



**SEABROOK CITY COUNCIL
NOTICE OF REGULAR CITY COUNCIL MEETING
TUESDAY, APRIL 2, 2024 - 6:00 PM**

For city information visit www.seabrooktx.gov
For Agenda Center visit www.seabrooktx.gov/agendacenter

NOTICE IS HEREBY GIVEN THAT THE SEABROOK CITY COUNCIL WILL MEET ON **TUESDAY APRIL 2, 2024 AT 6:00 PM** IN THE CITY HALL CITY COUNCIL CHAMBERS, 1700 1ST STREET, SEABROOK, TEXAS, **TO DISCUSS, CONSIDER, AND IF APPROPRIATE, TAKE ACTION** WITH RESPECT TO THE ITEMS LISTED BELOW.

PLEDGE OF ALLEGIANCE

1. PUBLIC COMMENTS AND ANNOUNCEMENTS

At this time we would like to listen to any member of the audience on any subject matter, whether or not that item is on the agenda. All comments are limited to a maximum of four minutes for each speaker, shall be limited to City business or City-related business or matters of general public interest, and shall not include any personal attacks. In accordance with the Texas Open Meetings Act, members may not discuss or take action on any item that has not been posted on the agenda. When your name is called, please come to the podium and state your name and address clearly into the microphone before making your comments. Thank you.

REGISTER ONLINE TO SPEAK IN PERSON DURING PUBLIC COMMENTS:

[www.seabrooktx.gov/speaker - registration](http://www.seabrooktx.gov/speaker-registration)

1.1 Mayor, City Council and/or members of the City staff may make announcements about City/Community events. City Council

2. PRESENTATIONS

2.1 Mayor Kolupski to issue a proclamation declaring the month of April, 2024 as Sexual Assault Awareness Month in the City of Seabrook.

3. CONSENT AGENDA

3.1 Approve the minutes of the March 19, 2024 City Council Meeting.

3.2 Consider and take all appropriate action on the second reading of Ordinance 2024-10, modifying the Civil Service Classification System for the Seabrook Police Department.

AN ORDINANCE MODIFYING AND CONTINUING A CIVIL SERVICE CLASSIFICATION SYSTEM CONSISTING OF CLASSES, POSITIONS, PAY GRADES AND COMPENSATION LEVELS IN THE CLASSIFIED SERVICE OF THE SEABROOK POLICE DEPARTMENT; PROVIDING FOR A REPEAL WITH LIMITED EXTENSION; PROVIDING A SEVERABILITY CLAUSE, AN EFFECTIVE DATE, CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT AND REPLACING PREVIOUSLY ADOPTED ORDINANCES 2023-32

4. BID AWARDS

4.1 Consider and take all appropriate action on bid award and execution of a contract for RFP 2023-27-318, Fiber Infrastructure NASA for design, supply integration, installation and commissioning of Fiber Optic lines with Gulf Coast Fiber Services in an amount not to exceed \$481,373.50 and authorizing the City Manager to execute any and all documents. *Kevin Padgett, Public Works Director*

4.2 Consider and take all appropriate action on bid award and execution of a contract for RFP 2024-01-341, Sidewalk Removal and Replacement Project for an on call Maintenance Contract for FY23-24 with Cracon, Inc. in an amount not to exceed \$100,000.00 and authorizing the City Manager to execute any and all documents. *Kevin Padgett, Public Works Director*

4.3 Consider and take all appropriate action on bid award and execution of a contract for RFP 2024-02-340 Red Oak Acres Subdivision Water Line to Bull-G Construction LLC, not to exceed \$516,572.00. *Kevin Padgett, Public Works Director*

5. NEW BUSINESS

5.1 Consider and take all appropriate action on the approval of a Professional Services Agreement between the City of Seabrook and Brown Reynolds Watford Architects (BRW) for architectural services in an amount not to exceed \$264,000.00 and authorize the City Manager to execute all associated documents. This project is part of the 2023 Bond Program. *Gayle Cook, City Manager*

5.2 Consider and take all appropriate action on an amendment to the Public Safety Fund budget including an additional \$7,215.49 for additional equipment for the Seabrook Police Department and Seabrook Public Works. *Kevin Rodgers, Emergency Management Director*

5.3 Consider and take appropriate action regarding flying the existing PVC pole American flags all year long on Main Street at the Bay Area Veterans Memorial. *Joe Machol, At-Large Position 6*

6. OLD BUSINESS

6.1 Discuss, consider, and take all appropriate action on second reading of Ordinance 2024-06, a request to amend the Seabrook City Code, Appendix A, "Comprehensive Zoning", Article 3, "Establishment of Zoning Districts and Associated Regulations" by modifying the "Supplementary Regulations", to include, the addition of tents and lean-to as prohibited temporary structures to be used for on-site dwelling purposes. *Sean Landis, Deputy City Manager | Planning and Zoning Director*

AN AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, SECTIONS 3.02 THROUGH 3.14 AND SECTION 3.16, BY AMENDING THE "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ON-SITE DWELLING PURPOSES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR VIOLATION OF ANY PROVISION HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

7. DISCUSSION

7.1 Discussion of a city funded advertising program for hotel logo signage on SH146 with Lonestar Logos for main lanes and ramps. *Michael Giangrosso, At-Large Position 4*

7.2 Discussion of the Seabrook Economic Development Services agreement and administrative services provided to the Economic Development Corporation. *Jackie Rasco, At-Large Position 1*

7.3 Discussion and update regarding the appointment of members to the Charter Review Commission for 2024. *Rachel Lewis, City Secretary*

8. EXECUTIVE SESSION

8.1 Section 551.071 Conduct a Closed Executive Session to consult with the City Attorney for legal matters relating to 202218911; *DHI Fund LP v. City of Seabrook, et al.*; in the 127th Judicial District, Harris County, Texas *George Vie, Feldman & Feldman*

9. OPEN SESSION

Council will reconvene in Open Session to allow for possible action on any of the agenda items listed above under "Closed Executive Session".

10. ROUTINE BUSINESS

10.1 City Manager update and report to City Council on various items that require no action, including Seabrook Boards and Commissions, Transportation Projects, Port of Houston Rail Spur, City of Seabrook CIP Projects, Economic Development Updates, and any City of Seabrook Grant Administration. *Gayle Cook, City Manager*

10.2 Establish future meeting dates and agenda items. *Rachel Lewis, City Secretary*

THE CITY COUNCIL RESERVES THE RIGHT TO HEAR ANY OF THE ABOVE DESCRIBED AGENDA ITEMS THAT QUALIFY FOR AN EXECUTIVE SESSION IN AN EXECUTIVE SESSION BY PUBLICLY ANNOUNCING THE APPLICABLE SECTION NUMBER OF THE OPEN MEETINGS ACT, (CHAPTER 551 OF THE TEXAS GOVERNMENT CODE) THAT JUSTIFIES EXECUTIVE SESSION TREATMENT.

THIS FACILITY IS WHEELCHAIR ACCESSIBLE AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR OTHER ACCOMMODATIONS OR INTERPRETIVE SERVICES, MUST BE MADE, 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT THE CITY SECRETARY'S OFFICE AT (281) 291-5663 OR CITYSEC@SEABROOKTX.GOV FOR FURTHER INFORMATION.

I certify that this notice was posted on the bulletin board on or before Friday, March 29, 2024 no later than 6:00 p.m. and that this notice will remain posted until the meeting has ended.

Rachel Lewis, TRMC





Proclamation

WHEREAS, Sexual Assault Awareness and Prevention Month calls attention to the fact that sexual violence is widespread and impacts every person in this community; and

WHEREAS, Rape, sexual assault, and sexual harassment harm our community, and statistics show 1 in 4 women and 1 in 26 men will be sexual assault or attempted sexual assault in their lifetime; and

WHEREAS, Child sexual abuse prevention must be a priority to confront the reality that 1 in 6 boys and 1 in 4 girls will experience a sexual assault before age 18; and

WHEREAS, Young people experience heightened rates of sexual violence, and youth ages 12-17 are 2.5 times as likely to be victims of rape or sexual assault; and

WHEREAS, 1 in 5 women and 1 in 16 men are sexually assaulted during their time in college on campus; and

WHEREAS, 95% of assaults on college campuses go unreported; and

WHEREAS, only 25 out of every 1000 perpetrators will ever see prison time; and

WHEREAS, We must work together to educate our community about sexual violence prevention, supporting survivors, and speaking out against harmful attitudes and actions,

NOW THEREFORE, in recognition of the important work done by domestic violence programs, I, Thom Kolupski, Mayor of Seabrook, Texas, do hereby proclaim the month of February as Teen Dating Violence Awareness Month and urge all citizens to actively participate in the scheduled activities and programs sponsored by Bay Area Turning Point to work toward the elimination of teen dating violence.

Sexual Assault Awareness Month

In Witness Whereof: I have hereto set my hand and caused the Seal of the City to be affixed hereto, this, the 2nd day of April, 2024.

City of Seabrook

Thom Kolupski, Mayor



MEETING MINUTES
March 19, 2024
Regular Seabrook City
Council Meeting

Mayor Thom Kolupski called the Seabrook Council Meeting to order at 6:00 p.m. in the Council Chambers in Seabrook City Hall. Present were City Councilmembers Jackie Rasco, Rob Hefner, Tom Tollett, Mike Giangrosso, and Buddy Hammann. Also in attendance were City Manager Gayle Cook, City Secretary Rachel Lewis, and Deputy City Manager Sean Landis. Mayor Thom Kolupski declared a quorum and pledges were conducted.

1. Public Comments and Announcements

There were no citizen comments

1.1 Mayor, City Council and/or City Staff Announcements

Councilmember Rob Hefner reported on the following:

- Trash Bash on March 23rd
- Easter Excursion on March 30th
- Monroe Fields Splash Pad opening on April 1st
- DF 95 Regional Championship April 19th through 21st
- Trail Adventure on April 20th
- SVFD Open House on April 20th
- Keels & Wheels on May 4th through May 5th

2. Presentations

2.1 Presentation of Quarterly Update of the Seabrook Volunteer Fire Department

Nathan Douglas, Chief of the Seabrook Volunteer Fire Department, gave the quarterly report. He stated there were 99 calls during the month of February and 7 of these were medical assistance calls. He reported the Department received around 1300 calls per year. He went over descriptions of fire apparatuses which included fire engines and a fire boat.

2.2 Introduce and hold a badge ceremony for newly promoted Seabrook Police Lieutenant, Jason Smith.

Chief Rolf Nelson introduced Lieutenant Smith and recognized him for his promotion from Sergeant to Lieutenant.

3. Consent Agenda

3.1 Approve the minutes of the March 5, 2024 meeting.

3.2 Approve the quarterly investment report for the period of October 2023 through December 2023.



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3.3 Consider and take all appropriate action on Resolution 2024-09, Suspending the Effective Date of a CenterPoint Rate Change.

RESOLUTION OF THE CITY OF SEABROOK, TEXAS SUSPENDING THE APRIL 10, 2024 EFFECTIVE DATE OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S REQUESTED RATE CHANGE TO PERMIT THE CITY TIME TO STUDY THE REQUEST AND TO ESTABLISH REASONABLE RATES; APPROVING CONTINUED COOPERATION WITH THE GULF COAST COALITION OF CITIES; HIRING LLOYD GOSSELINK ATTORNEYS AND CONSULTING SERVICES TO NEGOTIATE WITH THE COMPANY AND DIRECT ANY NECESSARY LITIGATION AND APPEALS; REQUIRING REIMBURSEMENT OF CITIES' RATE CASE EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL FOR THE GULF COAST COALITION OF CITIES

3.4 Consider and take all appropriate action on Resolution 2024-10, Authorizing the City Manager to submit an application for the US Department of Homeland Security State and Local Cybersecurity Grant Program (SLCGP)

A RESOLUTION OF THE CITY OF SEABROOK, TEXAS AUTHORIZING THE CITY MANAGER OF THE CITY OF SEABROOK, TEXAS TO SUBMIT AN APPLICATION FOR THE US DEPARTMENT OF HOMELAND SECURITY STATE AND LOCAL CYBERSECURITY GRANT (SLCGP) PROGRAM AND PROVIDING FOR AN EFFECTIVE DATE.

Motion:	To approve the Consent Agenda
Made By:	Councilmember Hammann
Seconded By:	Councilmember Giangrosso
Vote:	Motion carried unanimously by all present

4. Specific Public Hearing

Mayor Kolupski opened the public hearing at 6:18 pm.

4.1 Conduct a public hearing to take all appropriate action on an amendment to the Seabrook City Code, Appendix A, "Comprehensive Zoning", Article 3, "Establishment of Zoning Districts and Associated Regulations", Section 3.02 "R-LD Low Density Single-Family Residential District", Section 3.03 "R-1 Single-Family Detached Residential District, Section 3.04 "R-2 Single-Family Detached Residential District (Small Lots)", Section. 3.05 "R-3 Medium Density Residential District", Section 3.06 "C-1 Light Commercial District", Section 3.07 "C-2 Medium Commercial District", Section 3.08 "C-3 Heavy Commercial District", Section 3.09 "SH 146 South Commercial District (146-S)", Section 3.10 "WAD Waterfront Activity District", Section 3.11 "MMU Marine Oriented Mixed-Use District", Section 3.12 "OS Old Seabrook District", Section 3.13 "MH Mobile Home-Manufactured Housing District", Section 3.14 "LI Light Industrial District", and Section 3.16 "SH 146 Main Commercial District (146-M)", by modifying the "Supplementary Regulations", to include, the addition of tents and lean-tos as prohibited temporary structures to be used for on-site



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dwelling purposes.

Assistant City Manager, Sean Landis presented the ordinance.

There were no comments from citizens.

Mayor Kolupski closed the public hearing at 6:20 pm.

5. New Business

5.1 Discuss, consider, and take all appropriate action on first reading of Ordinance 2024-06, a request to amend the Seabrook City Code, Appendix A, “Comprehensive Zoning”, Article 3, “Establishment of Zoning Districts and Associated Regulations” by modifying the “Supplementary Regulations”, to include, the addition of tents and lean-to as prohibited temporary structures to be used for on-site dwelling purposes.

AN AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, SECTIONS 3.02 THROUGH 3.14 AND SECTION 3.16, BY AMENDING THE "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ON-SITE DWELLING PURPOSES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR VIOLATION OF ANY PROVISION HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion: Approve with an amendment of wording to eliminate “Temporary”

Made By: Councilmember Hammann

Seconded By: Councilmember Tollett

Vote: **Motion carried** unanimously by all present

5.2 Consider and take all appropriate action upon the first and final reading of Ordinance 2024-07 Authorizing and Ordering the Issuance of City of Seabrook, Texas General Obligation Bonds, Series 2024; Prescribing the Terms and Form Thereof; Making Other Provisions Regarding Such Bonds, Including Use of Proceeds Thereof, and Matters Incident Thereto.

AN ORDINANCE AUTHORIZING AND ORDERING THE ISSUANCE OF CITY OF SEABROOK, TEXAS GENERAL OBLIGATION BONDS, SERIES 2024; PRESCRIBING THE TERMS AND FORM THEREOF; MAKING OTHER PROVISIONS REGARDING SUCH BONDS, INCLUDING USE OF THE PROCEEDS THEREOF, AND MATTERS INCIDENT THERETO.

John Robuck presented the buyer index with all final numbers. **See Attachment A.**

Motion: To Approve

Made By: Councilmember

Seconded By: Councilmember

Vote: **Motion carried** unanimously by all present



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- 5.3 **Consider and take all appropriate action upon the first and final reading of Ordinance 2024-08 Authorizing and Ordering the Issuance of City of Seabrook, Texas Certificates of Obligation, Series 2024 in the Maximum Aggregate Principal Amount of \$10,000,000; Awarding the Sale Thereof; and Containing Matters Incident Thereto.**

ORDINANCE AUTHORIZING AND ORDERING THE ISSUANCE OF CITY OF SEABROOK, TEXAS CERTIFICATES OF OBLIGATION, SERIES 2024 IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$10,000,000; AWARDING THE SALE THEREOF; AND CONTAINING MATTERS INCIDENT THERETO.

Motion: To Approve
Made By: Councilmember Hammann
Seconded By: Councilmember Hefner
Vote: **Motion carried** unanimously by all present

- 5.4 **Consider and take all appropriate action on the first and final reading of Ordinance 2024-09, Amending the Operating, Enterprise and Public Safety Vehicle and Equipment Replacement Fund Budgets for Fiscal Year 2024.**

AN ORDINANCE AMENDING THE AMOUNT OF APPROPRIATIONS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024 BY AUTHORIZING CERTAIN ADDITIONS IN THE AMOUNT OF \$259,857 FOR GENERAL FUND, PUBLIC SAFETY VEHICLE AND EQUIPMENT REPLACEMENT FUND AND ENTERPRISE FUND, AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO FACILITATE THE CHANGES IDENTIFIED; AND FINDING AVAILABLE UNENCUMBERED FUNDS FOR THE SUPPLEMENTAL APPROPRIATION AND/OR RESERVE REDUCTION.

Motion: To Approve
Made By: Councilmember Hammann
Seconded By: Councilmember Giangrosso
Vote: **Motion carried** unanimously by all present

- 5.5 **Consider and take all appropriate action on the first reading of Ordinance 2024-10, modifying the Civil Service Classification System for the Seabrook Police Department.**

AN ORDINANCE MODIFYING AND CONTINUING A CIVIL SERVICE CLASSIFICATION SYSTEM CONSISTING OF CLASSES, POSITIONS, PAY GRADES AND COMPENSATION LEVELS IN THE CLASSIFIED SERVICE OF THE SEABROOK POLICE DEPARTMENT; PROVIDING FOR A REPEAL WITH LIMITED EXTENSION; PROVIDING A SEVERABILITY CLAUSE, AN EFFECTIVE DATE, CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT AND REPLACING PREVIOUSLY ADOPTED ORDINANCES 2023-32.

HR Director Yesenia Garza-Spires presented the ordinance and explained it reduced the



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number of Sergeant positions to 6.

Motion: To Approve
Made By: Councilmember Hammann
Seconded By: Councilmember Rasco
Vote: **Motion carried** unanimously by all present

6. Old Business

6.1 Consider and take all appropriate action on a six (6) month Trap-Neuter-Release (TNR) Pilot Program for the Waterfront Targeted Zone.

Chief Rolf Nelson presented a program proposal. **See attachment B.**

Motion: To Approve
Made By: Councilmember Hammann
Seconded By: Councilmember Hefner
Vote: **Motion carried** unanimously by all present

Mayor Kolupski Moved Items 7. Executive Session and 8. Open Session up to this point in the meeting.

6.2 Discuss, consider and take all appropriate action on replacing a section of wooden fence with chain-link fence at 502A Pine Gully, within the Community Garden project at an amount not to exceed \$4,400.00, and consider source of funding.

City Manager Gayle Cook informed Council the amount did not include clearing of the brush or fill dirt.

Motion: To Approve
Made By: Councilmember Hammann
Seconded By: Councilmember Giangrosso
Vote: **Motion carried** unanimously by all present

Motion: To Amend the motion to include the funding be taken from insurance proceeds.

Made By: Councilmember Hammann
Seconded By: Councilmember Rasco
Vote: **Motion carried** unanimously by all present

6.3 Consider and take all appropriate action on the approval of a Carothers Community Garden Operations and Maintenance Agreement between the City of Seabrook and Carothers Coastal Gardens 501(c)(3) for a term of three (3) years as amended by previously discussed items.



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1. **Utilities for Project**
2. **Facility Maintenance for Project**
3. **Project Funding by City**

Councilmember Hammann requested the following statement be on the record: "I want to go on the record as opposing granting subsidies to the Carothers Coastal Gardens 501 (c)(3) for the following reason. Council was never provided an explanation by the recipient, nor sponsoring member of Council, as to why the Community Gardens is in need of these annual subsidies from the City, especially when one takes into consideration that when this venue was first presented to Council in 2021 it was promoted that it would be self-sustaining after the City's initial investment. If we go forward and approve these subsidies, at a minimum, I feel we are obligated to be able to explain to our citizens why the Community Gardens are no longer self-sustaining before we reach into their pockets for money. Additionally, we should also be able to identify to our citizens the expected benefits to the Community for these expenses along with the metrics for measuring these benefits.

Motion: To Approve
Made By: Councilmember Rasco
Seconded By: Councilmember Hefner
Vote: **Motion failed** with Councilmembers Rasco and Hefner voting in favor, and Councilmembers Hamman, Tollett, Giangrosso, and Mayor Kolupski voting opposed.

7. Closed Executive Session The Executive Session took place before item 6.2.

7.1 Section 551.071
Conduct a Closed Executive Session to consult with the City Attorney for legal matters related to agenda items.

Pursuant to the provisions of Chapter 551 of the Texas Government Code, Mayor Kolupski called a Closed Executive Session to consult with the City Attorney. He adjourned the meeting into Executive Session at 6:38 pm.

8. Open Session

8.1 Council will reconvene in Open Session to allow for possible action on any of the agenda items listed above under "Closed Session".

Mayor Kolupski reconvened the regular meeting into open session at 7:01 pm. No further action was taken.

9. Discussion

9.1 Discussion and possible action regarding a project with Galveston Bay



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Foundation to reintroduce oysters into the City's lagoon located West of Main Street, East of Highway 146, and North of Todville Road, with all activity to take place on City-owned land.

Councilmember Hammann presented the proposed project. He asked if anyone had any objections to this project and there were no objections.

10. Routine Business

- 10.1 City Manager update and report to City Council on various items that require no action, including Seabrook Boards and Commissions, Transportation Projects, City of Seabrook CIP Projects, Economic Development Updates, and any City of Seabrook active grants.**

City Manager Gayle Cook presented the update. **See attachment C.**

- 10.2 Strategic Plan Update**

City Manager Cook presented the Strategic Plan update. **See Attachment D.**

- 10.3 Establish future meeting dates and agenda items.**

City Secretary Rachel Lewis stated the next meeting was scheduled for April 2, 2024 at 6:00 pm.

Councilmember Rasco made a motion to reconsider item 6.3 at this time. The motion died due to lack of a second.

Motion: To adjourn
Made By: Councilmember
Seconded By: Councilmember
Vote: **Motion carried** unanimously by all present.

Council was adjourned at 7:52 pm.

APPROVED: _____
Thom Kolupski, Mayor

DATE: _____

ATTEST: _____
Rachel Lewis City Secretary

**CITY OF SEABROOK
ORDINANCE 2024-10**

AN ORDINANCE MODIFYING AND CONTINUING A CIVIL SERVICE CLASSIFICATION SYSTEM CONSISTING OF CLASSES, POSITIONS, PAY GRADES AND COMPENSATION LEVELS IN THE CLASSIFIED SERVICE OF THE SEABROOK POLICE DEPARTMENT; PROVIDING FOR A REPEAL WITH LIMITED EXTENSION; PROVIDING A SEVERABILITY CLAUSE, AN EFFECTIVE DATE, CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT AND REPLACING PREVIOUSLY ADOPTED ORDINANCES 2023-32

RECITALS

WHEREAS, on September 20, 2011 by Ordinance No. 2011-13, the City Council of the City of Seabrook, Texas adopted a Civil Service Compensation Plan, including the classifications and salaries for the sworn personnel positions with the Police Department of the City of Seabrook; and

WHEREAS, on October 1, 2013 the City Council of the City of Seabrook replaced Ordinance No. 2011-13 with the passage of Ordinance No. 2013-21, which contained updates to the Civil Service Classification, Provisions and Salary Scale; and

WHEREAS, on June 3, 2014 the City Council of the City of Seabrook replaced Ordinance No. 2013-21 with the passage of Ordinance No. 2014-11, which contained updates to the Civil Service Classification, Provisions and Salary Scale; and

WHEREAS, on August 20, 2019 the City Council of the City of Seabrook replaced Ordinance No. 2014-11 with the passage of Ordinance No. 2019-16, which removed the position of Police Captain and to increase the number of officers in the position of Sergeant from six (6) to seven (7) officers, but did not approve updated exhibits and attachments; and

WHEREAS, on January 21, 2020, the City Council of the City of Seabrook replaced Ordinance No. 2019-16, with the passage of Ordinance No. 2020-06, which contained updates and revisions to the Civil Service Classification, Provisions and Salary Scale; and which maintained all regulations regarding civil service in one combined ordinance; and

WHEREAS, on October 18, 2022, the City Council of the City of Seabrook replaced Ordinance No. 2020-06, with the passage of Ordinance No. 2022-20, which contained updates and revisions to the Civil Service Classification, Provisions and Salary Scale; and which maintained all regulations regarding civil service in one combined ordinance; and

WHEREAS, on December 19, 2023, the City Council of the City of Seabrook replaced Ordinance No. 2022-20, with the passage of Ordinance No. 2023-32, which contained updates and revisions to the Civil Service Classification; and

WHEREAS, this amendment decreases the number of officers in the position of Sergeant from seven (7) to six (6) officers with the successful administration of a promotional exam and the appointment of an officer to the Lieutenant position.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEABROOK, STATE OF TEXAS:

Section 1.-Adoption of a Municipal Civil Service System

This ordinance is enacted following the adoption of a municipal civil service system for Seabrook Police Officers pursuant to Texas Local Government Code Chapter 143 “Municipal Civil Service”, (Civil Service) by the citizens of Seabrook in a referendum election on May 7, 2011. The provisions of Civil Service were fully implemented and in effect on or after October 30, 2011 as required by law.

The Council makes the following findings:

- (A) The City adopted Texas Local Government Code Chapter 143 “Municipal Civil Service”, applies to members of the classified service in the Seabrook Police Department.
- (B) Chapter 143 (Municipal Civil Service) provides that the City Council shall establish the classifications for the Police Department and the number of positions within each classification.
- (C) This Ordinance amends the existing classifications as noted below for law enforcement personnel commissioned by the City of Seabrook, Texas.

Section 2. - Classifications

The Seabrook Police Department classified civil service shall consist of the following classifications and the number of positions in each classification:

<u>FLSA</u>	<u>Title</u>	<u>Number of Positions</u>
N	Lieutenant	3
N	Sergeant	7 6
N	Police Officer	23
TOTAL		33 32

Section 3- Adoption

Should any part of this ordinance be held invalid by a court of competent jurisdiction, the remaining parts shall be severable and shall continue to be in full force and effect.

PASSED AND APPROVED on first reading this _____ day of _____, 2024.

PASSED AND ADOPTED on second and final reading this _____ day of _____, 2024.

CITY OF SEABROOK

BY: _____
Thomas G. Kolupski
Mayor

ATTEST:

BY: _____
Rachel Lewis, City Secretary



Agenda Briefing

Date of Meeting: April 2, 2024

Responsible Department: Finance

Presenter: Kevin Padgett, Public Works Director

Briefing Prepared By: Kevin Padgett

Strategic Focus Area: Infrastructure

General Information:

Consider and take all appropriate action on bid award and execution of a contract for RFP 2023-27-318, Fiber Infrastructure NASA for design, supply integration, installation and commissioning of Fiber Optic lines with Gulf Coast Fiber Services in an amount not to exceed \$481,373.50 and authorizing the City Manager to execute any and all documents.

Executive Summary / Background:

Staff advertised the RFP to procure prospective contractors for the work on October 19, 2023, and 26, 2023.

Two proposals were received and staff rated and recommends contractor Gulf Coast Fiber Services .

This project includes route engineering, permitting, and as-built documentation, as well as construction, including boring and installation of fiber optic network cabling.

Construction includes installation and termination of an underground single mode fiber optic network between specified endpoints, as well as terminated fiber links.

Funding / Fiscal Information:

CIP Funds

280-6052

Operating Budgets

902-6090 Water Maintenance

cost \$481,373.50

Supporting Materials Attached:

1. Gulf Coast Fiber Services Contract

Prior Action / Review by Council, Boards, Commissions:

Prior bids were rejected due to funding resources and RFP revisions to include additional clarifications based on location and spending options.

Staff Recommendation:

Staff recommends awarding the bid to Gulf Coast Fiber Services as a vendor for connecting and extending additional locations of our Ethernet network, with approval of a contract for the work between the City and Gulf Coast Fiber Services.

Construction Agreement

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT, made and entered into this ____ day of March A.D., 2024, by and between Gulf Coast Fiber Services, a Texas Limited Liability Corporation, of the County of Montgomery and State of Texas, acting through Earl Epps, its Director of Operations, hereinafter termed "Contractor" and the City of Seabrook, a home-rule municipal corporation, organized and existing under the laws of the State of Texas, acting through its City Manager or other duly authorized designee Texas, hereinafter termed "City."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by City and Contractor, Contractor hereby agrees to commence and complete performance of the work specified below:

- a) The City of Seabrook is seeking to extend the existing underground fiber optic network to additional locations in order to connect critical infrastructure to our Ethernet network.
- b) We currently have 288 strands of fiber at the Seabrook City Hall location at 1700 First St, Seabrook, TX, connecting current City facilities and water/sewer infrastructure.
The proposed fiber optic network extension will continue from the City Hall, under Hwy 146 then along NASA Road to Repsdorph Road, where it will connect at the elevated water tower on Repsdorph Road.
- c) Handholes shall be installed near both sides of Hwy 146 (on Main ST and NASA Road), with two 2-inch HDPE conduits between these two handholes.
- d) The bulk of the 144 fiber strands will run from the City Hall (1700 First St) to the Repsdorph Road elevated water storage tank, where 12 strands of fiber will be terminated on the third floor of the water tower (in server room).
- e) 24 strand armored fiber shall be installed from the new fiber run on NASA Road to the lift station at Lakeside Dr, with six fiber strands connected to Seabrook City Hall
- f) 24 strand armored fiber shall be installed from the NASA Road fiber run to the lift station at Elam St and Seargent St, with 6 strands connected to City Hall
- g) 24 strands of armored fiber shall be installed from handhole at NASA Rd and Repsdorph Rd to the Nasa Lift Station, with six strands of that fiber connected to Seabrook City Hall. Run 24 strands of fiber to handhole on opposite (South side of

NASA Rd.)

- h) Twelve strands of the new fiber from City Hall along NASA Road shall be connected to existing fiber going North from the handhole near the Repsdorph Road water tower, following route on East Meyer Road, Todville Road, and Red Bluff Road, terminating at the Public Works server room at 1100 Red Bluff Road in Seabrook.
- i) Four of the new fiber strands ending at the Repsdorph Water Tower handhole shall be connected and terminated at each of the following locations where we have existing fiber: Water Well Site 1, Water Well Site 3, Water Vault on Red Bluff Road, and Ground Storage tank at Lakeside Dr. (total of 16 fibers connected from these locations all the way to the City Hall fiber room).
- j) All underground fiber shall be installed at a depth of 48 to 52 inches.
- k) Each handhole cover shall be clearly marked with permanent "SEABROOK" markings similar to existing fiber handhole covers to indicate ownership.
- l) A Fiber utility marker post with a test station will be installed at each handhole location, to facilitate locates. Test station wires shall be connected to the metal jacket of the armored fiber. In addition to the typical warning labels indicating the presence of underground fiber optic cable, each marker pole shall have a note on two sides stating "48 HOURS BEFORE DIGGING IN THIS VICINITY CALL 281-291-5725", then "WWW.SEABROOKTX.GOV" on last line.
- m) Additional empty conduit shall be capped with removable rubber plugs in each handhole.

Contractor agrees to perform the work and City agrees to pay Contractor the total of four hundred one thousand eighty-five ninety dollars and fifty cents (\$401,085.50) for completed and accepted work as set forth and adjusted in accordance with the terms of this Agreement. City and Contractor hereby agree to the following additional terms and conditions:

OPTIONAL FIBER SEGMENTS IN ADDITION TO WORK SPECIFIED ABOVE

- **OPTION 1:** 48 strands of armored fiber from Red Bluff at Todville to Baywood Water Meter vault on Todville. \$74,250.00
- **OPTION 2:** 48 strands of armored fiber from closest handhole on existing fiber on Todville Rd. to Pine Gully Lift Station site, with six fibers connected to City Hall fiber room. \$1600.00
- **OPTION 3:** 48 strands of armored fiber from closest handhole on existing fiber on Todville Rd. to Surf Oaks Lift Station site, with six fibers connected to City Hall fiber room. \$1600.00

- **OPTION 4:** 48 strands of armored fiber shall be installed for 2712 Red Bluff lift station (Calgon Lift Station). \$3630.00
- **OPTION 5:** 48 strands of armored fiber shall be installed for 2609 Red Bluff lift station (Red Bluff Lift Station). \$2475.00
- **Warranty**
As part of the project approach, please include warranty information, including warranty length and where the nearest warranty service location is.

and all extra work in connection therewith, under the terms and conditions as stated in this Agreement, and at his (or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the work specified above, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with this Agreement, and in accordance with the plans, which includes all maps, plats, blueprints, and other drawings and printed or written explanatory matter thereof, and the Specifications therefore (all collectively referred to herein as “the Contract Documents”), all of which are made a part hereof and collectively evidence and constitute the entire contract.

Contractor agrees to perform the work and City agrees to pay Contractor the total of three hundred fifty-four thousand seven hundred and ninety dollars (\$401,085.50) for completed and accepted work as set forth and adjusted in accordance with the terms of this Agreement. City and Contractor hereby agree to the following additional terms and conditions:

1. Prior to Performance of Work

(a) *Examination of Contract and Site.* Contractor specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the proposed work and is thoroughly familiar with the nature and location of the work, the confirmation of the ground and soil, the nature of any structures, the character quality, and quantity of the material to be utilized, the character of equipment and facilities for and during the prosecution of the work, the time needed to complete the work, Contractor’s ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the work under this Agreement, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper.

(b) *Continuing Obligation.* Before undertaking each part of the work, Contractor shall carefully study the Contract Documents to check and verify pertinent figures shown thereon compare accurately to all applicable field measurements. Contractor shall promptly report in writing to City's representative any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from City's Representative

before proceeding with any Work affected thereby. Contractor shall be liable to City for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

(c) City will not be responsible for additional expenses incurred by Contractor to perform extra work necessitated by conditions which were discoverable by Contractor prior to beginning work and which Contractor failed to include in its proposal.

2. Construction Responsibilities

(e) *Commencement and Completion Dates.* Contractor hereby agrees to commence work on or after the date established for the start of work as set forth in the notice to proceed and complete all work within the time stated in this Agreement. The notice to proceed shall be given in writing by the City, and no work shall commence prior to the City issuance of a notice to proceed. The work embraced by this Agreement shall be completed within 180 days of issuance of notice to proceed.

(a) *Specifications.* Contractor shall construct the improvements required by the description of work set out in the Contract Documents (“the Improvements”) in a competent and efficient manner in accordance with the procedures, specifications and standards contained in the Contract Documents and all regulations, ordinances or specifications applicable to such Improvements, such specifications, standards, regulations and ordinances being expressly incorporated herein by reference and being made a part of the agreement as though written herein.

(b) *Unforeseen Conditions.* Contractor must notify City in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Agreement. If it is determined by City that such conditions differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the work, City’s representative will determine whether or not an equitable adjustment in the price or time for performance will be made, taking into consideration Section 1 and other applicable provisions of this Agreement. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, the price and time period will not be adjusted.

(c) *Protection of Lines.* Notwithstanding any other provision of this Agreement, Contractor is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the work area. **Contractor shall indemnify or reimburse such expenses or costs (including fines that may be levied against City) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area.** City reserves the right to repair any damage Contractor causes to such

utilities at Contractor's expense. If a public line and/or customer service line is damaged by Contractor, Contractor shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to City's representative.

(d) *Good and Workmanlike Manner.* All work on the Improvements shall be performed in a good and workmanlike manner and to the satisfaction of the City or its representative. City shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of specifications.

(e) *Facilitate Inspection.* Contractor shall furnish City or City's representative with every reasonable facility for ascertaining whether or not the work performed was in accordance with the specifications applicable thereto. Any work done or materials used without suitable inspection by City may be ordered removed and replaced at Contractor's expense. Upon failure of the Contractor to allow for inspection, to test materials furnished, to satisfactorily repair, remove or replace, if so directed, rejected, unauthorized or condemned work or materials, or to follow any other request or order of City or City's representative, City shall notify the Contractor of such failure and may suspend inspections of such work until such failure is remedied. If such failure is not remedied to the satisfaction of City, City shall have no obligation under this agreement to approve or accept the Improvements.

(f) *Means and Methods of Construction.* Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents. City may reject any of the Improvements for which, in the judgment of the City, the Improvements were not constructed in accordance with City specifications.

(g) *Work Stoppage.* The City shall have the right to order the work of the Contractor wholly or partially stopped:

- (1) if any of the materials furnished or the work being done is not in strict accordance with this Agreement;
- (2) until any objectionable person or material is removed from the premises; or
- (3) if any portion of the work is being performed so as to create a hazardous condition.

Such stoppage or suspension shall neither invalidate any of Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will extra charges be allowed the Contractor by reason of such stoppage or suspension.

(h) *Permits and Licenses.* The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the work. All City Permits shall be fee free. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws,

ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

(i) *Royalties and Licensing Fees.* The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the project. It shall defend all suits or claims for infringement of any patent rights.

(j) *Safety Precautions.* Safety precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Fire Department and City Code Enforcement.

(k) *Warn of Hazards.* The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

(l) *Failure of Safety Devices.* The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

(m) *Indemnity for Safety Failure.* The Contractor shall indemnify City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that relate to or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment no matter where fault or responsibility lies. Such indemnity shall indemnify and protect the City from the consequences of the City's own negligence, whether that negligence is the sole or concurring cause of the injury, death, or damages.

3. Insurance and Indemnification

(a) *Insurance.* Contractor shall provide for insurance and workers compensation coverage in accordance with the requirements applicable to contractors as provided for in Exhibits “A” and “B”, the provisions of which are expressly incorporated herein by reference. Evidence of required insurance shall be provided by Contractor and approved by City before work is commenced.

(b) *Indemnification.* Contractor shall **INDEMNIFY, DEFEND, AND HOLD HARMLESS**, City, its officers, agents and employees from and against any and all suits, actions, claims, damages, losses, and expenses of any character, name and description, including, but not limited to, attorney’s fees, arising out of or resulting from the operations of Contractor, his agents, employees or subcontractors; or on account of any negligent act of fault of Contractor, his agents, employees or subcontractors in construction of the Improvements, including, but not limited to, any such claim, damage, loss or expense attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage. Nothing herein shall waive any governmental immunity available to the city under Texas law and any defenses of the parties under Texas law.

4. Acceptance and Payment

(a) *Assurance of Payment.* Prior to acceptance of the Improvements by City, Contractor shall furnish a written affidavit, stating all bids, charges, accounts or claims for labor performed and material furnished in connection with the construction of the Improvements have been paid in full and that there are no unreleased recorded liens filed against the Improvements, or land to which they are affixed.

(b) *Retainage, Final Payments.* As security for the faithful completion of the Improvements, Contractor and City agree that City shall retain ten percent (10%) of the total dollar amount of the contract price until after final approval or acceptance of the Improvements by City. City shall thereafter pay Contractor the retainage, only after Contractor has furnished to the City satisfactory evidence that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in performance of the work have been paid or otherwise satisfied.

(c) *Encumbrances.* Contractor shall promptly pay all workmen and materialmen and shall not allow liens to be placed on the Improvements. Upon completion and approval or acceptance of the Improvements by City, the Improvements shall become the property of City free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Improvements, any claim, lien, charge or encumbrance is made, or found to exist, against the

Improvements, or land dedicated to the City, to which they are affixed, Contractor shall upon notice by City promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to insure payment of such claim, lien, charge or encumbrance.

(d) *Maintenance Bond.* Prior to approval or acceptance of the Improvements by City, Contractor shall furnish a maintenance bond in form and substance acceptable to City, in the amount of ten percent (10%) of the contract amount of the Improvements, insuring the repair and replacement of all defects due to faulty material and workmanship that appear within one (1) year from the date of acceptance. The bond shall be in favor of City and shall be executed by an approved surety company authorized to do business in the State of Texas.

(f) *Payment.* Upon proper completion of the Improvements in accordance with this Agreement and the Contract Documents, City agrees to accept the Improvements and pay Contractor from available current funds in accordance with the terms and pricing set forth in the proposal and the Contract Documents.

(g) *Work Rejection.* All work deemed not in conformity with this Agreement as determined by City, in its sole discretion, may be subject to rejection by City. City may reject any work found or determined by it to be defective or not in accordance with this Agreement. City may reject said work or any portion thereof regardless of the stage of its completion or the time or place of discovery of such errors. Further, City may reject said work regardless of whether City has previously accepted the work through oversight or otherwise. Neither observations by City nor inspections, tests, certificates or approvals made by City shall relieve Contractor from its obligation to perform the work in accordance with the requirements of this Agreement and related documents.

(h) *Remedial Work.* If the work or any part thereof is rejected by City, it shall be deemed by City as not in conformity with the Agreement and related documents. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

1. Contractor may be required, at City's option, after notice from City, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
2. If City deems it expedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum shall be made by City at City's sole discretion.

(i) *Changes to work or price.* No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid except upon the prior written order from authorized personnel of the City.

5. Warranties, Remedies and Damages

(n) *Defects Appearing After Acceptance.* Neither the final payment nor any acceptance nor any provision of this Agreement shall relieve Contractor of any responsibility for faulty workmanship or materials. At the option of City, Contractor shall remedy any defects thereto and pay for any damage to other work resulting therefrom, which may appear after final acceptance of the work.

(o) *Warranty.* Upon final acceptance of the work by City, Contractor warrants for a period of one (1) year as follows:

(1) The Contractor warrants to the City that all materials provided to the City under this Agreement shall be new unless otherwise approved by the City and that all work will be of a good quality, free from faults and defects, and in conformance with this Agreement and related documents.

(2) All work not conforming to these requirements, including but not limited to substitutions not properly approved and authorized, may be considered defective.

(3) This warranty is in addition to any rights or warranties expressed or implied by law and consumer protection claims arising from misrepresentations by Contractor.

(p) *Contractor to Correct.* If within one (1) year after the final acceptance of the work by City or within such longer period as may be prescribed by law or the terms of any applicable special warranty, if any of the work is found or determined by City to be defective, including obvious defects, or otherwise not in accordance with this Agreement, Contractor shall correct it promptly.

(q) *Not Exclusive Remedy.* After receipt of written notice from City to begin corrective work, Contractor shall promptly begin the corrective work. The obligation shall survive the termination of this Agreement. The guarantee shall not constitute the exclusive remedy of the City, nor shall other remedies be limited to either the warranty or guarantee period.

(r) *City may Correct.* If within ten (10) days after City has notified Contractor of a defect, failure, or abnormality in the work, Contractor has not started to make the necessary corrections or adjustments, City is hereby authorized to make the corrections or adjustments, or to order the work done by a third party. The cost of the work shall be paid by Contractor.

(s) *Contractor to Pay Costs.* The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects, shall be paid by the Contractor.

(t) *Liquidated Damages.* The time for the final completion of the work described herein is a reasonable time, taking into consideration all conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadline for final completion are fixed and agreed upon by the Contractor because of the impracticality and extreme difficulty in fixing and ascertaining actual damages that the City in such event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment and from final payment.

(u) *Delay Damages.* If the Contractor should neglect, fail, or refuse to finally complete the work within the time herein specified, or any proper extension thereof granted by the City, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement, that City may withhold permanently from the Contractor's total compensation the sum of Two Hundred and Fifty Dollars (\$250.00) for each and every calendar day that the Contractor shall be in default after the time for finally completing the work, not as a penalty, but as liquidated damages for the breach of this Agreement.

6. Termination

(a) *Termination for Cause.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law the City, upon giving the Contractor five (5) calendar days prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:

- (1) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or
- (2) If a receiver trustee or liquidator of any of the property or income of the Contractor shall be appointed; or
- (3) If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- (4) If the Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City; or

(5) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

(b) *Termination for Convenience.* The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

(c) *Payment on Termination For Convenience.* In the event of termination for convenience, the Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee.

(d) *Right To Complete.* If this Agreement is terminated, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting work by the Contractor which fails to meet agreement requirements.

(e) *Close Out.* After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City, do the following:

- (1) Stop the work on the date and to the extent specified in the notice of termination;
- (2) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;

(4) Assign to City, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) With the approval of City, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(6) Deliver to City, when directed by City, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City and transfer title to such property to City to the extent not already transferred; and/or

(7) In the event of such termination, there shall be an equitable reduction of the fixed fee to reflect the reduction in the work. Costs incurred after the effective date of the notice of termination shall not be treated as reimbursable costs unless they relate to carrying out the non-terminated portion or taking closeout measures approved by the City.

(f) *Breach of Contract.* The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate or terminate the Contractor's obligations under this Agreement.

(g) *Completion of Work.* Wherein the Contractor has abandoned the project or the City has terminated the contract for cause, then the City at its option may provide for completion of the work in the following manner:

(1) The City may employ such force of workers and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor.

(2) Should the cost to complete the work exceed this Agreement price and the Contractor fails to pay the amount due to the City within the time designated hereinabove, and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such

notice, such property shall be held at the risk of the Contractor subject only to the duty of City to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, City may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City may elect. City shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

- (3) In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

(h) *Damages.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (1) If the Contractor shall fail to remedy any default after written notice thereof from City, as City shall direct; or
- (2) If the Contractor shall fail for any reason, other than the failure by City, to make payments called upon when due; or
- (3) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

6. **Special Provisions**

(a) Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement.

(b) Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

7. **General Provisions**

(a) *Agreement Controlling.* The provisions of this Agreement shall control over any conflicting provision of any contract between City and Contractor as to the construction of the Improvements.

(b) *Venue.* The parties herein agree that this Agreement shall be enforceable in Harris County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Harris County, Texas.

(c) *Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

(d) *Independent Status.* It is mutually understood and agreed by and between City and Contractor that Contractor is an independent contractor and shall not be deemed to be or considered an employee of the City of Seabrook, Texas, for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other. City shall not have supervision and control of Contractor or any employee of Contractor.

(d) *Tax Exemption.* This Agreement is entered into by an organization which qualifies for exempt revisions pursuant to the Texas Tax Code, Sections 151.301, 151.307 and 151.309. The Contractor must divide the price for materials that will be incorporated into the capital improvement project and the price for skill and labor into separated contracts. Therefore, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate which shall enable the Contractor to buy the materials to be incorporated into the completed capital project and then resale the aforementioned materials for the City without paying the tax on the materials at the time of purchase.

(e) *Amendment.* No amendments to this Agreement shall be effective and binding until it is reduced to writing and signed by duly authorized representatives of both parties.

(f) *Litigation Costs.* In the event of litigation, the Contractor agrees to pay and shall pay all of the attorney's fees, court costs and other litigation costs of City.

(g) *Texas Law.* This Agreement has been made under and shall be governed by the laws of the State of Texas.

(h) *Authority to Enter Contract.* Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations or other legal entity.

(i) *Waiver.* Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the City party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

(j) *Headings.* The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or Intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

(k) *Invalidity.* If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

(l) *Written Notice.* Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least ten (10) days written notice to the other parties in writing of such change.

(m) *Entire Agreement.* It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

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

GULF COAST FIBER SERVICES- “Contractor”

Earl Epps, Director of Operations

CITY OF SEABROOK, TEXAS- “City”

Thomas G. Kolupski, Mayor

ATTEST:

Rachel Lewis, TRMC, City Secretary



Agenda Briefing

Date of Meeting: April 2, 2024

Responsible Department: Finance

Presenter: Kevin Padgett, Public Works Director

Briefing Prepared By: Kevin Padgett

Strategic Focus Area: Infrastructure

General Information:

Consider and take all appropriate action on bid award and execution of a contract for RFP 2024-01-341, Sidewalk Removal and Replacement Project for an on call Maintenance Contract for FY23-24 with Cracon, Inc. in an amount not to exceed \$100,000.00 and authorizing the City Manager to execute any and all documents.

Executive Summary / Background:

During the FY 2023-2024 budget process, the City Council approved a new budget line item within the Streets budget, 500-5155, for maintenance of sidewalks.

Line item 500-5155 has a fund limit of \$100,000 for sidewalk repairs within the City FY23-24.

Four proposals were received and staff rated and recommended contractor Cracon - Statewide.Services.

Funding / Fiscal Information:

Line Item 500-5155 has a fund limit of \$100,000 for sidewalk repairs within the City FY23-24

Supporting Materials Attached:

1. Sidewalk Removal and Replacement Project Cracon Contract

Prior Action / Review by Council, Boards, Commissions:

Council approved FY2023-2024 budget.

Staff Recommendation:

Staff recommends awarding the bid to Cracon - Statewide Services as vendor for

sidewalk work within the City for this fiscal year, with approval of a contract and work between the City and Cracon - Statewide Services.

Construction Agreement

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT, made and entered into this 19th day of March A.D., 2024, by and between Cracon Inc. of the County of Brazoria and State of Texas, acting through hereinafter termed "Contractor" and the City of Seabrook, a home-rule municipal corporation, organized and existing under the laws of the State of Texas, acting through its City Manager or other duly authorized designee Texas, hereinafter termed "City."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by City and Contractor, Contractor hereby agrees to commence and complete performance of the work specified below:

The removal and replacement of sidewalks in multiple locations on a Task Order basis within the City of Seabrook city limits. The contractor shall provide and furnish all labor, materials, tools, equipment, transportation services and disposal services required for the work. Repairs may include removal of existing sidewalks and replacement with new concrete sidewalks and removal and replacement of ADA ramps including curb and gutter replacements as indicated by the City. All work shall be per the City of Seabrook's standards as referenced in Scope of Work and Exhibit A.

City and Contractor hereby agree to the following additional terms and conditions:

1. Prior to Performance of Work

(a) *Examination of Contract and Site.* Contractor specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the proposed work and is thoroughly familiar with the nature and location of the work, the confirmation of the ground and soil, the nature of any structures, the character quality, and quantity of the material to be utilized, the character of equipment and facilities for and during the prosecution of the work, the time needed to complete the work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the work under this Agreement, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper.

(b) *Continuing Obligation.* Before undertaking each part of the work, Contractor shall carefully study the Contract Documents to check and verify pertinent figures shown thereon

compare accurately to all applicable field measurements. Contractor shall promptly report in writing to City's representative any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from City's Representative before proceeding with any Work affected thereby. Contractor shall be liable to City for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

(c) City will not be responsible for additional expenses incurred by Contractor to perform extra work necessitated by conditions which were discoverable by Contractor prior to beginning work and which Contractor failed to include in its proposal.

2. Construction Responsibilities

(e) *Commencement and Completion Dates.* Contractor hereby agrees to commence work on or after the date established for the start of work as set forth in the notice to proceed and complete all work within the time stated in this Agreement. The notice to proceed shall be given in writing by the City, and no work shall commence prior to the City issuance of a notice to proceed. The work embraced by this Agreement shall be completed by September 30, 2024.

(a) *Specifications.* Contractor shall construct the improvements required by the description of work set out in the Contract Documents ("the Improvements") in a competent and efficient manner in accordance with the procedures, specifications and standards contained in the Contract Documents and all regulations, ordinances or specifications applicable to such Improvements, such specifications, standards, regulations and ordinances being expressly incorporated herein by reference and being made a part of the agreement as though written herein.

(b) *Unforeseen Conditions.* Contractor must notify City in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Agreement. If it is determined by City that such conditions differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the work, City's representative will determine whether or not an equitable adjustment in the price or time for performance will be made, taking into consideration Section 1 and other applicable provisions of this Agreement. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, the price and time period will not be adjusted.

(c) *Protection of Lines.* Notwithstanding any other provision of this Agreement, Contractor is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the work area. **Contractor shall indemnify or reimburse**

such expenses or costs (including fines that may be levied against City) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area. City reserves the right to repair any damage Contractor causes to such utilities at Contractor's expense. If a public line and/or customer service line is damaged by Contractor, Contractor shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to City's representative.

(d) *Good and Workmanlike Manner.* All work on the Improvements shall be performed in a good and workmanlike manner and to the satisfaction of the City or its representative. City shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of specifications.

(e) *Facilitate Inspection.* Contractor shall furnish City or City's representative with every reasonable facility for ascertaining whether or not the work performed was in accordance with the specifications applicable thereto. Any work done or materials used without suitable inspection by City may be ordered removed and replaced at Contractor's expense. Upon failure of the Contractor to allow for inspection, to test materials furnished, to satisfactorily repair, remove or replace, if so directed, rejected, unauthorized or condemned work or materials, or to follow any other request or order of City or City's representative, City shall notify the Contractor of such failure and may suspend inspections of such work until such failure is remedied. If such failure is not remedied to the satisfaction of City, City shall have no obligation under this agreement to approve or accept the Improvements.

(f) *Means and Methods of Construction.* Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents. City may reject any of the Improvements for which, in the judgment of the City, the Improvements were not constructed in accordance with City specifications.

(g) *Work Stoppage.* The City shall have the right to order the work of the Contractor wholly or partially stopped:

- (1) if any of the materials furnished or the work being done is not in strict accordance with this Agreement;
- (2) until any objectionable person or material is removed from the premises; or
- (3) if any portion of the work is being performed so as to create a hazardous condition.

Such stoppage or suspension shall neither invalidate any of Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will extra charges be allowed the Contractor by reason of such stoppage or suspension.

(h) *Permits and Licenses.* The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the work. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

(i) *Royalties and Licensing Fees.* The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the project. It shall defend all suits or claims for infringement of any patent rights.

(j) *Safety Precautions.* Safety precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Fire Department and City Code Enforcement.

(k) *Warn of Hazards.* The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

(l) *Failure of Safety Devices.* The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

(m) *Indemnity for Safety Failure.* **The Contractor shall indemnify City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that relate to or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment no matter where fault or responsibility lies. Such indemnity shall indemnify and protect the City from the consequences of the City's own negligence, whether that negligence is the sole or concurring cause of the injury, death, or damages.**

3. Insurance and Indemnification

(a) *Insurance.* Contractor shall provide for insurance and workers compensation coverage in accordance with the requirements applicable to contractors as provided for in Exhibits A, the provisions of which are expressly incorporated herein by reference. Evidence of required insurance shall be provided by Contractor and approved by City before work is commenced.

(b) *Indemnification.* Contractor shall **INDEMNIFY, DEFEND, AND HOLD HARMLESS**, City, its officers, agents and employees from and against any and all suits, actions, claims, damages, losses, and expenses of any character, name and description, including, but not limited to, attorney's fees, arising out of or resulting from the operations of Contractor, his agents, employees or subcontractors; or on account of any negligent act of fault of Contractor, his agents, employees or subcontractors in construction of the Improvements, including, but not limited to, any such claim, damage, loss or expense attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage. Nothing herein shall waive any governmental immunity available to the city under Texas law and any defenses of the parties under Texas law.

4. Acceptance and Payment

(a) *Assurance of Payment.* Prior to acceptance of the Improvements by City, Contractor shall furnish a written affidavit, in a form provided by City, stating all bids, charges, accounts or claims for labor performed and material furnished in connection with the construction of the Improvements have been paid in full and that there are no unreleased recorded liens filed against the Improvements, or land to which they are affixed.

(b) *Retainage, Final Payments.* As security for the faithful completion of the Improvements, Contractor and City agree that City shall retain ten percent (10%) of the total dollar amount of the contract price until after final approval or acceptance of the Improvements by City. City shall thereafter pay Contractor the retainage, only after Contractor has furnished to the City satisfactory evidence that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in performance of the work have been paid or otherwise satisfied.

(c) *Encumbrances.* Contractor shall promptly pay all workmen and materialmen and shall not allow liens to be placed on the Improvements. Upon completion and approval or acceptance of the Improvements by City, the Improvements shall become the property of City free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Improvements, any claim, lien, charge or encumbrance is made, or found to exist, against the Improvements, or land dedicated to the City, to which they are affixed, Contractor shall upon notice

by City promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to insure payment of such claim, lien, charge or encumbrance.

(d) *Maintenance Bond.* Prior to approval or acceptance of the Improvements by City, Contractor shall furnish a maintenance bond in form and substance acceptable to City, in the amount of ten percent (10%) of the contract amount of the Improvements, insuring the repair and replacement of all defects due to faulty material and workmanship that appear within one (1) year from the date of acceptance. The bond shall be in favor of City and shall be executed by an approved surety company authorized to do business in the State of Texas.

(f) *Payment.* Upon proper completion of the Improvements in accordance with this Agreement and the Contract Documents, City agrees to accept the Improvements and pay Contractor from available current funds in accordance with the terms and pricing set forth in the proposal and the Contract Documents.

(g) *Work Rejection.* All work deemed not in conformity with this Agreement as determined by City, in its sole discretion, may be subject to rejection by City. City may reject any work found or determined by it to be defective or not in accordance with this Agreement. City may reject said work or any portion thereof regardless of the stage of its completion or the time or place of discovery of such errors. Further, City may reject said work regardless of whether City has previously accepted the work through oversight or otherwise. Neither observations by City nor inspections, tests, certificates or approvals made by City shall relieve Contractor from its obligation to perform the work in accordance with the requirements of this Agreement and related documents.

(h) *Remedial Work.* If the work or any part thereof is rejected by City, it shall be deemed by City as not in conformity with the Agreement and related documents. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

1. Contractor may be required, at City's option, after notice from City, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
2. If City deems it expedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum shall be made by City at City's sole discretion.

(i) *Changes to work or price.* No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid except upon the prior written order from authorized personnel of the City.

5. Warranties, Remedies and Damages

(n) *Defects Appearing After Acceptance.* Neither the final payment nor any acceptance nor any provision of this Agreement shall relieve Contractor of any responsibility for faulty workmanship or materials. At the option of City, Contractor shall remedy any defects thereto and pay for any damage to other work resulting therefrom, which may appear after final acceptance of the work.

(o) *Warranty.* Upon final acceptance of the work by City, Contractor warrants for a period of one (1) year as follows:

(1) The Contractor warrants to the City that all materials provided to the City under this Agreement shall be new unless otherwise approved by the City and that all work will be of a good quality, free from faults and defects, and in conformance with this Agreement and related documents.

(2) All work not conforming to these requirements, including but not limited to substitutions not properly approved and authorized, may be considered defective.

(3) This warranty is in addition to any rights or warranties expressed or implied by law and consumer protection claims arising from misrepresentations by Contractor.

(p) *Contractor to Correct.* If within one (1) year after the final acceptance of the work by City or within such longer period as may be prescribed by law or the terms of any applicable special warranty, if any of the work is found or determined by City to be defective, including obvious defects, or otherwise not in accordance with this Agreement, Contractor shall correct it promptly.

(q) *Not Exclusive Remedy.* After receipt of written notice from City to begin corrective work, Contractor shall promptly begin the corrective work. The obligation shall survive the termination of this Agreement. The guarantee shall not constitute the exclusive remedy of the City, nor shall other remedies be limited to either the warranty or guarantee period.

(r) *City may Correct.* If within ten (10) days after City has notified Contractor of a defect, failure, or abnormality in the work, Contractor has not started to make the necessary corrections or adjustments, City is hereby authorized to make the corrections or adjustments, or to order the work done by a third party. The cost of the work shall be paid by Contractor.

(s) *Contractor to Pay Costs.* The cost of all materials, parts, labor, transportation,

supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects, shall be paid by the Contractor.

(t) *Liquidated Damages.* The time for the final completion of the work described herein is a reasonable time, taking into consideration all conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadline for final completion are fixed and agreed upon by the Contractor because of the impracticality and extreme difficulty in fixing and ascertaining actual damages that the City in such event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment and from final payment.

(u) *Delay Damages.* If the Contractor should neglect, fail, or refuse to finally complete the work within the time herein specified, or any proper extension thereof granted by the City, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement, that City may withhold permanently from the Contractor's total compensation the sum of Two Hundred and Fifty Dollars (\$250.00) for each and every calendar day that the Contractor shall be in default after the time for finally completing the work, not as a penalty, but as liquidated damages for the breach of this Agreement.

6. Termination

(a) *Termination for Cause.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law the City, upon giving the Contractor five (5) calendar days prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:

- (1) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or
- (2) If a receiver trustee or liquidator of any of the property or income of the Contractor shall be appointed; or
- (3) If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- (4) If the Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City; or

(5) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

(b) *Termination for Convenience.* The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

(c) *Payment on Termination For Convenience.* In the event of termination for convenience, the Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee.

(d) *Right To Complete.* If this Agreement is terminated, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting work by the Contractor which fails to meet agreement requirements.

(e) *Close Out.* After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City, do the following:

- (1) Stop the work on the date and to the extent specified in the notice of termination;
- (2) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;

(4) Assign to City, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) With the approval of City, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(6) Deliver to City, when directed by City, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City and transfer title to such property to City to the extent not already transferred; and/or

(7) In the event of such termination, there shall be an equitable reduction of the fixed fee to reflect the reduction in the work. Costs incurred after the effective date of the notice of termination shall not be treated as reimbursable costs unless they relate to carrying out the non-terminated portion or taking closeout measures approved by the City.

(f) *Breach of Contract.* The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate or terminate the Contractor's obligations under this Agreement.

(g) *Completion of Work.* Wherein the Contractor has abandoned the project or the City has terminated the contract for cause, then the City at its option may provide for completion of the work in the following manner:

(1) The City may employ such force of workers and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor.

(2) Should the cost to complete the work exceed this Agreement price and the Contractor fails to pay the amount due to the City within the time designated hereinabove, and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address

designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, City may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City may elect. City shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

- (3) In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

(h) *Damages.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (1) If the Contractor shall fail to remedy any default after written notice thereof from City, as City shall direct; or
- (2) If the Contractor shall fail for any reason, other than the failure by City, to make payments called upon when due; or
- (3) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

6. **Special Provisions**

- (a) *Task orders.* The City shall issue task orders that identify the scope of work and shall include:
- a. The location within the City where work shall be conducted
 - b. A pre-construction meeting will be held at the location identified in the task order
 - c. The length and width of the sidewalk that shall be replaced

- d. The length of the curb/gutter, if any, to be disposed and replaced
- e. The location and quantity of ADA Ramps, if any, to be disposed and replaced
- f. Invoices need to be submitted at the time each task order is completed
- g. Change orders shall be submitted by Contractor to the Public Works Director and signed off on prior to change in scope
- h. Each task order will be closed out after Public Works Director has inspected and signed off on work completed.

7. General Provisions

(a) *Agreement Controlling.* The provisions of this Agreement shall control over any conflicting provision of any contract between City and Contractor as to the construction of the Improvements.

(b) *Venue.* The parties herein agree that this Agreement shall be enforceable in Harris County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Harris County, Texas.

(c) *Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

(d) *Independent Status.* It is mutually understood and agreed by and between City and Contractor that Contractor is an independent contractor and shall not be deemed to be or considered an employee of the City of Seabrook, Texas, for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other. City shall not have supervision and control of Contractor or any employee of Contractor.

(d) *Tax Exemption.* This Agreement is entered into by an organization which qualifies for exempt revisions pursuant to the Texas Tax Code, Sections 151.301, 151.307 and 151.309. The Contractor must divide the price for materials that will be incorporated into the capital improvement project and the price for skill and labor into separated contracts. Therefore, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate which shall enable the Contractor to buy the materials to be incorporated into the completed capital project and then resale the aforementioned materials for the City without paying the tax on the materials at the time of purchase.

(e) *Amendment.* No amendments to this Agreement shall be effective and binding until it is reduced to writing and signed by duly authorized representatives of both parties.

(f) *Litigation Costs.* In the event of litigation, the Contractor agrees to pay and shall pay all of the attorney's fees, court costs and other litigation costs of City.

(g) *Texas Law.* This Agreement has been made under and shall be governed by the laws of the State of Texas.

(h) *Authority to Enter Contract.* Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations or other legal entity.

(i) *Waiver.* Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the City party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

(j) *Headings.* The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or Intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

(k) *Invalidity.* If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

(l) *Written Notice.* Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least ten (10) days written notice to the other parties in writing of such change.

(m) *Entire Agreement.* It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This

Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

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

CITY OF _____, TEXAS:

ATTEST:

_____, Mayor
City of _____, Texas

_____, City Secretary
City of _____, Texas

CONTRACTOR:

ATTEST:

CONTRACTOR

By:
Title:

By:
Title:



Agenda Briefing

Date of Meeting: April 2, 2024

Responsible Department: Finance

Presenter: Kevin Padgett, Public Works Director

Briefing Prepared By: Kevin Padgett

Strategic Focus Area: Infrastructure

General Information:

Consider and take all appropriate action on bid award and execution of a contract for RFP 2024-02-340 Red Oak Acres Subdivision Water Line to Bull-G Construction LLC, not to exceed \$516,572.00.

Executive Summary / Background:

City of Seabrook solicited bids for waterline replacement project in the Red Oak Acres Subdivision. Sixteen bids were received with Bull-G Construction, LLC, being the lowest responsible bidder at a base bid of \$516,672.

Funding / Fiscal Information:

Total Base Bid & Supplemental Items \$516,672.00

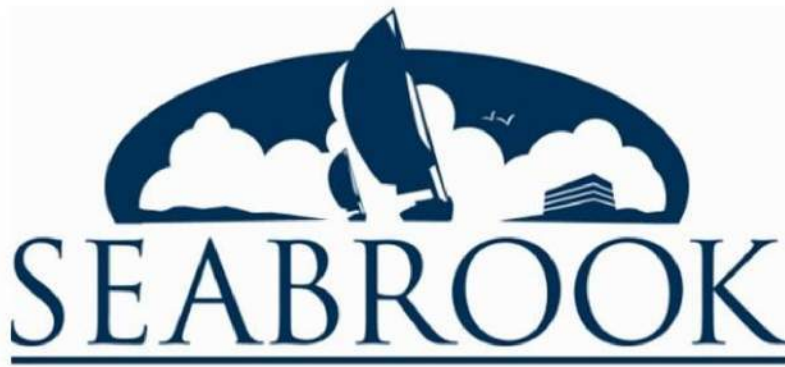
Supporting Materials Attached:

1. Bull-G Front End Documents - Red Oak Acres

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

Approve bid proposal and enter into contract with Bull-G Construction LLC.



**STANDARD CONTRACT DOCUMENTS AND
TECHNICAL SPECIFICATIONS FOR:**

RED OAK ACRES SUBDIVISION WATER LINE

SEABROOK PROJECT NO: 2024-02-340

COBBFENDLEY PROJECT NO. 1912-001-20



Kerry Lackey

1/31/2024

JANUARY 2024



TBPE Firm Registration No. 274 | TBPLS Firm Registration No. 100467

Construction Management ▪ Geographic Information Systems ▪ Hydraulics and Hydrology ▪ Land Development
Public Works ▪ Right-of-Way Acquisition ▪ Site Development ▪ Subsurface Utility Engineering
Surveying ▪ Telecommunications ▪ Transportation ▪ Utility Coordination and Design

00003
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01-Section 00020

NOTICE TO BIDDERS

Request for Competitive Sealed Bids

CSB# 2024-02-340

Red Oak Acres Subdivision Water Line

Notice is hereby given that the City of Seabrook solicits competitive sealed bids for the following:

CSB#-2024-02-340: RED OAK ACRES SUBDIVISION WATER LINE

Sealed bid packets will be received until 10:00 a.m. on February 29, 2024 by the Purchasing Department, 1700 First Street, Seabrook TX 77586. CSBs must be received and time stamped by the Purchasing Department prior to the aforementioned time, after which time all qualified packets will be opened and read aloud at Seabrook City Hall. No late CSBs will be accepted. CSB documents may be obtained from the Purchasing Department at City Hall or by email to kshannahan@seabrooktx.gov. CSB documents may also be obtained upon payment of \$75 (non-refundable) at the office of the Engineer, Cobb, Fendley & Associates, Inc., 13430 Northwest Freeway, Suite 1100, Houston TX 77040, with checks made payable to the **City of Seabrook** or at www.civcastusa.com without charge. A **non-mandatory** pre-bid conference will be held at City Hall, City of Seabrook, 1700 First Street, Seabrook, Texas 77586, on February 22, 2024, at 2:00 p.m. All prospective Bidders are **encouraged** to attend.

CSBs may be viewed and submitted electronically through Public Purchase. To submit a bid packet electronically, an account will need to be created in Public Purchase, and then CSB 2024-02-340 can be accessed for electronic submission. Electronic CSBs must be submitted before the 10:00 a.m. deadline on February 29, 2024.

Please visit <https://www.publicpurchase.com/gems/register/vendor/register> to register or login with Public Purchase.

PUBLISH: February 8, 2024
February 15, 2024

Section 00100

INSTRUCTIONS TO BIDDERS

1. DEFINITIONS

- A. Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (General Conditions) have the meanings assigned to them in the General Conditions. Other terms used in the Bidding Documents and not defined elsewhere have the following meanings, which are applicable to both the singular and plural thereof:
1. Bidder: One who submits a bid directly to the Owner.
 2. Successful Bidder: The most qualified, responsible and responsive bidder to whom the Owner makes an award.
 3. Bidding Documents: The Notice to Bidders, Instructions to Bidders, Supplementary Conditions to General Conditions, Special Conditions (Underground Utilities), Special Conditions to the Agreement, Proposal and the Proposed Contract Documents (including Addenda issued prior to receipt of Bids).

2. PREPARATION OF BIDS

- 2.1. Complete sets of bidding documents must be used in preparing bids. Neither the Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of bidding documents. Copies of bidding documents are made available only for the purpose of obtaining bids on the work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

- 3.1. Each bidder must submit with the bid a Financial and Experience Statement. The statement shall be filed with the proposal in a separate sealed envelope marked "Financial and Experience Statement".
- 3.2. Financial statements from the three most qualified bidders will be retained by the Owner until award of the contract. NO FINANCIAL STATEMENT WILL BE READ ALOUD AT THE BID OPENING. Upon award of the contract, the statements of all unsuccessful bidders will be returned.
- 3.3. Experience Statement will demonstrate the Company's **minimum 10 years' experience in the construction of similar facilities** by listing example projects completed by Bidder, giving the Name of Project, Value of Contract, and Date Completed. An exhaustive list is not required, but representative projects over the entire period should be listed.
- 3.4. Experience Statement shall also demonstrate the **minimum 5 years' experience of the proposed Project Superintendent**.
- 3.5. Additional written evidence of qualifications, such as financial data, previous experience, present commitments, and other such data as may be called for by the OWNER.

- 3.6. Bidder cannot do business with Iran, Sudan or known terrorist organizations and have contracts with the City (Texas Government Code Section 2252.151 and 2252.152).
- 3.7. Bidder cannot boycott Israel and have contracts with the City (Texas Government Code Section 2271.002).
- 3.8. Bidder's attention is directed to the fact that the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. (SB 13, 87th Session of Texas Legis., Effective September 1, 2021.)
- 3.9. Bidder's attention is directed to the fact that the contract contains a written verification from the company that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association (SB 19, 87th Session of Texas Legis., Effective September 1, 2021.)
- 3.10. Bidder's attention is directed to the fact that the contract contains a written verification from the company that it is not owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia or any designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or any designated country; and (ii) is headquartered in China, Iran, North Korea, Russia or a designated country. (SB 2116, 87th Session of Texas Legis, Effective September 1, 2021.)
- 3.11. A contract award must not be made to parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities or otherwise listed in the SAM Exclusions, the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. Therefore, the Bidder agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- A. It is the responsibility of each Bidder before submitting a Bid to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance, or furnishing of the Work, (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify ENGINEER of all conflicts, errors, or discrepancies in the Contract Documents discovered by the Bidder.
- B. Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities or others, and OWNER does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

- C. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, underground facilities, and other physical conditions, and possible changes in the Contract Documents due to differing conditions appear in Article 5 of the General Conditions.
- D. Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies, and obtain any additional information and data which pertain to the physical conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work, and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.
- E. On request in advance, OWNER will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall clean up and restore the site to its former condition upon completion of such explorations.
- F. Failure to perform such investigations during the Bid period shall not relieve Bidder from responsibility for investigations, interpretations and proper use of available information in preparation of Bidder's proposal.
- G. The lands upon which the Work is to be performed, rights-of-way, and easements for access thereto and other lands designated for use by CONTRACTOR in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by CONTRACTOR. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by OWNER unless otherwise provided in the Contract Documents.
- H. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 5, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences, or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

5. INTERPRETATION OF DOCUMENTS AND ADDENDA

- A. All questions about the meaning or intent of the Contract Documents must be submitted to the Engineer in writing or through Civcast at least five (5) days prior to the opening of bids. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda at least 48 hours prior to Bid Opening.
- B. Any interpretation of the Contract Documents will be made only by Addendum duly issued, and a copy of such addendum will be made available to each prospective bidder recorded by ENGINEER as having received a set of Contract Documents. Each Bidder is responsible for obtaining Addenda. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

- C. Addenda may also be issued to modify the Contract Documents as deemed advisable by OWNER and ENGINEER.

6. BID SECURITY

- A. Each Bid shall be accompanied by Bid security made payable to OWNER in an amount of five percent of the Bidder's maximum Bid price and in the form of a bid bond, cashier's check, or certified check. Bid Bond shall have a "B+" rating from Best's Key Rating Guide, and shall be duly authorized by the State of Texas to execute Bid Security.
- B. The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security with 15 calendar days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of the seventh day after the Effective Date of the Agreement or the forty-sixth day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within 7 days after the Bid opening. All bid awards should include fully negotiated contracts, signed by the contractor prior to the agenda briefing form being submitted. Bond and Insurance documents must be submitted prior to start of work.

7. CONTRACT TIME

- A. The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Time) are set forth in the Agreement.

8. LIQUIDATED DAMAGES

- A. Provisions for liquidated damages, if any, are set forth in the Agreement.

9. SUBSTITUTE OR "OR EQUAL" ITEMS

- A. The Contract, if awarded, will be on the basis of materials and equipment described in the DRAWINGS or specified in the Specifications without consideration of possible substitute or "or equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in Paragraph 7.05 of the General Conditions and may be supplemented in the General Requirements (Division 1).

10. SUBCONTRACTORS, SUPPLIERS AND OTHERS

- A. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, and other person and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within 7 days after the Bid opening, submit to OWNER a

list of all such Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person, or organization, either may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.

- B. If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person, or organization listed and to whom OWNER or ENGINEER does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 7.07 of the General Conditions.
- C. In Contracts where the Contract Price is on the basis of Cost of Work Plus a Fee, the apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to OWNER those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with OWNER'S written consent.
- D. No CONTRACTOR shall be required to employ any Subcontractor, Supplier, other person, or organization against whom CONTRACTOR has a reasonable objection.

11. BID FORMS

- A. All Bids shall be completely filled out on the specified bid forms without modification or provisions unless otherwise required.
- B. The Bids shall be completed in duplicate. The original shall be filed with the OWNER and the Engineer shall keep the duplicate.
- C. The Bids must be clearly and legibly filled out in ink or typed.
- D. All Bids must be officially executed. Bids by Corporations must be executed in the corporate name by the president or vice president (or other corporate officer, accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or assistant secretary. The corporate address and state of incorporation must be shown below the signature. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature, and the official address of the partnership must be shown below the signature. All business entity names must be registered with the Secretary of State of Texas and appropriate office of registration.
- E. The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).

12. SUBMISSION OF BIDS

- A. Bids shall be submitted at the time and place indicated in the Notice to Bidders, and shall be enclosed in an opaque sealed envelope marked with the Project title, name and address

of the Bidder and containing Bid security and other required documents. Bids will be securely kept unopened, until the specified time. The bids received after the specified time will not be considered. All incomplete Bids shall be considered non-responsive. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

13. MODIFICATION AND WITHDRAWAL OF BIDS

- A. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to opening of Bids.
- B. If, within 24 hours after Bids are opened, any Bidder files a duly signed, written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

14. OPENING OF BIDS

- A. Bids will be opened and read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders within 7 calendar days after the date of Bid opening.

15. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- A. The apparent Successful Bid and the next two lowest Bids will remain subject to acceptance for 45 calendar days after the day of the Bid opening. All other Bids will be released and the Bid security returned within 7 days. OWNER may, in its sole discretion, release any Bid and return the Bid security prior to that date.

16. AWARD OF CONTRACT

- A. Contract will be awarded on basis of best apparent value to the City. The base bid or the alternate bid may be used for award at the discretion of the City. The lowest base bid is not necessarily awarded the bid.
- B. The Owner reserves the right to reject any and all bids, to waive any and all informalities not involving price, time or changes in the Work, to negotiate contract terms with the Successful Bidder, and to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. Also, OWNER reserves the right to reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER. Bidder will be checked against federal disbarment lists. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- C. In evaluating Bids, OWNER will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

- D. OWNER may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. OWNER also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- E. OWNER may conduct such investigations as OWNER deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to OWNER'S satisfaction within the prescribed time.
- F. Alternate bid items are included in the Bid Form. The Successful Bidder will be determined based on either the low Base Bid (Part C of the Bid), or the low Base Bid Plus Alternate Bid (Part E of the Bid), at the discretion of the OWNER.
- G. If the Contract is to be awarded, OWNER will give the Successful Bidder a Notice of Award within 60 calendar days after the day of the Bid opening.
- H. All bid awards should include fully negotiated contracts, signed by the contractor prior to the agenda briefing form being submitted. Bond and Insurance documents must be submitted prior to start of work.

17. CONTRACT SECURITY

- A. Paragraph 6.01 of the General Conditions and the Supplementary Conditions set forth OWNER'S requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by the required performance and payment Bonds.

18. INSURANCE REQUIREMENTS

- A. The CONTRACTOR shall provide and maintain a minimum coverage as defined in the Contract Documents (Article 6 of the General Conditions). The companies providing the coverage shall be acceptable to the OWNER (Certificate of Insurance Section 00650).

19. SIGNING OF AGREEMENT

- A. When OWNER gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within 15 calendar days thereafter, CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement, and attached documents to OWNER with the required Bonds. Within 10 calendar days thereafter, OWNER shall deliver one fully signed counterpart to CONTRACTOR. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

20. PRE-BID CONFERENCE

- A. A pre-bid conference will be held at the time and place indicated in the Invitation to Bid (Section 00020). Representatives of OWNER and ENGINEER will be present to discuss the Project. All prospective bidders are encouraged to attend and participate in the

conference. ENGINEER will notify all prospective Bidders of record of any such Addenda as ENGINEER considers necessary in response to questions arising at the conference.

21. SALES TAX

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

END OF SECTION

Section 00300

BID FORM

TO: City of Seabrook
City Hall
1700 First Street
Seabrook, Texas 77586

PROJECT: Red Oak Acres Subdivision Water Line

PROJECT NO.: 2024-02-340

BIDDER: BULL-G CONSTRUCTION LIMITED LIABILITY COMPANY
(Print or Type full name of proprietorship, partnership, corporation, or joint venture.)

1. The undersigned bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the deposition of Bid Security. This Bid will remain subject to acceptance for 60 calendar days after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within 15 calendar days after the date of OWNER'S Notice of Award. All bid awards should include fully negotiated contracts, signed by the contractor prior to the agenda briefing form being submitted. Bond and Insurance documents must be submitted prior to start of work.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - A. BIDDER has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged):

Date	Number
_____	_____
_____	_____
_____	_____

- B. BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

- C. BIDDER has studied carefully all reports and drawings of subsurface conditions and drawings of physical conditions as provided in Paragraph 5.03 of the General Conditions, and accepts the determination of the technical data contained in such reports and drawings upon which BIDDER is entitled to rely.
 - D. BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, and studies (in addition to or to supplement those referred to in C above) which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance, or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 5.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.
 - E. BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, or similar information or data in respect to said underground facilities are or will be required by BIDDER in order to perform and furnish the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 5.04 of the General Conditions.
 - F. BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
 - G. BIDDER has given ENGINEER written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to BIDDER.
 - H. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any Agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.
4. BIDDER will complete the Work for the following price: (Note: Bid item is for work complete in place). These prices are to cover all expenses incurred in performing the work required under the Contract Documents, including related work that may not be specifically mentioned.

A. BID FORM: RED OAK ACRES SUBDIVISION WATER LINE

ITEM NO.	DESCRIPTION	UNIT	EST. QUAN.	UNIT PRICE	TOTAL PRICE
BASE BID					
1	Mobilization (No Greater Than 5% of Total Bid)	LS	1	\$ 24,000	\$ 24,000
2	Traffic Control and Regulation, in Accordance with Drawings and Specifications, (MUTCD latest Revision) Complete in Place	LS	1	\$ 2,500	\$ 2,500
3	4-Inch PVC Water Line (AWWA C900) Class 150, by Horizontal Directional Drill Construction, Including Bends, Fittings, Disinfection and Pressure Test, Complete in Place, the Sum of	LF	267	\$ 35	\$ 9,345
4	6-Inch PVC Water Line (AWWA C900) Class 150, by Horizontal Directional Drill Construction, Including Bends, Fittings, Disinfection and Pressure Test, Complete in Place, the Sum of	LF	281	\$ 40	\$ 11,240
5	8-Inch PVC Water Line (AWWA C900) Class 150, by Horizontal Directional Drill Construction, Including Bends, Fittings, Disinfection and Pressure Test, Complete in Place, the Sum of	LF	5406	\$ 52	\$ 281,112
6	Fire Hydrant Assembly, Complete in Place, the Sum of	EA	11	\$ 7,765	\$ 85,415
7	12-Inch Wet Connection, Complete in Place, the Sum of	EA	1	\$ 3,000	\$ 3,000
8	6-Inch by 6-Inch Tapping Sleeve and Valve, Including 6-Inch PVC Required to Temporarily Connect to 8-Inch Water Line, Complete in Place	EA	2	\$ 4,000	\$ 8,000
9	6-Inch Gate Valve (AWWA C509), Mechanical Joint, Resilient Wedge, Open Counterclockwise with Valve Box and Concrete Pad, Complete in Place, the Sum of	EA	1	\$ 1,600	\$ 1,600

ITEM NO.	DESCRIPTION	UNIT	EST. QUAN.	UNIT PRICE	TOTAL PRICE
10	8-Inch Gate Valve (AWWA C509), Mechanical Joint, Resilient Wedge, Open Counterclockwise with Valve Box and Concrete Pad, Complete in Place, the Sum of	EA	7	\$ 2,700	\$ 18,900
11	Water Service Reconnection, Short Side, Complete in Place, the Sum of	EA	27	\$ 1,100	\$ 29,700
12	Water Service Reconnection, Long Side, Complete in Place, the Sum of	EA	16	\$ 1,800	\$ 28,800
13	Trench Safety System for Water Lines Greater than 5-Feet Deep, All Types, Including Installation, Operation and Removal	LF	1200	\$ 1.00	\$ 1,200
14	Remove and Dispose of Existing Sidewalk and Base (All Depths), Includes all Saw-Cutting Required	SY	15	\$ 20	\$ 300
15	Replace Sidewalk Including Base, Match Existing Grade, Complete in Place, the Sum of	SY	15	\$ 20	\$ 300
16	Remove and Salvage Existing Fire Hydrant Assembly and Valve	EA	9	\$ 300	\$ 2,700
17	Abandon Valve and Remove and Dispose of Valve Box	EA	6	\$ 300	\$ 1,800
18	Cut, Plug & Abandon Water Line, All Sizes	EA	3	\$ 1,250	\$ 3,750
SUBTOTAL BASE BID PRICE					\$ 513,662.00

ITEM NO.	DESCRIPTION	UNIT	EST. QUAN.	UNIT PRICE	TOTAL PRICE
SUPPLEMENTAL ITEMS					
19	Install Extra Cement Stabilized Sand, as Instructed by the Engineer	CY	100	\$ 5.00	\$ 500
20	Install Extra Select Fill, as Instructed by the Engineer	CY	300	\$ 5.00	\$ 1,500
21	Brace, Support and Protect Structures as per Utility Company's Requirements	EA	2	\$ 5.00	\$ 10.00
22	Remove, Dispose of, and Replace Existing Asphalt Pavement and Base (All Depths), Match Existing Grade, as Instructed by the Engineer	SY	100	\$ 10.00	\$ 1,000
SUBTOTAL SUPPLEMENTAL ITEMS					\$ 3,010.00
TOTAL BASE BID & SUPPLEMENTAL ITEMS					\$ 516,672.00

B. SUPPLEMENTAL WORK BID ITEMS

** The items listed above are supplemental work items and are to be used only on the instructions of the field engineer on the job. No Compensation will be received for any part of these items unless they are actually used on the job under the direction of the field engineer. Any additional items required over and above those listed above will have to be secured on a change in contract and are not to be used until same has been approved by the City Auditor. The amount bid on the above listed items is to be included in the grand total of this contract.

C. TOTAL BID PRICE

TOTAL BASE BID & SUPPLEMENTAL ITEMS \$ 516,672.00

D. DEDUCTIONS FROM BID ITEMS

BIDDER acknowledges that OWNER has a maximum funding limitation and that OWNER may adjust the total quantity of the items listed above to conform to that limitation. Reducing the quantity of items listed in this BID shall not invoke the provisions of Paragraph 13.03E.1 of the General Conditions unless such reduction exceeds 20% of any individual item.

5. BIDDER agrees that the Work will be substantially complete and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
6. The following documents are attached to and made a condition of this Bid:
 - A. Required Bid Security in the form of a Bid Bond, Cashier's Check, or Certified Check.
7. Communications concerning this Bid shall be addressed to the business address of BIDDER indicated herein.
8. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

SUBMITTED on FEBRUARY 29, 2024.Bidder: BULL-G CONSTRUCTION LIMITED LIABILITY COMPANY

(Print or Type full name of your proprietorship, partnership, corporation, or joint venture.)*

**By:

Beatriz Rios
Signature02/29/2024

Date

Name: BEATRIZ RIOS

(Print or Type name)

MANAGER

Title

Address: 8519 CEDEL DR HOUSTON, TX 77055

(Mailing)

(Street, if different)

Telephone and Fax Number: 832-846-3183

(Print or Type numbers)

* If Bid is a joint venture, add additional Bid Form signature sheets for each member of the joint venture.

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

Note: This document constitutes a government record, as defined by § 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in § 37.10 of the Texas Penal Code.

END OF SECTION



The Gray Insurance Company
The Gray Casualty & Surety Company

Bid Bond

Know all men by these presents:

THAT Bull-G Construction, LLC.
of Houston, TX

hereinafter called the Principal, and The Gray Casualty & Surety Company of Metairie, Louisiana, a corporation duly organized under the laws of the State of Louisiana, as Surety, hereinafter called the Surety, are held firmly bound unto City of Seabrook as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Greatest Amount Bid (5% G.A.B.) for the payment of which sum and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid:

Job Number: 1912-001-20

Project Description: Red Oak Acres Subdivision Water Line

Project Location: _____

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specialized in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this 29th day of February, 2024, by:

Principal: Bull-G Construction, LLC

Witness: [Signature]
Signature: Beatriz Rios

Signature and Title: Beatriz Rios - MANAGER

Surety: The Gray Casualty & Surety Company

Witness: [Signature]
Megan Liescheski
Signature: [Signature]

Attorney-in-Fact: Mireli Stanford

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: **Principal:**

Project:

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Megan Liescheski, Jacob Strader, Justin McQuain, Mireli Stanford, and Brian P. Herrera of Spring, Texas jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$25,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana
ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 29th day of February, 2024.

Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 29th day of February, 2024.

Leigh Anne Henican





The Gray Insurance Company
The Gray Casualty & Surety Company

Statutory Complaint Notice

To obtain information or to make a complaint:

You may contact the Surety via telephone for information or to make a complaint at: 1-504-754-6711.

You may also write to the Surety at:

Gray Surety
P.O. Box 6202
Metairie, LA 70009-6202

You may also contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write to the Texas Department of Insurance at:

P.O. Box 149104
Austin, TX 78714-9104
Fax: 512-475-1771

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become part of condition of the attached document. This notice is written under a complete reservation of rights. Nothing herein shall be deemed to be an estoppel, waiver or modification of any of Gray's rights or defenses, and Gray hereby reserves all of its rights and defenses under any general agreement of indemnity, contracts, agreements, bonds, or applicable law.

Section 00500

AGREEMENT

THIS AGREEMENT is dated as of _____, by and between City of Seabrook (hereinafter called OWNER) and Bull-G Construction, LLC (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The work is generally described as follows:

Red Oak Acres Subdivision Water Line**Article 2. ENGINEER**

The project has been designed by Cobb, Fendley & Associates, Inc., who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES

- 3.1 The Work will be substantially completed within **180** days after the date when the Contract Times commence to run as provided in paragraph 4.01 of the General Conditions and completed and ready for final payment in accordance with paragraph 15.06 of the General Conditions within **210** days after the date when the Contract Times commence to run.
- 3.2 Liquidated Damages. CONTRACTOR and OWNER recognize that time is of the essence as stated in Paragraph 3.1 above and that OWNER will suffer financial and other losses if the Work is not completed within the Contract Times, as duly modified. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration preceding 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) CONTRACTOR shall pay OWNER Five Hundred and no/100_dollars (\$ 500.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in Paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER Five Hundred and no/100 dollars (\$500.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE

The OWNER shall pay to the CONTRACTOR in current funds the price or prices shown in CONTRACTOR'S Bid, which forms a part of this Contract, such payments to be subject to the General and Special Conditions of the Contract. The total amount awarded is \$ 516,672.00.

Five Hundred Sixteen Thousand Six Hundred Seventy-Two and 00/100 Dollars

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the last day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in accordance with 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 in the General Requirements

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to 95% of Work completed, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 15.01E of the General Conditions.

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 15.01E of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 15.06.

Article 6. INTEREST

All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect costs, progress, performance or furnishing the Work.

- 7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions provided in paragraph 4.02 of the General Conditions and accepts the determination of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTS in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 7.7 Under Section 231.006, Family Code, the CONTRACTOR certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.
- 7.8 By signing and entering into this Agreement, CONTRACTOR verifies that neither the Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Contractor, pursuant to Chapter 2271 of the Texas Government Code, (1) boycotts Israel; (2)nor will boycott Israel during the term of the contract; and (3) is not listed by the Texas Comptroller on the list of prohibited companies as defined in Texas Government Code Section 808.051.
- 7.9 CONTRACTOR represents that, neither the Contractor nor any wholly owned subsidiary,

majority-owned subsidiary, parent company or affiliate of the Contractor (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

- 7.10 By signing and entering into this Agreement, CONTRACTOR verifies that neither the Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Contractor, pursuant to Senate Bill 13, 87th Session of Texas Legis., Effective September 1, 2021, (1) boycotts energy companies; (2) nor will boycott energy companies during the term of the contract.
- 7.11 By signing and entering into this Agreement, CONTRACTOR verifies that neither the Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Contractor, pursuant to Senate Bill 19, 87th Session of Texas Legis., Effective September 1, 2021, has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) nor will discriminate during the term of the contract against a firearm entity or firearm trade association.
- 7.12 By signing and entering into this Agreement, CONTRACTOR verifies that neither the Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Contractor, or any of its sub-contractors pursuant to Senate Bill 2116, 87th Session of Texas Legis., Effective September 1, 2021, is owned or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia or any designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or a designated country; and (ii) is headquartered in China, Iran, North Korea, Russia or a designated country. The term "designated country" means a country designated by the Governor as a threat to critical infrastructure under Section 113.003 of the Texas Business & Commerce Code. The term "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.
- 7.13 CONTRACTOR certifies that the individual or business entity named in this contract, bid, or application is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities.

Article 8. CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work, consist of the following:

- 8.1 This Agreement (pages 00500-1 to 00500-7, inclusive)
- 8.2 Conflict of Interest Questionnaire, Form 1259
- 8.3 Performance, Payment and/or Maintenance Bonds

- 8.4 Notice of Award
- 8.5 General Conditions (pages 00700-0 thru 00700-70, inclusive), Supplemental Conditions (pages 00800-1 thru 00800-14, inclusive), Prevailing Wage Rate Scale (pages 00900-1 thru 00900-2, inclusive)
- 8.6 Specifications bearing the title “*Standard Contract Documents and Technical Specifications for Red Oak Acres Subdivision Water Line*”.
- 8.7 CONTRACTOR’S Bid (pages 00300-1 to 00300-7 inclusive).
- 8.8 Addenda issued prior to Bid.
- 8.9 Documentation submitted by CONTRACTOR prior to Notice of Award.
- 8.10 Evidence of Insurance.
- 8.11 Drawings consisting of sheets numbered 1 through 27, inclusive, bearing the general title “*Red Oak Acres Subdivision Water Line*”.
- 8.12 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant Article 11 the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Article 11 of the General Conditions. All bid awards should include fully negotiated contracts, signed by the contractor prior to the agenda briefing form being submitted. Bond and Insurance documents must be submitted prior to start of work.

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are 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 Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, officers, directors, shareholders, successors, assigns and legal representatives to the other party hereto, its partners, officers, directors, shareholders, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

AGREEMENT

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement).

OWNER

CONTRACTOR:

CITY OF SEABROOK

Bull-G Construction, LLC

By: _____

By: Beatis Pies
Title: MANAGER

Attest: _____

Attest: SL

Address for giving notice:
1700 First Street

Address for giving notice: 8519 Cedel Dr.
HOUSTON, TX 77055

Seabrook, Texas 77586

By: _____
Title: _____

Attest: _____

Agent for service of process:

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

END OF SECTION

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

BULL-G CONSTRUCTION LIMITED LIABILITY COMPANY

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N/A

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☒ No

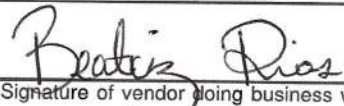
B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☒ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 
Signature of vendor doing business with the governmental entity

03/11/2024

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2024-1129600

Date Filed:
02/29/2024

Date Acknowledged:

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

Bull-G Construction Limited Liability Company
Houston, TX United States

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

City of Seabrook

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

1912-001-20
Red Oak Acres Subdivision Water Line

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



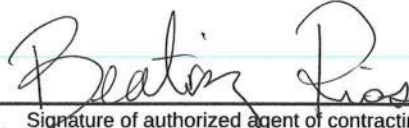
6 UNSWORN DECLARATION

My name is BEATRIZ RIOS, and my date of birth is 02/09/1981.

My address is 8519 CEDEL DR, HOUSTON, TX, 77055, US.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in HARRIS County, State of TEXAS, on the 29 day of FEB, 20 24.
(month) (year)


Signature of authorized agent of contracting business entity
(Declarant)

House Bill 89 VERIFICATION

I hereby affirm that I am an authorized agent of BULL-G CONSTRUCTION LIMITED LIABILITY COMPANY hereafter referred to as company, **do hereby depose and verify under oath that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270::**

- 1. Does not boycott Israel currently; and**
- 2. Will not boycott Israel during the term of the contract the above-named Company, business or individual.**

Pursuant to Section 2270.001, Texas Government Code:

- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
- 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

03/11/2024

DATE



SIGNATURE OF COMPANY REPRESENTATIVE

City of Seabrook

PERFORMANCE BOND

Section 00610

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That Bull-G Construction, LLC of the City of Houston of Harris County, and State of Texas as principal, and The Gray Casualty & Surety Company, authorized under the laws of the State of Texas to act as surety on Bonds for principals, are held and firmly bound unto City of Seabrook (OWNER), in the penal sum of \$ 516,672.00 Five Hundred Sixteen Thousand Six Hundred Seventy-Two and 00/100 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 with the OWNER, dated the ___ day of _____ 20___, for Work associated with the project named:

“Red Oak Acres Subdivision Water Line”

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 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 Statute 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 any way 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____.

Contractor

Bull-G Construction, LLC

By: Beatriz Rios

Title: MANAGER

Address: 8519 CEDEL DR.

HOUSTON, TX 77055

Telephone: 832-846-3183

Fax: _____

Surety

The Gray Casualty & Surety Company

By: Megan Liescheski

Title: Megan Liescheski, Attorney-in-Fact

Address: 1625 West Causeway Approach

Mandeville, LA 70471

Telephone: 1-504-754-6711

Fax: _____

NOTICE: THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING ITS TOLL-FREE TELEPHONE NUMBER; 1-800-252-3439.

END OF SECTION

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: _____ **Principal:** _____
Project: _____

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Megan Liescheski, Jacob Strader, Justin McQuain, Mireli Stanford, and Brian P. Herrera of Spring, Texas jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety. contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$25,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this _____ day of _____

Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this _____ day of _____

Leigh Anne Henican



City of Seabrook

PAYMENT BOND

Section 00620

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That Bull-G Construction, LLC of the City of Houston of Harris County, and State of Texas as principal, and The Gray Casualty & Surety Company, authorized under the laws of the State of Texas to act as surety on Bonds for principals, are held and firmly bound unto City of Seabrook (OWNER), in the penal sum of \$ 516,672.00 Five Hundred Sixteen Thousand Six Hundred Seventy-Two and 00/100 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 with the OWNER, dated the ___ day of _____ 20___, for Work associated with the project named:

Red Oak Acres Subdivision Water Line

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 Statute 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 any way 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.

PAYMENT BOND

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

Contractor

Bull-G Construction, LLC

By: Beatriz Rios

Title: MANAGER

Address: 8519 CEDEL DR.
HOUSTON, TX 77055

Telephone: 832-846-3183

Fax: _____

Surety

The Gray Casualty & Surety Company

By: Megan Liescheski

Title: Megan Liescheski, Attorney-in-Fact

Address: 1625 West Causeway Approach
Mandeville, LA 70471

Telephone: 1-504-754-6711

Fax: _____

NOTICE: THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING ITS TOLL-FREE TELEPHONE NUMBER; 1-800-252-3439.

END OF SECTION

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number:

Principal:

Project:

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: Megan Liescheski, Jacob Strader, Justin McQuain, Mireli Stanford, and Brian P. Herrera of Spring, Texas jointly and severally on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$25,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this day of

Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this day of

Leigh Anne Henican



City of Seabrook

ONE-YEAR MAINTENANCE BOND

Section 00630

ONE-YEAR MAINTENANCE BOND

THE STATE OF TEXAS §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Bull-G Construction, LLC, a
Texas Corporation, as Principal, hereinafter called "Contractor" and the other subscriber
hereto The Gray Casualty & Surety Company as Surety, do hereby acknowledge ourselves to be held
and firmly bound to the City of Seabrook, a municipal corporation, in the sum of
Five Hundred Sixteen Thousand Six Hundred Seventy-Two and 00/100 Dollars (\$ 516,672.00) for the payment of
which sum, well and truly to be made to the City of Seabrook, and its successors, the said
Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and
assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the said Contractor has on or about this day executed a contract in writing with the City of Seabrook for:

Red Oak Acres Subdivision Water Line

with all of the work to be done as set out in full in said contract and plans and specifications therein referred to and adopted by the City of Seabrook (Contract), all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW, THEREFORE, if the said Contractor shall comply with the provisions of the subject Contract, and correct Work not in accordance with the Contract Documents discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the contract documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20__.

Principal:

Bull-G Construction, LLC

By: Beatriz Rios

Title: MANAGER

Address:

8519 CEDEL DR.

HOUSTON, TX 77055

Telephone: 832-846-3183

Fax: _____

Surety:

The Gray Casualty & Surety Company

By: Megan Liescheski

Title: Megan Liescheski, Attorney-in-Fact

Address:

1625 West Causeway Approach

Mandeville, LA 70471

Telephone: 1-504-754-6711

Fax: _____

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END OF SECTION

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: _____ **Principal:** _____
Project: _____

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"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

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Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this _____ day of _____

Leigh Anne Henican





The Gray Insurance Company
The Gray Casualty & Surety Company

Statutory Complaint Notice

To obtain information or to make a complaint:

You may contact the Surety via telephone for information or to make a complaint at: 1-504-754-6711.

You may also write to the Surety at:

Gray Surety
P.O. Box 6202
Metairie, LA 70009-6202

You may also contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write to the Texas Department of Insurance at:

P.O. Box 149104
Austin, TX 78714-9104
Fax: 512-475-1771

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become part of condition of the attached document. This notice is written under a complete reservation of rights. Nothing herein shall be deemed to be an estoppel, waiver or modification of any of Gray's rights or defenses, and Gray hereby reserves all of its rights and defenses under any general agreement of indemnity, contracts, agreements, bonds, or applicable law.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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 parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, 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 an initial decision by 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 an initial decision by Engineer concerning the

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; 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 Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - 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.4, concerning disputes arising after Engineer 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. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *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.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *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.
 - 21. *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.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *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.
25. *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.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *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.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *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.
31. *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.
32. *Project*—The total undertaking to be accomplished for Owner by 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.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
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 Engineer's 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 Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. 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 or not approved or accepted by 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, in the opinion of Engineer, 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 on the basis of 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 to Contractor issued 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 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 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 shall not be effective to assign to 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 Engineer’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 Engineer.

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 Engineer 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, 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, Engineer, 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 Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer 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 Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer 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, 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, Engineer, 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. 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 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 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, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner 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 part of the Contract Documents prepared by or for Engineer.

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 Engineer 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 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 Engineer 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 Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner 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 part of the Contract Documents prepared by or for Engineer 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 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer 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 acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision 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.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

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 which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. 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 Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *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 Engineer 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, 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 as a consequence 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 Engineer 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 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, 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 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 Owner and Engineer 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. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, 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 Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) 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 adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion 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 the course of 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 Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. 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;
 3. 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
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) 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 adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner'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 the Engineer may at its discretion 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 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 and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with 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, 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 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 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 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 Engineer 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 sufficient 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, 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 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 each other insured and Engineer.

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 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 insurance 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

Engineer or its consultants, 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 Engineer, its consultants, 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, 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, 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, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its 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 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 Engineer 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 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 Engineer, 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 Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion 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, Engineer 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 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. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer'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 Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer 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 Engineer 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 sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer 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 Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer 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. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer 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 Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of 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 Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer'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 Engineer 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 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 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 or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, 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 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 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 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 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 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 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 Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

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 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 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, in writing, 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 and Engineer of the specific requirements of Contractor's safety program with which Owner'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, Engineer 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 Engineer 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 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 Engineer 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 Engineer for review and approval 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 Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information 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 Engineer may require to enable Engineer to review the Submittal 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 review and approval 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 and approval 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 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 of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval 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. 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 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 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 Engineer's 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 corrections required by Engineer 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 by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient 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 the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review 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. Engineer's 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 Engineer 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. Engineer is 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 Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer 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 Engineer;
 - 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 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 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 Engineer 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 Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner 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 other 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 Engineer 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 Engineer 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, 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 and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, 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 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 Engineer.

9.02 *Replacement of Engineer*

- A. 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—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

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

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order 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. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not 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 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

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

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

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by 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 Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by 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. Engineer will not 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. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not 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. Engineer'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, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has 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 or technical 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 actually 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 or technical 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. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also 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 or technical 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 on the basis of 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 Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer 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 Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
 - 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner 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. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), 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 Engineer 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 Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer'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. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer 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 Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer 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 the Engineer, for its 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, giving full consideration to 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 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 on the basis of 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 on the basis of 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 Engineer, 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 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 as a whole is performed on the basis of 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 on the basis of 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 Engineer.
- 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 Engineer 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. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer 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, 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 Engineer 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 Engineer 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 Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; 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 Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, 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 Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer 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 assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner 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 Engineer 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 Engineer 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. Engineer 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 Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer 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 Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, 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, and Engineer and Engineer's 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 Engineer. 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 Engineer 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. Engineer 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 Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer'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 Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer 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 Engineer 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 Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - 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. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer'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. Engineer 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 Engineer'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 Engineer, 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 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 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 Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) 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 Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a 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 Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer 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 therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer 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 Engineer 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, 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, 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 Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
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, Engineer will promptly make a final inspection with Owner 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 Payment*

1. After Contractor has, in the opinion of 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. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer'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 Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer 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, Engineer 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 Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer 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 Engineer.

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 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 Engineer. 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 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 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 Engineer as to their reasonableness and, when so approved by Engineer, 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 Engineer, 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) Engineer 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 Engineer, and provided Owner or Engineer 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 Engineer 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 Engineer, 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, Engineer, or Contractor, 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 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**

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SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement EJCDC® C-700, Standard General Conditions of the Construction Contract (2018). 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

No Supplementary Conditions in this Article.

ARTICLE 2—PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

SC-2.01A. Amend Paragraph 2.01. A. to read: Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to Owner **for Owner’s signature**, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

SC-2.01C. Delete Paragraph 2.01. C. in its entirety.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

No Supplementary Conditions in this Article.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.05 Delays in Contractor’s Progress

SC-4.05 Amend Paragraph 4.05.C by adding the following subparagraphs:

5. Weather-Related Delays

- a. If “abnormal weather conditions” as set forth in Paragraph 4.05.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Contract Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.

- b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:
 - 1) Every workday on which one or more of the following conditions exist will be considered a “bad weather day”:
 - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds 0.25” of precipitation as rain equivalent.
 - ii) Ambient outdoor air temperature at 11:00 a.m. is equal to or less than the following low temperature threshold: 32 degrees Fahrenheit.
 - 2) Determination of actual bad weather days during performance of the Work will be based on the weather records routinely measured and recorded by a weather monitoring station readily available nearest the site of the Work.
 - 3) Contractor shall anticipate the number of foreseeable bad weather days per month indicated in the table in Exhibit A—Foreseeable Bad Weather Days.
 - 4) In each month, every bad weather day exceeding the number of foreseeable bad weather days established in the table in Exhibit A—Foreseeable Bad Weather Days will be considered as “abnormal weather conditions.” The existence of abnormal weather conditions will not relieve Contractor of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Contractor’s then-current Progress Schedule’s critical path for the Project.

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

5.03 *Subsurface and Physical Conditions*

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

- E. Reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data were supplied with the Bidding Documents. 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 the Geotechnical Report comprise the specific Technical Data. Opinions, analysis, and other conclusions stated in the report are not Technical Data.
- F. 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), mapping based on remote sensing, and any other data identified to the Bidders have not been verified and are not Technical Data.

- G. Contractor may request copies of reports and drawings identified in SC-5.03.E and SC-5.03.F that were not included with the Bidding Documents from Engineer.

5.06 Hazardous Environmental Conditions

SC-5.06 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
none		[Identify Technical Data]

5. The following table lists the drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely:

Drawings Title	Date of Drawings	Technical Data
none		[Identify Technical Data]

ARTICLE 6—BONDS AND INSURANCE

6.02 Insurance—General Provisions

SC-6.02.A Amend Paragraph 6.02.A, to read as follows:

“Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.”

SC 6.02.B. delete the words “Owner or” from the first sentence; the remainder to remain as written.

SC 6.02.D. add the following after the first sentence:

“Contractor’s insurance policy will be required to verify coverage/limits to conform to the requirements of the Contract should the Certificate of Insurance provide a disclaimer that they are not conclusive evidence of insurance.”

SC 6.02.E Delete Paragraph 6.02.E of the General Conditions in its entirety.

SC-6.02.F Amend Paragraph 6.02.F, to read as follows:

“Failure of Owner to demand such certificates or other evidence of the Contractor’s full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Contractor’s obligation to obtain and maintain such insurance.”

SC-6.02.I Amend Paragraph 6.02.I to read as follows:

“If Contractor does not maintain the insurance required by the Contract, he shall notify Owner in writing of such failure to maintain prior to any change in the required coverage.

SC 6.02.K Delete Paragraph 6.02.K of the General Conditions in its entirety.

6.03 Contractor’s Insurance

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

- D. 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).

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

- E. 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.
- F. 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.
- G. 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.

H. Commercial General Liability—Minimum Policy Limits

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

- I. Automobile Liability: Contractor shall purchase and maintain comprehensive 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.

Automobile Liability	Policy limits of not less than:
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

- J. 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.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$20,000,000
General Aggregate	\$20,000,000

- K. 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 \$18,000,000 after accounting for partial attribution of its limits to underlying policies, as allowed above.
- L. 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.

SUPPLEMENTARY CONDITIONS

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$5,000,000
General Aggregate	\$5,000,000

- M. **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.

Contractor's Professional Liability	Policy limits of not less than:
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- N. **Railroad Protective Liability Insurance:** Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

[Insert additional specific requirements, commonly set by the railroad, here.]

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	\$specified by railroad
Aggregate	\$specified by railroad

- O. **Unmanned Aerial Vehicle Liability Insurance:** If Contractor uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, Contractor shall obtain UAV liability insurance in the amounts stated; name Owner, Engineer, and all individuals and entities identified in the Supplementary Conditions as additional insureds; and provide a certificate to Owner confirming Contractor's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

Unmanned Aerial Vehicle Liability Insurance	Policy limits of not less than:
Each Claim	\$1,000,000
General Aggregate	\$1,000,000

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04B Delete Paragraphs 6.04.B and 6.04.C of the General Conditions in their entirety.

SC 6.04F Supplement Paragraph 6.04 with the following addition:

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, losses to Owner's connected/adjacent/involved facilities, 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.
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) Owner's connected/adjacent/involved property or facilities affected by the Work, (c) spare parts inventory required within the scope of the Contract; and (d) 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, 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), Engineer, 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."

6.05 *Property Losses; Subrogation*

SC-6.05.B Delete Paragraph 6.05.B of the General Conditions in its entirety.

6.06 *Receipt and Application of Property Insurance Proceeds*

SC-6.06. Delete Paragraphs 6.06.A, 6.06.B, and 6.06.C of the General Conditions in their entirety.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:

- D. Contractor shall be responsible for the cost of any overtime pay or other expense incurred by the Owner for Engineer's services (including those of the Resident Project Representative, if any), Owner's representative, and construction observation services, occasioned by the performance of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day. If Contractor is responsible but does not pay, or if the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

7.10 *Taxes*

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

- B. 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.

ARTICLE 8—OTHER WORK AT THE SITE

No Supplementary Conditions in this Article.

ARTICLE 9—OWNER'S RESPONSIBILITIES

No Supplementary Conditions in this Article.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.03 *Resident Project Representative*

SC 10.03 Add the following new subparagraph immediately after Paragraph 10.03.A:

- 1. On this Project, by agreement with the Owner, the Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.

ARTICLE 11—CHANGES TO THE CONTRACT

No Supplementary Conditions in this Article.

ARTICLE 12—CLAIMS

No Supplementary Conditions in this Article.

ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

13.01 *Cost of the Work*

SC-13.01 Supplement Paragraph 13.01.B.5.c.(2) by adding the following sentence:

The equipment rental rate book that governs the included costs for the rental of machinery and equipment owned by Contractor (or a related entity) under the Cost of the Work provisions of this Contract is the most current edition of either the Rental Rate Blue Book for Construction Equipment, or the AED Green Book: Rental Rates

& Specifications for Construction Equipment. Only one reference will be used as basis of cost, not most favorable rates from varying sources.

13.03 *Unit Price Work*

SC-13.03 Delete Paragraph 13.03.E in its entirety and insert the following in its place:

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 extended price of a particular item of Unit Price Work amounts to five percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than twenty five percent 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

No Supplementary Conditions in this Article.

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

15.01 *Progress Payments*

SC-15.01 Add the following new Paragraph 15.01.F:

- F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.03 *Substantial Completion*

SC-15.03 Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, will be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under this Article 15.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

No Supplementary Conditions in this Article.

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

No Supplementary Conditions in this Article.

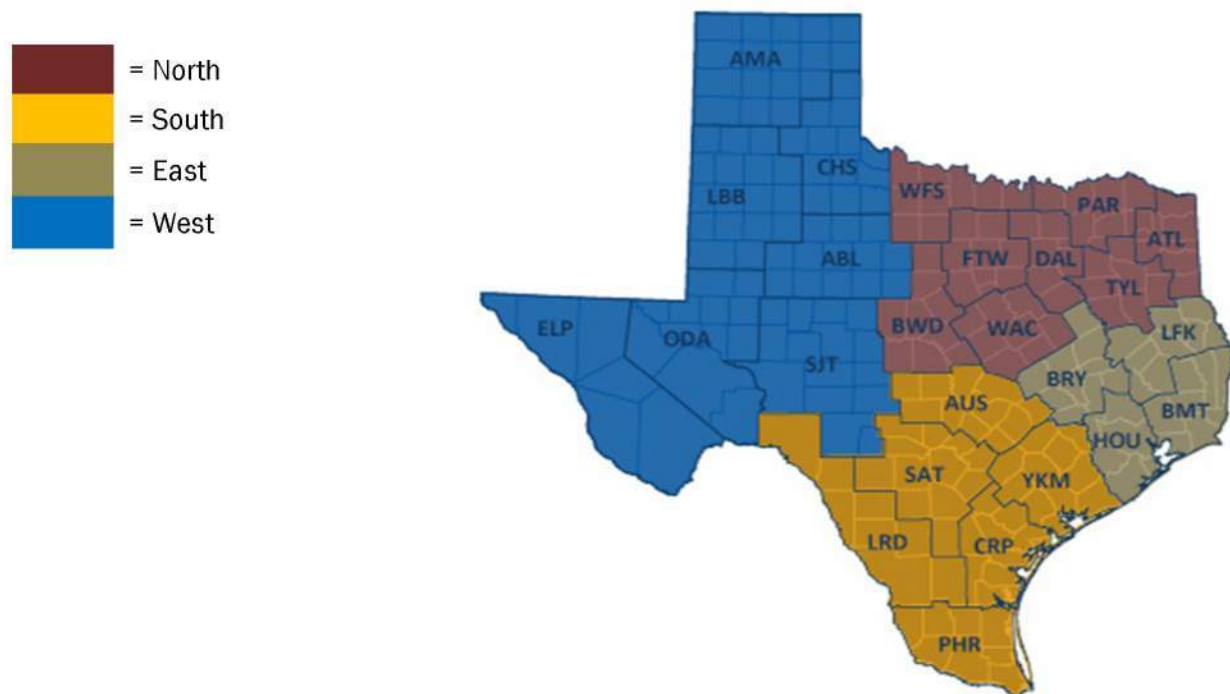
ARTICLE 18—MISCELLANEOUS

No Supplementary Conditions in this Article.

EXHIBIT A—FORESEEABLE BAD WEATHER DAYS

Weather Days Included per Month & Year
Number of days with >0.25" Precipitation, too wet days, or Avg Temp =< 32 degrees
*Year total is dependent on calendar day definition. Assumes 75% of weather days falls on weekday and not weekend or holiday for 5 day, 85% for 6 day, and 100% for 7 day

	January	February	March	April	May	June	July	August	Sept	October	Nov	Dec	Average per Month	* Total per Year (5 day)	* Total per Year (6 day)	* Total per Year (7 day)
North	6	3	2	4	4	5	6	7	2	2	1	4	4	37	40	46
South	4	2	4	2	3	2	1	5	5	2	1	4	3	27	31	35
East	6	2	6	4	5	9	6	12	3	4	2	7	5	48	53	66
West	5	2	1	2	2	3	3	5	4	1	1	4	3	27	30	33



Source: Texas Department of Transportation

**CITY OF SEABROOK
RESOLUTION NO. 2017-15**

PREVAILING WAGE RATE SCALE

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SEABROOK, TEXAS, ADOPTING A PREVAILING WAGE RATE
SCALE FOR PUBLIC WORKS PROJECTS**

WHEREAS, The City of Seabrook has been here to fore duly created and organized as a political subdivision of the state; and

WHEREAS, Chapter 2258, Texas Government Code ("Chapter 2258"), requires a political subdivision to determine the general prevailing rate of per diem wages for each craft or type of worker in the locality in which a construction project for the political subdivision is to be performed and the general prevailing rate of per diem wages for legal holiday and overtime work; and

WHEREAS, Chapter 2258 provides that a worker employed on a public works project (not including maintenance work) by or on behalf of the political subdivision shall be paid not less than said general prevailing rates, as applicable; and

WHEREAS, Chapter 2258 provides that a contractor which is awarded a construction contract for the political subdivision, or a subcontractor of the contractor, shall pay not less than the rates determined as set forth above to a worker employed in the execution of such contract for a public works project; and

WHEREAS, Chapter 2258 applies to public works projects paid for in whole or in part from funds of the political subdivision, regardless of whether the work is done under the political subdivision's supervision or direction; and

WHEREAS, the City Council of the City of Seabrook has determined the general prevailing rate of per diem wages by using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act(40 U.S.C.§276 *et seq.*), as amended, and has determined to adopt a Prevailing Wage Rate Scale for Public Works Projects forthe City of Seabrook.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEABROOK THAT:

Section1: The City Council has determined the general prevailing rate of per diem wages for each craft or type of worker in the locality in which a public works project for the City of Seabrook is to be performed and the general prevailing rate of per diem wages for legal holiday and overtime work, by using the prevailing wage rate as determined by the United States Department of Labor, in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a *et seq.*), as amended. Further, the City Council has determined that the wage rates in the Prevailing Wage Rate Scale for Public Works Projects (comprised of one or more United States Department of Labor wage determination scales for each project type) for Harris County, which can be found at <https://www.wdol.gov/wdol/scafiles/davisbacon/tx.html>, are the general prevailing wage rates for public works projects by or on behalf of the City of Seabrook.

Section 2: The City Council of the City of Seabrook hereby adopts the Prevailing Wage Rate Scale for Public Works Projects for Harris County, which can be found at <https://www.wdol.gov/wdol/scafiles/davisbacon/tx.html>, which establishes minimum rates for each project type that shall be used by all contractors and their subcontractors on public works projects by or on behalf of the City of Seabrook.

Section 3: A contractor or subcontractor on a construction project by or on behalf of the City of Seabrook shall maintain records as required by Chapter 2258 and shall be subject to the penalties, forfeitures, and withholding of money for failure to comply with this Resolution and/or pending a final determination of an alleged violation, as provided in Chapter 2258.

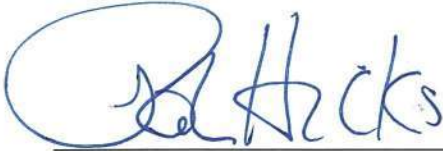
Section 4: The City Manager is hereby directed and authorized to specify the wage rates adopted hereunder for each project type in all specifications for bids and contracts for public works projects by or on behalf of the City of Seabrook.

Section 5: Any prior Resolution Adopting Prevailing Wage Rate Scale for Public Works Projects previously adopted by the City Council is hereby revoked.

PASSED and ADOPTED this 11th day of July, 2017.


Thomas G. Kolupski
Mayor

ATTEST:



Robin Hicks, TRMC
City Secretary



APPROVED AS TO FORM:



Steve Weathered
City Attorney



Agenda Briefing

Date of Meeting: April 2, 2024

Responsible Department: City Manager's Office

Presenter:

Briefing Prepared By: Gayle Cook

Strategic Focus Area: Infrastructure

General Information:

Consider and take all appropriate action on the approval of a Professional Services Agreement between the City of Seabrook and Brown Reynolds Watford Architects (BRW) for architectural services in an amount not to exceed \$264,000.00 and authorize the City Manager to execute all associated documents. This project is part of the 2023 Bond Program.

Executive Summary / Background:

As part of the 2023 Bond Election, the proposition to approve an expansion of Seabrook Fire Station No. 1 was voted in favor by the voters. The proposal under consideration on this item is to extend architectural services to the vendor that was selected during the feasibility study and conducted all onsite reviews for the initial drawings and cost estimates.

Funding / Fiscal Information:

Supporting Materials Attached:

1. Seabrook EMS Proposal - Exhibit A 2024-03-08

Prior Action / Review by Council, Boards, Commissions:

Staff Recommendation:

All requests must be submitted to the City Secretary's Office no later than 12:00 p.m. on the Monday, one week prior to the regular Tuesday Council Meeting. All required attachments are to be submitted with the request. Incomplete items cannot be placed on the agenda.



EXHIBIT A

March 8, 2024

**PROFESSIONAL SERVICES PROPOSAL
CITY OF SEABROOK
VOLUNTEER FIRE STATION ADDITION AND RENOVATION**

ATTN: Gayle Cook, City Manager
1700 1st Street
Seabrook, TX 77586
gcook@seabrooktx.gov
281-291-5688

BRW Architects is pleased to submit this proposal for architectural services to design an EMS addition and select renovation to the existing volunteer Fire Station. The project has an estimated construction budget of \$2.2 Million.

The project scope, scope of services, project schedule, and compensation are described below:

1. INITIAL INFORMATION

The following professional architectural services described in this proposal for the EMS addition and renovation of select spaces that will meet the current and anticipated future employee operational needs and will allow for a more efficient workflow and overall better plan efficiency. A new 4,000 SF addition will be built onto the existing Volunteer Fire Station at 1850 E Meyer Ave. Add Alternates are going to include renovations of the existing fire station. These will consist of a pantry renovation, replacing existing windows with impact rated glazing and frames, replacing the carpet in the training room, and replacing countertops in the kitchen with Quartz.

The current facility and most of the parking spaces will remain operational throughout construction.

The selected exterior design preferences include a one-story building form to closely match the existing building with shed or low-slope roofs, and a secondary entrance. The exterior material preferences include split-face CMU, and metal panels to closely match existing.

The new Building will be designed and engineered to be durable, functional, low maintenance and to resist hurricane winds per local and FEMA codes.

2. ARCHITECTS RESPONSIBILITIES

- A. The Architect shall provide the professional services as set forth in this agreement.
- B. Architectural
 - Description of the basic services listed below under scope of services by phases for the new addition and remodel to select areas of the existing building.
 - Assist the City by Providing RFQ documents, reviews, scoring, and interviews for Solicitation for Competitive Sealed Proposal
- C. Interior Design
 - Design of all Interior Space
 - Selection of Interior materials and Colors throughout the building

- D. Landscape Architecture
 - Landscape design to meet zoning ordinance requirements as applicable and drought-tolerant / Native vegetation goals.
- E. Civil Engineering
 - Drainage, grading and paving design
 - Grading spot elevation adequate for TAS compliance
 - On-site water, gas, and sewer utilities
 - On-site electrical
 - Geotechnical Survey for foundation and paving design recommendations.
 - Complete Surveying with additional information to add to the meets and bounds, easements, and setbacks with topo, existing utilities, existing vegetation.
 - Storm Water Pollutant Prevention Plan (SWPPP to be provided by Contractor)
 - Detention Pond Design, calculations, TCEQ approval, and city review process, as necessary.
- F. Structural Engineering
 - Structural foundation
 - Structural framing
 - ASCE 7-10 wind speed (mph) occupancy category IV, 150 mph
- G. Mechanical, Plumbing and Electrical Engineering
 - Mechanical systems, including temperature controls systems and written sequence of operations
 - Fire protection sprinkler system (performance specifications)
 - Electrical power, lighting, and fire alarm systems
 - Coordination with utility companies for electrical power, telephone, fiber, cable TV, etc. service entrances.
 - Coordination with City's IT department

3. EXCLUSIONS FROM SERVICES

- A. The services shown below are not anticipated at this time; however, project requirements identified during design may require them to be added.
- B. Architectural
 - LEED Design / LEED Certification
 - Full-time on-site construction observation
 - Environmental or hazardous materials conditions / issues
 - Preparation or assistance of additional bid packages after the initial bid
 - Mold analysis
 - Asbestos environmental remediation beyond the analysis
 - Furniture, Fixture and Equipment Procurement
 - Coordination of delivery and installation of furniture
- C. Civil Engineering
 - Zoning modifications, including street abandonments, easements
 - Environmental II or hazardous materials conditions / issues
 - Platting
 - Traffic analysis and traffic signals
- D. Mechanical, Electrical and Plumbing Engineering
 - Building utility bill estimates
 - Acoustical Design and Documentation
 - Energy Efficient / Life Cycle
 - Audio / Visual Equipment
 - Emergency Generator

- Technology and Telecommunication/Data

4. OWNER RESPONSIBILITIES

- A. The Owner shall provide written comments within fourteen to twenty-one (14-21) calendar days pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architects' services. The Owner shall not modify a decision once given to the Architect without additional compensation to the Architect.

5. OWNER PROVIDED SERVICES AND SYSTEMS

- A. The Owner shall furnish services or building systems other than Basic Services or authorize the Architect in writing to furnish them as an Additional Service, when such services are required to complete the project, provided that the City may use another subcontractor to provide the following services. These services may include those listed below as applicable:
- Laboratory materials testing / inspections (during construction)
 - Environmental or hazardous materials conditions / issues

6. SCOPE OF SERVICES BY PROJECT PHASE

- A. Kick Off Meeting
- Review scope of work with project team. Identify contact information as well as chain of command for distributing information.
- B. Programming
- BRW, working with city staff, will review the needs assessment study of the program of spaces, equipment needs, and site modifications for the new EMS addition.
- C. Code Research
- Research the International Building Code requirements as well as plumbing, electrical, lighting, and mechanical, site, floodplain, TAS by identifying requirements and restrictions related to the station and new addition.
 - Research regulatory agencies requirements to verify the agencies' needs and review their process of receiving and approving submitted documents.
- D. Schematic Design
- Schematic Design documents shall include a site plan, building plans, sections, elevations and renderings. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
 - Meet with City of Seabrook Development Services Departments for Pre-Application/Approval Meeting.
 - BRW will provide a statement of probable cost at the completion of Schematic Design, which will be a general estimate developed from several cost databases including our own to determine the cost per square foot.
 - Meetings and Deliverables. The schematic design phase shall include three (3) working design meetings with the Owner. BRW will provide the City of Seabrook PDFs of the drawings and documents for the schematic design phase.
- E. Design Development
- BRW will develop the Schematic Design to greater detail. The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and probable cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the

design establishing the scope, relationships, forms, size and appearance of the project by means of plans, sections and elevations, typical construction details, and outline specifications. The Design Development Documents shall include in general the quality levels for major materials and project systems.

- During the design process, the Architect shall work with the Owner and user group to coordinate the scope of the project. At the completion of Design Development, the Architect shall update the statement of probable cost of the Work and the project schedule. The Architect shall advise the Owner of any changes from previous cost projections due to adjustments in the project scope, refinement of the probable cost of the work, or general market conditions. If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget, the Architect shall make appropriate recommendations to the Owner to adjust the project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.
- BRW will provide preliminary Civil, Structural, Mechanical, Electrical, and Plumbing engineering. Design and coordination with the Owner's IT department will be implemented at this phase. During this phase interior elevations will be developed and BRW will review finish materials, lighting, and furniture. BRW will review with the Owner, equipment and furniture that are owner supplied vs. items supplied by the contractor during construction. Door hardware will be outlined and reviewed. BRW will prepare an outline for materials and products used for specifications.
- BRW's civil engineer will evaluate our site conditions along with parking requirements, drainage, landscaping, and irrigation.
- Meetings and Deliverables. The Design Development phase shall include four (4) working design meetings with the Owner. BRW will provide the City of Seabrook PDFs of the drawings and documents for design development phase. Furthermore, PDF's will be provided for the project manuals (front ends).
- BRW will provide a statement of probable cost at the completion of Design Development, which will be a general estimate developed from several cost data bases including our own to determine the cost per square foot and general costs of selected materials and methods. BRW will submit the estimate in PDF/electronic format.

F. Construction Documents

- The Architect shall provide Construction Documents based on the approved Design Development Documents and updated probable cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and project systems required for construction.
- The Architect shall update the estimate of the Cost of the Work and project schedule at 30%, 60% and 90% completion of Construction Documents. The statement of Probable Cost shall be an estimate to include materials, equipment, component systems and construction types for construction costs. The Statement of Probable Cost will also include project costs consisting of alternates to the bid, owner provided furniture and equipment, an allowance for construction testing, along with the contingency. The contingency includes Owner Generated Changes, Architectural and Engineering Design Contingency, and Unforeseen Construction Conditions. It is recognized that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, over competitive bidding, or market conditions. Accordingly, the Architect acknowledges that the bids may vary from the Owner's budget or the Architect's cost estimate.
- During the development of the Construction Documents, the Architect shall prepare a Project Manual including (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and (2) the Conditions of the contract for Construction (General, Supplementary and other Conditions).

- Construction Documents phase deliverables shall include PDF documents at 30%, 60% and 90% completion for the Owner's review and comment. Final deliverables at 100% completion shall include one electronic file of the Contract Documents in PDF format and Specifications in PDF format.
 - Final design and coordination of the mechanical, electrical, and plumbing will be completed. Mechanical engineering will include sizing of equipment, ducts, diffusers, dampers, and appropriate calculations. Plumbing engineer will include design of wastewater system tied into the existing system, supply water, and gas system. Electrical engineer will provide lighting and locations for speaker system, phone, cable, and data. Civil engineering work will be reviewed and coordinated, and final details will be drawn and specified.
 - Prepare complete Construction Documents, Specifications, Architect's Cost Estimate and Schedule and submit for Permit. Submit plans to Developmental Services Department for their review. Two (2) full size plan sets and PDF's.
 - Submit plans and coordinate with Texas Department of Licensing and Regulation (TDLR) or Registered Accessibility Specialist (RAS) for accessibility review and city permitting. Obtain EAB Number and Plan Review Report and approval for permit.
 - Coordination of all architectural drawings will be detailed and finalized. Specifications will be coordinated with drawings and completed. BRW shall assist in the solicitation for inclusion in the specifications.
 - The Construction Documentation Phase shall consist of four (4) meetings. Construction Documents phase deliverables shall include PDF sets of documents at 30/60/90/100 percent completion for the Owner's review and comment. Final deliverables will be coordinated and submitted per standard process with Permitting Division.
- G. Bidding includes the following
- BRW will provide bid-ready construction drawings and specifications.
 - Assist the City by Providing RFQ documents, reviews, scoring, and interviews for Solicitation for Competitive Sealed Proposal
 - The Architect shall prepare responses to questions from proposers and provide clarifications and interpretations of the Contract Documents in the form of Addenda.
 - The Architect shall consider requests for substitutions during the bidding period, as permitted by the Contract Documents, and shall prepare an Addenda including approved substitutions.
 - The Architect will participate in a pre-proposal conference for prospective bidders.
 - BRW will evaluate the bids for accuracy, check references, and provide a letter of recommendation to award.
- H. Construction Administration
- Participate in Pre-Construction Meeting.
 - Attend and chair (or as requested by Project Manager) construction progress meetings based roughly on one (1) meeting per month on site.
 - The Architect shall not have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction as selected by the Contractor, or for the safety precautions and programs incident to the work of the Contractor, or for the failure of the Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to the Contractor furnishing and performing the work.

- The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as shop drawings, product data, samples, and mock-ups for general conformance with information given and the design concept expressed in the Contract Documents. Review is not conducted for the purpose of determining the accuracy, completeness, or quantities, or for substantiating instructions for installation or performance of equipment or systems.
- The Architect shall visit the site to become generally familiar with the progress of the quality of the work completed (assuming work is ongoing). The Architect's representative shall attend pre-arranged progress meetings and prepare field reports describing the status of the work and any deviations observed from the Construction Documents. The Architect anticipates the addition to be constructed all in one phase of construction.
- Through the construction administration activities with monthly progress meetings, submittal approvals, RFI's, change orders, construction schedule approval, and project close-out, BRW will serve as the representative of the Owner during construction to observe the construction effort and the general conformance by the contractor with the construction drawings and specifications.
- Architect shall perform final closeout procedures as defined in the Contract Documents, including preparation and verification of Punch Lists for the Contractor's use.
- Construction Administration services beyond the following limits shall be an Additional Service:
 - Evaluation of Contractor's substitution requests after thirty (30) days following the execution of the contract.
 - Owner requested project scope changes resulting in changes to the Construction Documents.
 - Evaluation of claims submitted by the Contractor in connection with the work.
- Construction Delays Caused by the General Contractor that result in the Architects Construction Administration services to extend beyond more than sixty (60) days after the date of the Substantial Completion, originally established in the construction contract shall be Additional Services, with the exception of final completion and project closeout, and warranty walk. The monthly lump-sum fee for extended Construction Administration (CA) services shall be the CA portion of the fee divided by the number of months for construction originally established in the construction contract.

I. Warranty Period

- During the 12-month warranty period BRW will manage the coordination of possible issues with the new building by informing the City and by contacting the contractor for correction of possible issue and report to the City on status and completion of resolved issue.
- BRW will Participate in warranty walk of the building after 11 months from substantial completion.

7. TRAVEL

- A. Twenty-four visits to the site by BRW over the duration of the Project. The 24 visits by project team shall be split into 12 visits during design and 12 visits during construction and any additional site visits requested by the Owner shall be reimbursable expenses to BRW. Additional reimbursement excludes additional site visits required to correct design errors or omissions.

8. COMPENSATION

- A. Payment for Architectural services is not to exceed an amount of **\$264,000** to be invoiced monthly based on the percentage of the hourly not to exceed amount projected.
- B. Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as stated below.

- C. If the square footage of the buildings increases by more than 5% prior to acceptance of the construction contractor's competitive sealed proposal or construction manager's guaranteed maximum price, the Architect shall request additional fees for additional services for owners' approval of the additional fees.

D. COST BREAKDOWN BY PHASES

Programming	\$0
Schematic Design (20%)	\$52,800
Design Development (15%)	\$39,600
Construction Documents (40%)	\$105,600
Bid Phase (5%)	\$13,200
Construction Admin Phase (20%)	<u>\$52,800</u>
Total	\$264,000

E. ADDITIONAL COSTS (not Included in Total)

- Geotechnical Survey = \$19,000
- Topographic Survey = \$12,500
- Full Time onsite Construction Observation Daily. 40 hr. weeks, 12 months = \$144,000
- Recommend 1-1/2 visits a week. 82 visits, \$550 a visit = \$45,100
- Two (2) hours for each site visit including local travel time. Field Report (1 hr.) 3 hrs. total = \$550 per visit

F. COST OF THE WORK

- In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

G. BILLING RATES

The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

▪ Principal Architect/ Engineer	\$240.00/hour
▪ Sr. Project Manager Architect/ Engineer	\$185.00/hour
▪ Project Manager Architect/ Engineer	\$170.00/hour
▪ Project Architect Architect/ Engineer	\$150.00/hour
▪ Architect / Engineer	\$125.00/hour
▪ Intern Architect I / Engineer I	\$105.00/hour
▪ Intern Architect II / Engineer II	\$85.00/hour
▪ Admin	\$70.00/hour

H. ADDITIONAL SERVICES

- Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services shall entitle the Architect to compensation and an appropriate adjustment in the Architect's schedule. Additional Services will be negotiated on a lump sum basis.
- Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization.
- If the services covered by this Agreement have not been completed within two (2) years of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

- Add Alternates, existing building renovations, beyond these described in Article 1 shall be negotiated on a lump sum basis.

I. REIMBURSABLE EXPENSES

- BRW does not anticipate compensation for reimbursable expenses. Travel and other related expenses are figured into the overall fee.

J. INVOICING

- Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty days (30) days after the invoice date shall bear interest at the rate of 5% or the maximum rate allowed under Chapter 2251, Texas Government Code.

9. PROJECT SCHEDULE

We anticipate the following time periods for the project phases:

PROJECT PHASE	COMPLETED
Design	
Programming/ Schematic Design (30%)	4 weeks
Design Development (50%)	4 weeks
Construction Documents (100%)	12 weeks
City review	<u>4 weeks</u>
Sub-total	24 weeks (6 months)
Construction	
Bidding	1 month
Building Construction	<u>12 months</u>
Sub-total	13 months
Total	19 months

10. SCOPE AGREEMENT

Agreement represents the entire and integrated agreement between Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral.

This Agreement entered as of the day and year first written above. Please refer to the AIA B101-2017 for signatures.



Agenda Briefing

Date of Meeting: April 2, 2024

Responsible Department: Emergency Services

Presenter: Kevin Rodgers, Emergency Management Director

Briefing Prepared By: Kevin Rodgers

Strategic Focus Area: Public Safety

General Information:

Consider and take all appropriate action on an amendment to the Public Safety Fund budget including an additional \$7,215.49 for additional equipment for the Seabrook Police Department and Seabrook Public Works.

Executive Summary / Background:

The Public Safety Fund Budget is presented to the Council each year to approve the expenditures for the Year. The Funds come from the water bill which is \$3 charge per month per meter and it is on an opt out basis. The only funds historically spent are those collected throughout the previous year minus a 10% amount that is set aside for a Reserve. The amount received was \$111,188.00 giving the task force \$97,642.00 to budget for the year.

The Public Safety Task Force has a budget of \$97,642.00 which includes items to be purchased for the Public Safety agencies. These include, Police Department, Fire Department, Public Works Department, Emergency Medical Services, Fire Marshal and Office of Emergency Management (which includes BayCERT).

This year requests totaled \$100,309.14. The Public Safety Fund Committee identified all requests as appropriate and justified. This approval will leave a healthy reserve balance of \$145,809.66.

Funding / Fiscal Information:

The current approved Public Safety Budget total is \$100,309.14. The committee is asking for an amendment to the budget of \$7,215.49 for a total of \$107,524.65

Supporting Materials Attached:

1. 23-24 SPW PSF Purchase Request Form 1.2
2. 23-24 SPD PSF Purchase Request Form 2

Prior Action / Review by Council, Boards, Commissions:

The Public Safety Fund budget was previously approved by council on January 16, 2024.

Staff Recommendation:

Recommended for approval by the task

Public Safety Fund Purchase Plan Request Form

Date of Request:

Submitter:

Presenter:

Description/Subject:

Purpose/Need:

Estimated Cost:

Impacted Parties:

Miscellaneous Comments:

Task Force Approved YES NO

DATE: _____

Seabrook Police Department

Yes _____ **No** _____

Seabrook Volunteer Fire Department

Yes _____ **No** _____

Seabrook Office of Emergency Management

Yes _____ **No** _____

Seabrook Public Works

Yes _____ **No** _____

Clear Lake Emergency Medical Corps

Yes _____ **No** _____

Community Emergency Response Team

Yes _____ **No** _____

Chairman Signature

DATE: _____

Public Safety Fund Purchase Plan Request Form

Date of Request:

Submitter:

Presenter:

Description/Subject:

Purpose/Need:

Estimated Cost:

Impacted Parties:

Miscellaneous Comments:

Task Force Approved YES NO

DATE: _____

Seabrook Police Department

Yes _____ **No** _____

Seabrook Volunteer Fire Department

Yes _____ **No** _____

Seabrook Office of Emergency Management

Yes _____ **No** _____

Seabrook Public Works

Yes _____ **No** _____

Seabrook Emergency Medical Service

Yes _____ **No** _____

Community Emergency Response Team

Yes _____ **No** _____

Chairman Signature

DATE: _____

Web: www.gardnerandmartin.com

Planning & Zoning Commission

OFFICIAL REPORT

The Planning and Zoning Commission of the City of Seabrook met on FEBRUARY 15, 2024 to hold a meeting to consider:

Conduct a public hearing on a request to amend the Seabrook City Code, Appendix A, "Comprehensive Zoning", Article 3, "Establishment of Zoning Districts and Associated Regulations", Section 3.02 "R-LD Low Density Single-Family Residential District", Section 3.03 "R-1 Single-Family Detached Residential District", Section 3.04 "R-2 Single-Family Detached Residential District (Small Lots)", Section 3.05 "R-3 Medium Density Residential District", Section 3.06 "C-1 Light Commercial District", Section 3.07 "C-2 Medium Commercial District", Section 3.08 "C-3 Heavy Commercial District", Section 3.09 "SH 146 South Commercial District (146-S)", Section 3.10 "WAD Waterfront Activity District", Section 3.11 "MMU Marine Oriented Mixed-Use District", Section 3.12 "OS Old Seabrook District", Section 3.13 "MH Mobile Home-Manufactured Housing District", Section 3.14 "LI Light Industrial District", and Section 3.16 "SH 146 Main Commercial District (146-M)", by modifying the "Supplementary Regulations", to include, the addition of tents and lean-to as prohibited temporary structures to be used for on-site dwelling purposes.

THE PLANNING & ZONING COMMISSION MADE THE FOLLOWING RECOMMENDATION:

APPROVAL ☒ **APPROVAL WITH AMENDMENTS/CONDITIONS (SEE BELOW)** ☒ **DENIAL** ☐
by a concurring vote of a majority of members of the Planning and Zoning Commission present at the meeting on FEBRUARY 15, 2024, as designated below and as certified by the signature of the Chairman.
This document is not valid unless signed by the Chairman/Presiding Commissioner.

Approval with amendment to make "Lean-to" plural in the verbiage.

<u>VOTE:</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>INITIAL</u>
Gary Renola	✓				GTR
Darrell Picha	✓				DP
Rosebud Caradec	✓				
Scott Reynolds	✓				CSR
Ed Klein	✓				EK
Guy Rogers	✓				Guy Rogers
Rhonda Thompson				✓	

Gary T. Renola

Gary T. Renola, Chairman
Planning & Zoning Commission

ATTEST:

Kianna Bellow

Kianna Bellow
Administrative Assistant

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02 / 16 / 2024
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This document has not been fully executed by all signers.

ORDINANCE NO. 2024-06
AMEND SUPPLEMENTARY REGULATIONS
PROHIBITING THE USE OF TENTS AND LEAN-
TOS FOR ON-SITE DWELLING PURPOSES

AN AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, SECTIONS 3.02 THROUGH 3.14 AND SECTION 3.16, BY AMENDING THE "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ON-SITE DWELLING PURPOSES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR VIOLATION OF ANY PROVISION HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Seabrook is continually reviewing the provisions of the City Code of Ordinances relating to land use and other circumstances which impact the health, safety and well-being of residents, citizens, and inhabitants; and

WHEREAS, the Planning and Zoning Commission of the City of Seabrook has conducted a public hearing, received input from staff and is of the opinion and has issued its final report that the amendments hereto are necessary for the public safety, health, and welfare and for protection of the residents; and

WHEREAS, the City Council and the Planning and Zoning Commission of the City of Seabrook have studied the present provisions of the Code of Ordinances of the City of Seabrook and have determined the need to update the provisions relative to permitted land uses; and

WHEREAS, the Planning and Zoning Commission recommended approval of this amendment at its meeting of February 15, 2024, and has made its final report; and

WHEREAS, all public notices have been posted, published and all required hearings on this matter have been held in accordance with the Comprehensive Zoning Ordinance and law; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEABROOK, STATE OF TEXAS:

SECTION 1. FINDINGS OF FACT.

That the facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.02 "R-LD LOW DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT", BY AMENDING, SUBSECTION 3.02.13 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.02.13 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.

SECTION 3. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.03 "R-1 SINGLE-FAMILY DETACHED RESIDENTIAL DISTRICT", BY AMENDING, SUBSECTION 3.03.13 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.03.13 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.

SECTION 4. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.04 "R-2 SINGLE-FAMILY DETACHED RESIDENTIAL DISTRICT (SMALL LOTS)", BY AMENDING, SUBSECTION 3.04.11 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.04.11 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 5. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.05 "R-3 MEDIUM DENSITY RESIDENTIAL DISTRICT", BY AMENDING, SUBSECTION 3.05.11 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.05.11 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 6. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.06 "C-1 LIGHT COMMERCIAL DISTRICT", BY AMENDING, SUBSECTION 3.06.13 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.06.13 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 7. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.07 "C-2 MEDIUM COMMERCIAL DISTRICT", BY AMENDING, SUBSECTION 3.07.13 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.07.13 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 8. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.08 "C-3 HEAVY COMMERCIAL DISTRICT", BY AMENDING, SUBSECTION 3.08.13 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.08.13 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 9. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.09 "SH 146 SOUTH COMMERCIAL DISTRICT (146-S)", BY AMENDING, SUBSECTION 3.09.12 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.09.12 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 10. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.10 "WAD WATERFRONT ACTIVITY DISTRICT", BY AMENDING, SUBSECTION 3.10.13 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.10.13 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 11. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.11 "MMU MARINE ORIENTED MIXED USE DISTRICT", BY AMENDING, SUBSECTION 3.11.10 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.11.10 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 12. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.12 "OS OLD SEABROOK DISTRICT", BY AMENDING, SUBSECTION 3.12.03 H. ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.12.03 H. Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 13. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.13 "MH MOBILE HOME-MANUFACTURED HOUSING DISTRICT", BY AMENDING, SUBSECTION 3.13.13 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.13.13 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 14. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.14 "LI LIGHT INDUSTRIAL DISTRICT", BY AMENDING, SUBSECTION 3.14.14 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.14.14 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 16. AMENDMENT TO SEABROOK CODE OF ORDINANCE, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE III, "ESTABLISHMENT OF ZONING DISTRICTS AND ASSOCIATED REGULATIONS", SECTION 3.16 "SH 146 MAIN COMMERCIAL DISTRICT (146-M)", BY AMENDING, SUBSECTION 3.16.12 ENTITLED "SUPPLEMENTARY REGULATIONS", TO INCLUDE, THE ADDITION OF TENTS AND LEAN-TOS AS PROHIBITED TEMPORARY STRUCTURES TO BE USED FOR ONSITE DWELLING PURPOSES, ESTABLISHING THE FOLLOWING ASSOCIATED REGULATIONS:

3.16.12 Supplementary Regulations:

- A. Temporary structures for uses incidental to construction work on the premises which are removed upon completion or abandonment of construction work are allowed upon permit from the building official.**
- B. No temporary structures, including tents, lean-tos, recreational vehicles, construction trailers or travel trailers may be used for on-site dwelling purposes.**
- C. Eaves shall be permitted to encroach no more than 18 inches upon any setback.**

SECTION 17. INCORPORATION INTO THE CODE, PENALTY
CLAUSE.

This Ordinance is hereby incorporated and made a part of the Seabrook City Code. Violation of this ordinance is subject to the penalty section of said Code and Ordinance, Section 1-15 "General Penalty and 11.06, "Criminal Enforcement" which provides that any person who shall violate any provision of this Ordinance shall be deemed guilty of an offense and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

SECTION 18. REPEAL OF CONFLICTING ORDINANCES.

All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance are hereby expressly repealed.

SECTION 19. SEVERIBILITY.

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Seabrook, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 20. NOTICE.

The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City; the Ordinance to take effect upon publication.

PASSED, APPROVED, AND ADOPTED on first reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 19th day of March 2024.

PASSED, APPROVED, AND ADOPTED, as revised on final reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 2nd day of April 2024.

BY: _____
Thomas G. Kolupski, Mayor

411

412 ATTEST:

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415 By: _____

416 Rachel Lewis, TRMC

417 City Secretary

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421 APPROVED AS TO FORM:

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423 By: _____

424 David Olson

425 City Attorney



LOGOS

About LOGO Guide Signs

LOGO Guide Signs are the eye-catching blue Specific Service Signs located on eligible highways that guide motorists to services such as gas, food, lodging, and camping. The signs show the exit numbers where those services are located. For businesses not visible from the highway, a directional ramp sign will guide drivers to each business.

Why LOGOS?



The primary benefit of using Logo signs is that a motorist will know which specific brand or providers of services are accessible from an interchange prior to exiting the limited-access highway. Travelers and potential customers will follow the widely recognized 'blue signs' to your business. Not only that, but the brand exposure gained with highway advertising is one of the least-expensive and most cost-effective ways to leverage your brand.



Pricing: Mainline Panel

Range 1 Traffic Count is under 29,999 cars per day	Range 2 Traffic Count is between 30,000 and 99,999 cars per day	Range 3 Traffic Count is between 100,000 and 149,999 cars per day	Range 4 Traffic Count is over 150,000 cars per day
\$1,000 per year	\$1,850 per year	\$2,950 per year	\$3,500 per year
Ramp Panel may be required based on location of business	Ramp Panel may be required based on location of business	Ramp Panel may be required based on location of business	Ramp Panel may be required based on location of business
\$150 plus tax Printing Fee	\$150 plus tax Printing Fee	\$150 plus tax Printing Fee	\$150 plus tax Printing Fee
\$150 installation fee	\$150 installation fee	\$150 installation fee	\$150 installation fee
Design and fabrication included in cost	Design and fabrication included in cost	Design and fabrication included in cost	Design and fabrication included in cost

Pricing: Ramp Panel

Range 1 Traffic Count is under 29,999 cars per day	Range 2 Traffic Count is between 30,000 and 99,999 cars per day	Range 3 Traffic Count is between 100,000 and 149,999 cars per day	Range 4 Traffic Count is over 150,000 cars per day
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Ramp Panel may be required based on location of business	Ramp Panel may be required based on location of business	Ramp Panel may be required based on location of business	Ramp Panel may be required based on location of business	
\$100 plus tax Printing Fee	\$100 plus tax Printing Fee	\$100 plus tax Printing Fee	\$100 plus tax Printing Fee	
\$150 installation fee	\$150 installation fee	\$150 installation fee	\$150 installation fee	
Design and fabrication included in cost	Design and fabrication included in cost	Design and fabrication included in cost	Design and fabrication included in cost	

Eligibility

General Requirements

Currently, the LOGOS program accommodates services for gas, food, lodging, camping, and 24-hour pharmacies. To qualify for Specific Travel Services (Logo) Signing, a facility shall be open to the general public and shall:

- Offer at least one primary motorist service;
- be located with driveway access to the access road (frontage road), ramp, or intersecting crossroad;
- be visible, or have on-premise signing visible, from the commercial establishment's driveway access or the exit ramp, access road, crossroad, or intersection (or for an establishment that provides lodging, be visible from an eligible highway or an interchange on an eligible highway and be located on a street that is not more than two turns off the access or frontage road to the eligible highway); and
- be located not farther than three miles from an interchange on an eligible highway
- comply with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, or national origin; and

- post its hours of operation on or near the main entrance so that they are visible to the public during open and closed hours.



FOOD

To be eligible to have a business logo placed on a specific information logo sign carrying the legend “FOOD,” a commercial establishment must provide:

- a license or other evidence of compliance with public health or sanitation laws, if required by law;
- continuous operation at least 10 hours a day to serve two meals a day, six days a week;
- seating capacity for at least 16 people;
- public restrooms; and
- a telephone accessible to the public.

LODGING

To be eligible to have a business logo placed on a specific information logo sign carrying the legend “LODGING,” a commercial establishment must provide:

- a license or other evidence of compliance with laws regulating facilities providing lodging, if required by law;
- a minimum of 10 guest rooms each of which provides sleeping accommodations; and
- a telephone accessible to the public.

Pharmacy

GAS

To be eligible to have a business logo placed on a specific information logo sign carrying the legend “GAS,” a commercial establishment must provide:

- Vehicle services, including fuel, oil, and wash;
- restroom facilities and drinking water;
- continuous operation for at least 12 hours a day, six days a week; and
- a telephone accessible to the public.

CAMPING

To be eligible to have a business logo placed on a specific information logo sign carrying the legend “CAMPING,” a commercial establishment must provide:

- a license or other evidence of compliance with laws regulating camping facilities, if required by law;
- a facility that is accessible to and capable of accommodating all types of recreational vehicles, trailers, campers, and tents;
- adequate parking accommodations;
- drinking water; and
- modern sanitary facilities.

Multiple services

To be eligible to have a business logo placed on a specific information logo sign, including the legend "24 HOUR Rx," a commercial establishment must:

- be open for business 24 hours of each day; and



If a commercial establishment offers more than one motorist service, it will be eligible to display a sign for each of those services on the appropriate information logo sign, provided that:

- provide pharmacy services 24 hours of each day.
- minimum criteria for Gas, Food, and/or Lodging.
- the additional business logo(s) would not constitute participation by another eligible commercial establishment whose sole service would be Gas, Food, and/or Lodging, and
- a business logo space is available.

Q & A

 How many business logo panels can be displayed on one sign?

No more than six (6) business logo panels shall be displayed on any background sign.

 How much do LOGOS cost?

LOGO Mainlane Signs cost between \$1,000 and \$3,500 per year, and LOGO Ramp Signs cost between \$175 and \$775 per year. This cost is determined by the daily traffic count for your area. In addition to these annual fees, there is a startup fee for installation and printing.

 How big is a mainline panel?

A mainlane panel is 48" wide and 36" tall.

 What type of highway is eligible?

A controlled-access highway on the designated state highway system. These typically have on and off ramps and are grade separated.

 Do I get to choose position and placement of sign assembly?



Signage placement will be determined by a first-come, first-served basis of qualified applicants. In some cases, a lottery system for placement will be utilized.

☐ Can I get a ramp sign without a mainline sign?

No, you must have a contract for a mainlane panel. Ramps signs are not contracted separately.

☐ When is a ramp sign required?

Whenever the motorist must make a change in the original direction of travel in order to receive service. TxDOT does not allow ramp signs to be placed without a mainlane sign.

☐ How long will it take for my LOGOS to be installed?

For new structures, it will take about six months from the day we receive your application to the date of installation. For existing structures, it will take about five weeks from the day we receive your application to the date of installation.

☐ Do you offer screen printing?

Yes, screen printing is available upon request. Please call our office for more information.

Mainlane LOGOS cost: \$250 for the first color; \$50 for each additional color

Ramp LOGOS cost: \$175 for the first color; \$50 for each additional color

☐ What are the eligibility requirements for the EV (Electric Charging) snipe?

To be eligible to include the EV (Electric Charging) snipe to your Gas business logo:

- The facility is immediately adjacent to the signed conventional highway or lies on a roadway intersected by the signed highway;
- The facility is open to the general public while continuously operating for at least 12 hours per day, 7 days a week;
- The facility has an on-premise sign, visible to motorists, that clearly identifies the specific fuel(s) available at the facility;
- For cities with a population of 250,000 or more: be within a 1/2 mile of the eligible signed intersection;



- Facilities with Level 3 or higher electric charging stations must contain a cluster with 2 or more charging posts;
 - **Level 1 and Level 2 charging stations do not qualify for signing
- The electric charging station is illuminated and includes regulatory signs that clearly identify the dedicated parking spaces for electric vehicle charging

April 2024

April 2024							May 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
7	1	2	3	4	5	6	5	6	7	1	2	3	4
14	8	9	10	11	12	13	12	13	14	8	9	10	11
21	15	16	17	18	19	20	19	20	21	15	16	17	18
28	22	23	24	25	26	27	26	27	28	22	23	24	25

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 31	Apr 1 11:00am SH 146 MILESTONE EVENT - TXDOT EVENT 12:00pm SH 146 TOAST AT TOOKIES SEAFOOD (TOOKIES)	2 6:00pm Regular City Council Meeting (City Hall 1st Floor)	3	4 6:00pm Open Space and Trails Committee Meeting (Public Works Facility)	5	6
7	8	9	10	11 8:30am 3rd Grade Field Trip (City Hall) 6:00pm Seabrook Economic Development Board of Directors Meeting	12	13
14	15	16 6:00pm Regular City Council Meeting (City Council Chamber)	17	18 6:00pm Seabrook Planning & Zoning Commission Meeting (Council Chamber)	19	20 9:00am Seabrook Trail Adventure (1100 Red Bluff)
21	22	23	24	25	26	27
28	29	30	May 1	2	3	4

May 2024

May 2024							June 2024						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4	2	3	4	5	6	7	1
12	13	14	8	9	10	11	9	10	11	12	13	14	8
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Apr 28	29	30	May 1	2 6:00pm Open Space and Trails Committee Meeting (Public Works Facility)	3	4 Keels & Wheels (Lakewood Ya
5 Keels & Wheels (Lakewood \	6	7 6:00pm Regular City Council Meeting (City Hall 1st Floor)	8	9 6:00pm Seabrook Economic Development Board of Directors Meeting (Council Chamber)	10	11
12	13	14	15	16 6:00pm Seabrook Planning & Zoning Commission Meeting (Council Chamber)	17	18
19	20	21 6:00pm Regular City Council Meeting (City Council Chamber)	22	23 4:30pm 2024 State of the Bay (SSHR Marina Plaza Ballroom)	24	25
26	27 9:00am Memorial Day Event (Bay Area Veterans Memorial)	28	29	30	31	Jun 1