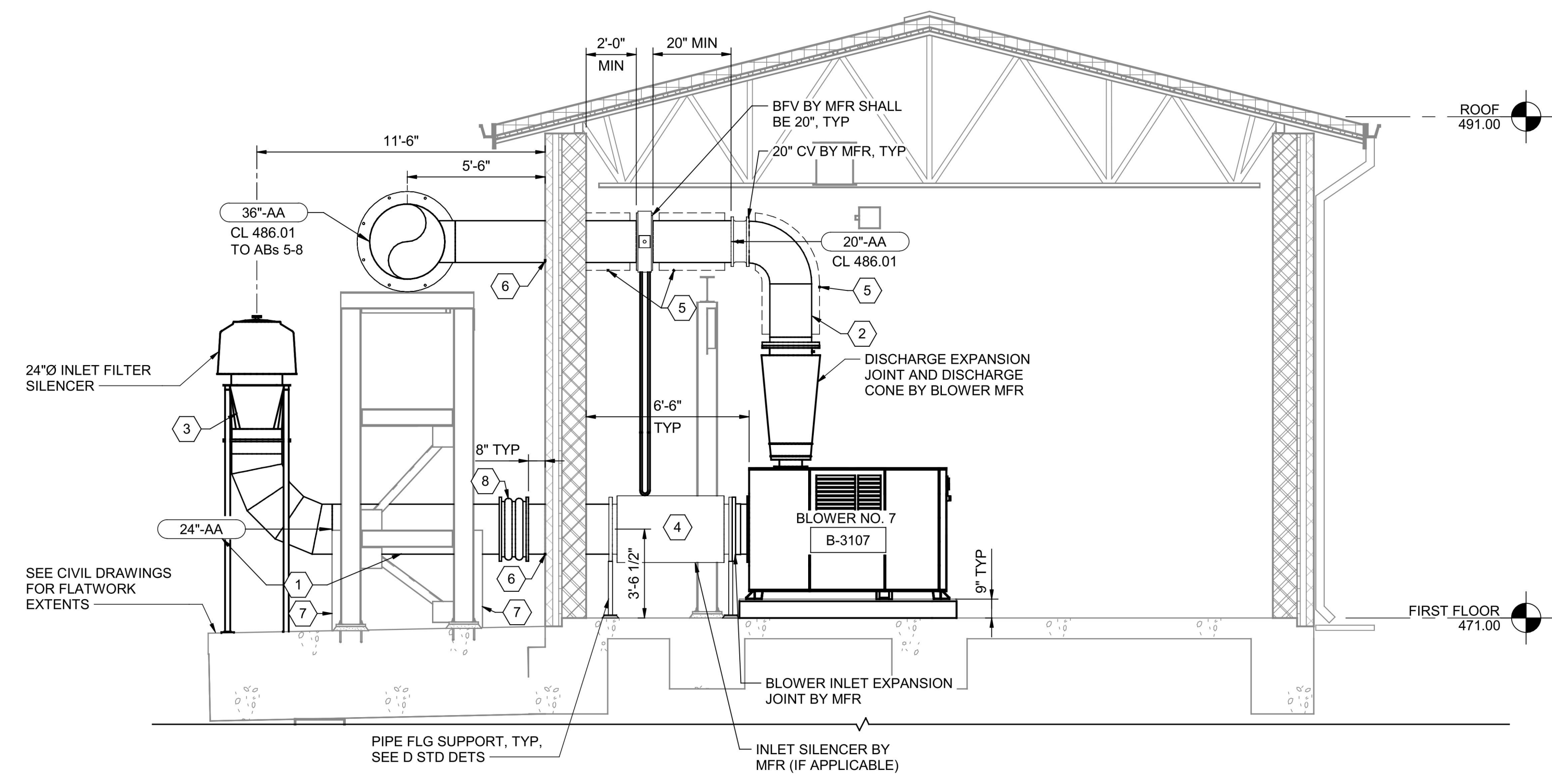


Thomas Paulmann, P.E.  
Engineer  
Texas Firm Registration No. F-754

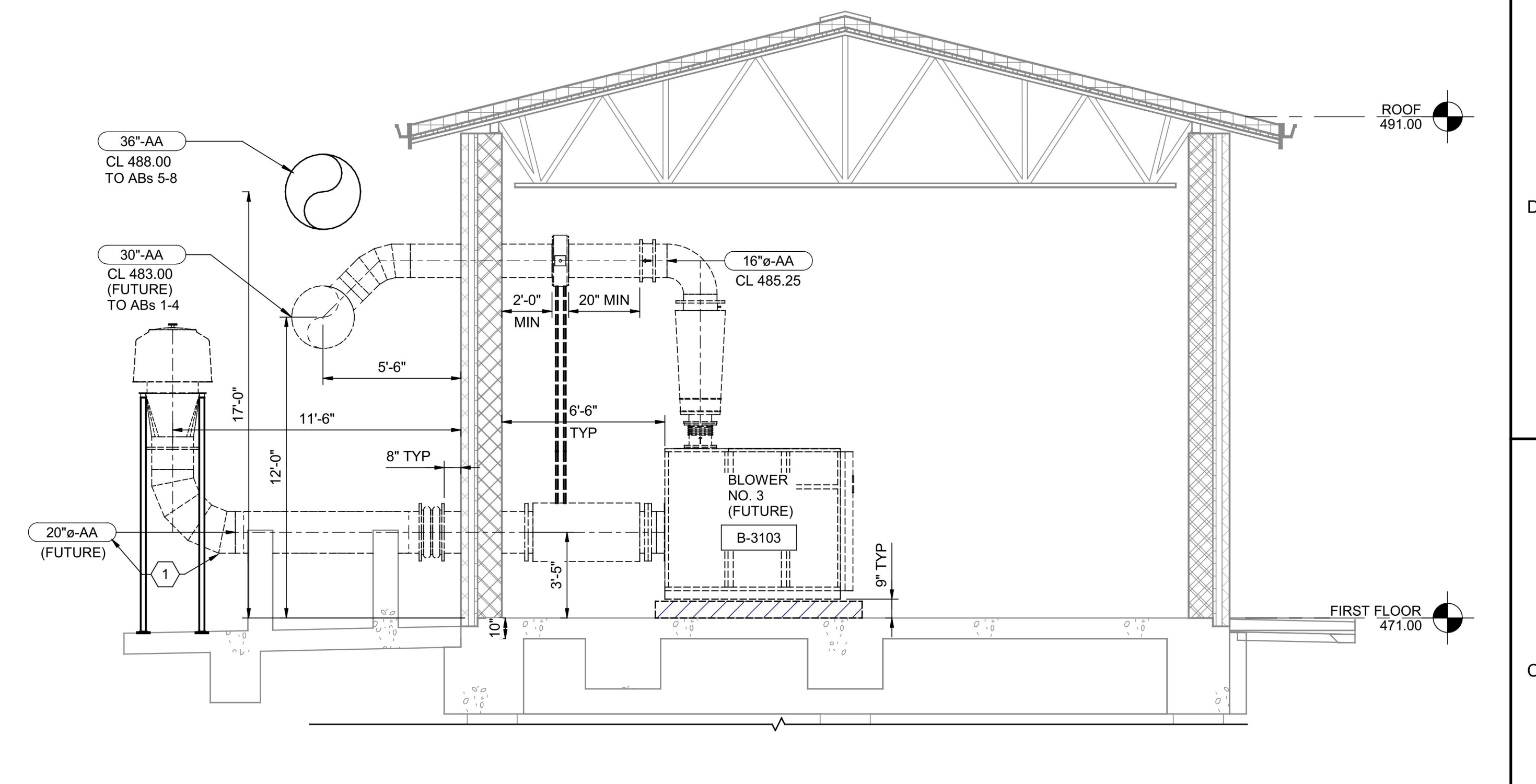




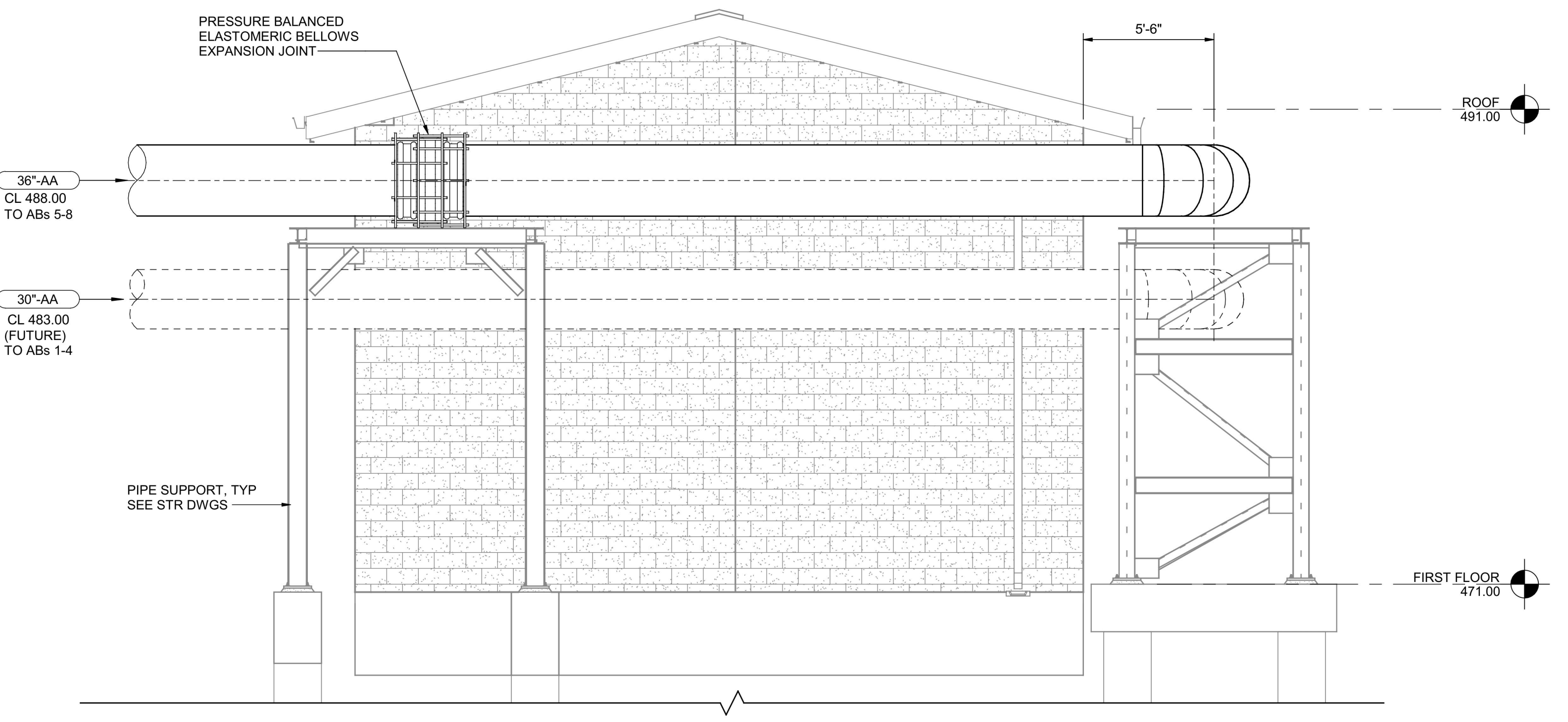
1 2 3 4 5 6 7 8



**A SECTION**  
31D101 1/4" = 1'-0"



**B SECTION (FUTURE BLOWERS 1 - 4)**  
31D101 1/4" = 1'-0"



**C SECTION**  
31D101 1/4" = 1'-0"

- KEYNOTES #**
- CONTRACTOR TO COORDINATE BLOWER INLET PIPING ELEVATION TO MATCH FURNISHED BLOWER INLET.
  - CONTRACTOR SHALL FURNISH PIPE REDUCER IN RISER IF BLOWER DISCHARGE IS <20" DIA. LAYOUT SHOWN IS BASED ON ABS SULZER BLOWERS. COORDINATE INLET AND DISCHARGE PIPING WITH RECOMMENDATIONS OF FURNISHED MANUFACTURER.
  - INLET FILTER SILENCER FURNISHED BY BLOWER MANUFACTURER INCLUDING SUPPORT LEGS AS SHOWN. ENDUSTRA TKT INLET FILTER SILENCER SHOWN. ADJUST PIPE RISER AS REQUIRED TO MATCH OVERALL HEIGHT INDICATED IF OTHER FILTER MANUFACTURER IS FURNISHED.
  - IF AN INLET SILENCER IS FURNISHED AT THE BLOWER INLET (IN ADDITION TO OUTDOOR FILTER SILENCER), CONTRACTOR SHALL FURNISH 304 SST SUPPORTS FOR SILENCER IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS. IF INLET SILENCER IS NOT FURNISHED AT THE BLOWER INLET (EITHER SHIPPED LOOSE OR IN THE BLOWER SKID), THEN CONTRACTOR SHALL INSULATE SUCTION PIPING WITHIN THE ROOM.
  - INSULATE ALL BLOWER DISCHARGE PIPING WITHIN THE BLOWER ROOM AS SHOWN. DO NOT INSULATE BLOWER MANUFACTURER FURNISHED APPURTENANCES SUCH AS SILENCERS OR VALVES. TERMINATE INSULATION SHORT OF APPURTENANCE FLANGES TO ALLOW DISASSEMBLY WITHOUT DISTURBING INSULATION.
  - PIPE WALL PENETRATION (MASONRY WALL), SEE PROCESS STANDARD DETAILS. SEE ARCHITECTURAL DRAWINGS FOR ADDITIONAL REQUIREMENTS AT PIPE WALL PENETRATIONS.
  - CONCRETE CRADEL PIPE SUPPORT, SEE STRUCTURAL STANDARD DETAILS.
  - 24" SINGLE ARCH ELASTOMERIC BELLOWS EXPANSION JOINT, TYPICAL.

Autodesk Docs/10342803\_COL\_PCWWT\_AB\_Expansion\_2024/31 - PLANT II BLOWER BUILDING (PROPOSED) - PROCESS.rvt 12/10/2025 6:56:50 AM



ISSUE	DATE	DESCRIPTION
A	DEC 9/2025	ADDENDUM #2
100%	JUNE 13/2025	ISSUED FOR BID

<b>PROJECT MANAGER</b> J. R. CANTWELL	
DESIGNED BY	J. MACMANUS
DRAWN BY	A. FREEMON
CHECKED BY	M. BOND
APPROVED BY	T. PAULMANN
CITY PROJECT NO.	U2100
PROJECT NUMBER	10342803



**CITY OF LEWISVILLE  
PRAIRIE CREEK  
AERATION BASIN  
EXPANSION**

**PLANT II BLOWER BUILDING (PROPOSED)  
PROCESS  
SECTIONS**

FILENAME | 31 - PLANT II BLOWER BUILDING (PROPOSED) | SHEET  
SCALE | 1/4" = 1'-0" | **31D302**

**CITY OF LEWISVILLE  
PRE-PROPOSAL  
CSP #26-02-C Pre-Proposal Meeting  
10:00 A.M., Wednesday, November 12, 2025**

	NAME (PRINT)	COMPANY	PHONE NUMBER	EMAIL ADDRESS
1	Kristi Byrd	City of Lewisville	972-219-3764	<a href="mailto:kbyrd@cityoflewisville.com">kbyrd@cityoflewisville.com</a> KB
2	Earl Whitaker	City of Lewisville	972-219-3765	<a href="mailto:ewhitaker@cityoflewisville.com">ewhitaker@cityoflewisville.com</a> EW
3	Aaron Russell	City of Lewisville	972-219-3531	<a href="mailto:arussell@cityoflewisville.com">arussell@cityoflewisville.com</a> AR
4	Cedric West	City of Lewisville	972-219-3545	<a href="mailto:cwest@cityoflewisville.com">cwest@cityoflewisville.com</a> CW
5	Katelyn Hearon	City of Lewisville	972-219-3509	<a href="mailto:khearon@cityoflewisville.com">khearon@cityoflewisville.com</a> KH
6	Roshan Chaudhary	City of Lewisville		<a href="mailto:rchaudhary@cityoflewisville.com">rchaudhary@cityoflewisville.com</a> RC
7	Thomas Paulmann	HDR	817-390-9865	<a href="mailto:thomas.paulmann@hdrinc.com">thomas.paulmann@hdrinc.com</a>
8	Joel Cantwell	HDR	972-960-4440	<a href="mailto:joel.cantwell@hdrinc.com">joel.cantwell@hdrinc.com</a>
9	Wesley White	Western Municipal	(214)-552-6106	<a href="mailto:wwhite@wmc-i.com">wwhite@wmc-i.com</a>
10	Josh Smith	Alterman Electric	940 210 2110	<a href="mailto:josh.smith@goalterman.com">josh.smith@goalterman.com</a>
11	Brandon Campos	Alterman Electric	940-334-5912	<a href="mailto:brandon.campos@goalterman.com">brandon.campos@goalterman.com</a>
12	KEITH HILL	FERGUSON WATER WORKS	807 805 1172	<a href="mailto:Keith.Hill@ferguson.com">Keith.Hill@ferguson.com</a>
13	Mason Oliver	Urban Infrastructure	254-265-1725	<a href="mailto:moliver@urbanconstruct.com">moliver@urbanconstruct.com</a>
14	MITO FORTI	CRESCENT CONSTRUCTORS	469-265-4692	<a href="mailto:KDAIGRE@CRESCENTCONSTRUCTORS.COM">KDAIGRE@CRESCENTCONSTRUCTORS.COM</a>
15	Hayden Gillespie	Crescent Constructors	806-346-7709	<a href="mailto:hayden.gillespie@crescentconstructors.com">hayden.gillespie@crescentconstructors.com</a>

**CITY OF LEWISVILLE  
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2	Earl Whitaker	City of Lewisville	972-219-3765	<a href="mailto:ewhitaker@cityoflewisville.com">ewhitaker@cityoflewisville.com</a>
3	Aaron Russell	City of Lewisville	972-219-3531	<a href="mailto:arussell@cityoflewisville.com">arussell@cityoflewisville.com</a>
4	Cedric West	City of Lewisville	972-219-3545	<a href="mailto:cwest@cityoflewisville.com">cwest@cityoflewisville.com</a>
5	Katelyn Hearon	City of Lewisville	972-219-3509	<a href="mailto:khearon@cityoflewisville.com">khearon@cityoflewisville.com</a>
6	Roshan Chaudhary	City of Lewisville		<a href="mailto:rchaudhary@cityoflewisville.com">rchaudhary@cityoflewisville.com</a>
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8	Kerry Coleman	Central Industrial	817-372-3989	<a href="mailto:KColeman@Centralig.com">KColeman@Centralig.com</a>
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11	MARCO TORRES	OCMI	787.370.2279	<a href="mailto:MTORRES@OCMI.COM">MTORRES@OCMI.COM</a>
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