

**SEABROOK CITY COUNCIL
NOTICE OF REGULAR CITY COUNCIL MEETING
TUESDAY, JULY 2, 2013 - 7:00 PM**

NOTICE IS HEREBY GIVEN THAT THE SEABROOK CITY COUNCIL WILL MEET ON **TUESDAY JULY 2, 2013 AT 7:00 PM** IN THE SEABROOK CITY HALL COUNCIL CHAMBERS, 1700 FIRST STREET, SEABROOK, TX 77586, **TO DISCUSS, CONSIDER, AND IF APPROPRIATE, TAKE ACTION** WITH RESPECT TO THE ITEMS LISTED BELOW.

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) 291-5600 OR FAX (281) 291-5710 FOR FURTHER INFORMATION.

PLEDGE OF ALLEGIANCE

1.0 PRESENTATIONS

- 1.1 Present a proclamation to John Coggeshall. (Council)
- 1.2 Pine Gully Project update and public comments. (Templin)
- 1.3 Presentation to Pam Lab from the Texas Comptroller. (Royal)
- 1.4 Presentation of the 2013 - 2014 Budget. (Templin)

2.0 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. In accordance with the 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.

- 2.1 Mayor, City Council and/or members of the city staff may make announcements about city/community events. (Council)

3.0 BID AWARDS

 ATTACHMENT 1

- 3.1 Consider and Approve the Memorandum of Understanding (MOU) and bid contract for Pine Gully Jetties Project in an amount not to exceed \$250,000. The low bidder

for the project was Crawley Shoreline Construction. (Templin)

4.0 CONSENT AGENDA - Council will discuss, consider and if appropriate, take action on the items listed below.

All consent agenda items are considered by the City Council to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a council member, city manager, city attorney or city secretary so requests, in which event the item will be removed from the Consent Agenda and considered immediately following the Consent Agenda.

ATTACHMENT 2

- 4.1 Approve minutes of the June 18, 2013 City Council meeting. (glaser)

ATTACHMENT 3

- 4.2 Approve second and final reading of proposed Ordinance No. 2013-11, "Parking Provisions for Boat Launch." (Templin/Municipal Court)

AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, ENTITLED "TRAFFIC AND VEHICLES," ARTICLE III, "STOPPING, STANDING, AND PARKING," DIVISION 1, "GENERALLY," TO UPDATE AND FURTHER CLARIFY SECTION 90-69 CURRENTLY ENTITLED, "DESIGNATION OF NO PARKING ZONES- BOAT LAUNCHING AND/OR PARKING;" BY ADDING NEW PROVISIONS AND REVISING TITLE TO "DESIGNATION OF PROHIBITED PARKING – BOAT LAUNCHING, OBSTRUCTION AND DESIGNATED PARKING FOR VEHICLES WITH BOAT TRAILERS;" PROVIDING FOR A PENALTY IN AN AMOUNT OF NOT MORE THAN TWO HUNDRED DOLLARS (\$200.00) FOR VIOLATION OF ANY PROVISIONS HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR NOTICE.

END OF CONSENT AGENDA

5.0 NEW BUSINESS - Council will discuss, consider and if appropriate, take action on the items listed below.

ATTACHMENT 4

- 5.1 Consider amending Chapter 10, "Animals" of the city code of ordinances. (Holbrook)

ATTACHMENT 5

- 5.2 Consider approval of special event permit for the Midnite Slice Seabrook Music Festival to be held on August 17-18, 2013 at Meador Park. (Applicant)

6.0 ROUTINE BUSINESS - Council will discuss, consider and if appropriate, take

action on the items listed below.

ATTACHMENT 6

- 6.1 Consider approval of Action Items Checklist which is attached and made a part of this agenda. (Council)

ATTACHMENT 7

- 6.2 Establish future meeting dates and agenda items. (Council)

7.0 EXECUTIVE SESSION

The City Council will now hold a closed executive meeting pursuant to the provisions of the open meetings Act, Charter 551, Government Code, and Vernon's Texas Codes Annotated, in accordance with the authority contained in one or more of the following sections: Section 551.071, Consultation with Attorney; Section 551.072, Real Property; Section 551.073, Deliberation Regarding a Prospective Gift; Section 551.074, Personnel Matters; Section 551.076. Security Devices; and Section 551.087, Economic Development.

Section 551.071

- 7.1 Consult with attorney to receive legal advice regarding requirements for sale/use of municipal property pursuant to Section 551.071 Texas Government Code. (Royal)

8.0 OPEN MEETING

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

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.

CERTIFICATE

I certify that this notice was posted on the bulletin board on or before Friday, June 28, 2013 no later than 5:00 p.m. and that this notice will remain posted until the meeting has ended.

Meredith Brant, TRMC
Assistant City Secretary



***CITY
OF
SEABROOK***

**AGENDA
BRIEFING**

Date of Meeting: TUESDAY, JULY 2, 2013

Submitter/Requestor: Templin/Chairez Date Submitted: 6/26/2013 7:33:50 AM

Presenter: Templin

Description/Subject:

Consider and Approve the Memorandum of Understanding (MOU) and bid contract for Pine Gully Jetties Project in an amount not to exceed \$250,000.

Purpose/Need: NA

Background/Issue(What prompted this need):

Impacted Parties(Expected/Notified):

Miscellaneous Comments:

Attachments:

(Please list description of attachments and number of pages in each attachment)

Pine Gully Jetties

Pine Gully Jetties - MOU Phase III

recommendation

Extension letter

Fiscal Impact:	Budgeted	Yes	Finance	Officer
			Review:	
	Budget Amendment Required	Yes		
	Future/Ongoing Impact	Yes		
	Budget Dept/Line Item Number			

Funding Comments:

Where on the agenda should this item be placed?

Bid Awards

Suggested Motion:

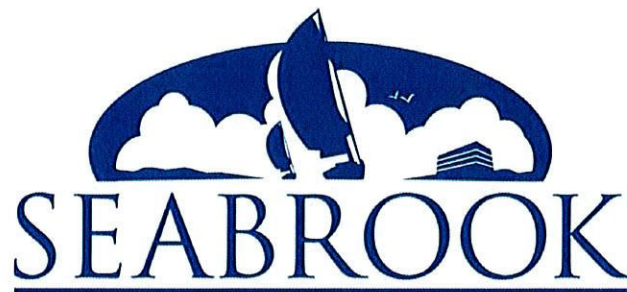
Agenda Language:

Consider and Approve the Memorandum of Understanding (MOU) and bid contract for Pine Gully Jetties Project in an amount not to exceed \$250,000. The low bidder for the project was Crawley Shoreline Construction. (Templin)

City Manager Review:

(All items are to be reviewed and approved by the city manager, except items submitted by the mayor or any council member or routine consent agenda items such as minutes and second & third readings of ordinances)

(City Attorney should review all ordinances, resolutions, contracts and executive session items.)



**CONTRACT DOCUMENTS AND
TECHNICAL SPECIFICATIONS FOR
THE CONSTRUCTION OF
PINE GULLY JETTIES**

PROJECT NO. 2013-07

MARCH 2013



Texas Registration No. 274

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

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2	General Notes
3	Jetties Overview
4	Jetty Plan View – 1 of 2
5	Jetty Plan View – 2 of 2
6	Jetties Section
7	Sign & Barricade Details

END OF SECTION

NOTICE TO BIDDERS

Section 00020

NOTICE TO BIDDERS

Sealed BIDS for the construction of City of Seabrook Pine Gully Jetties will be received until 2:00 p.m., April 23, 2013, in the office of the City Secretary, City Hall, 1700 First Street, Seabrook, Texas 77586. Bids must be received and time stamped by the City Secretary prior to the aforementioned time, when they will be publicly opened and read aloud at the City Hall, City of Seabrook, 1700 First Street, Seabrook, Texas 77586. Bidding Documents may 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 <http://www.civcastusa.com> without charge. Documents can also be examined without charge at the office of the City Secretary.

A Cashier's Check, Certified Check, or acceptable Bid Bond, payable to **City of Seabrook** in an amount not less than 5% of the maximum Bid price submitted, must accompany each Bid as a guarantee that, if awarded the Contract, the Bidder will within 15 calendar days of award of Contract enter into a Contract and execute Bonds on the forms provided in the Contract Documents.

The successful Bidder must furnish PERFORMANCE and PAYMENT BONDS on the forms furnished with the PROPOSAL, in the amount of 100% of the total Contract price.

Attention is called to the fact that not less than the federally determined prevailing (Davis-Bacon and Related Acts) wage rate, as issued by the United States Department of Labor and contained in the contract documents, must be paid on this project. In addition, the successful bidder must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, age, or national origin.

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

NOTICE TO BIDDERS

grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

This project shall comply with the requirements of the funding source, the City of Seabrook's Contract Number 11-323-000-5294 with the Texas General Land Office for Community Development Block Grant Disaster Recovery Round 1 funds appropriated by the Consolidated Security, Disaster Assistance, and Continuing Appropriation Act. This project may also be partially funded by the Coastal Impact Assistance Program, a federally funded program administered by the United States Fish and Wildlife Service and the Texas General Land Office.

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968. To the greatest extent feasible, opportunities for training and employment shall be given to Section 3 (low income) residents of the project area, and contracts for work in connection with the project shall be awarded to Section 3 business concerns.

A **non-mandatory** pre-bid conference will be held at City Hall, City of Seabrook, 1700 First Street, Seabrook, Texas 77586, on April 16, 2013, at 2:00 p.m. All prospective Bidders are **encouraged** to attend.

Until final award of the Contract, the OWNER reserves the right to reject any or all Bids, to waive irregularities or technicalities, to re-advertise, or proceed to do the Work otherwise when in the best interests of the OWNER.

INSTRUCTIONS TO BIDDERS

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

- A. 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

- A. To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of OWNER'S request written evidence, such as financial data, previous experience, present commitments, and other such data as may be called for by the OWNER. Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the contract.

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

INSTRUCTIONS TO BIDDERS

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 Paragraphs 4.02, 4.03, and 4.04 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 4, 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.

INSTRUCTIONS TO BIDDERS

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 at least ten (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.

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

INSTRUCTIONS TO BIDDERS

- 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 6.05 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 6.06.B 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.

INSTRUCTIONS TO BIDDERS

- B. The Bids shall be completed in duplicate. The original shall be filed with the OWNER and the Bidder 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.

INSTRUCTIONS TO BIDDERS

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. 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. 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.

INSTRUCTIONS TO BIDDERS

17. CONTRACT SECURITY

- A. Paragraph 5.1 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 CERTIFICATES

- A. The CONTRACTOR shall provide and maintain a minimum coverage as defined in the Contract Documents (Article 5 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

INSTRUCTIONS TO BIDDERS

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.

22. PROJECT FUNDS

- A. Owner has received two federal grants for use in funding the project, and is supplementing this with additional "local", or City, funds. Specific portions of the project are eligible for payment with a grant issued by the Economic Development Administration. Those items are indicated within the bid form, and CONTRACTOR will invoice for its work on the project with the same division of work items to assist the OWNER with keeping EDA eligible items separate from the other work on the project. All items of work on the project are eligible to be funded with the Community Development Block Grant funds and local funds available for the project. When all available EDA funds are expended, the remaining work will be funded by the other two fund sources.

END OF DOCUMENT

City of Seabrook
Pine Gully Jetties

COPY

BID FORM

Section 00300

BID FORM

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

PROJECT: Pine Gully Jetties

PROJECT NO.: 2013-07

BIDDER: Crawley Shoreline Construction, Inc.
(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.
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
<u>W/A 0</u>	<u>W/A 0</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- 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 4.02 of the General

BID FORM

- 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 4.02 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 4.03 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.

City of Seabrook
Pine Gully Jetties**BID FORM****A. BASE BID ITEMS**

A. BASE BID ITEMS						
Item No.	Spec. No.	Item Description	Unit	Quantity	Unit Price	Extended Price
SECTION 1 – BASE BID - JETTIES						
1	01 33 00 01 57 02	Mobilization/Demobilization	LS	1	\$5,600	\$5,600
2	31 05 19 31 23 00 35 31 19	Jetties	LS	1	\$591,006	\$591,006
3	636	Signs, Complete in Place	EA	4	\$500	\$2000
TOTAL BASE BID (SUM OF ITEMS 1.1 – 1.4)						\$598,606.00
TOTAL BASE BID (IN WORDS): FIVE HUNDRED NINETY-eight thousand SIX hundred and SIX DOLLARS.						
SECTION 2 – STANDBY TIME						
At any time during the contract performance period, the Owner may issue a temporary stop work order and activate standby time provisions. If activated, standby time will be paid to the contractor based on actual rental rates of equipment and labor rates of personnel on site during that time, or based on the state rates, whichever is less:						
4	Daily Rate (Up to 6 Days)				\$6,000 per day	
5	Weekly Rate (Up to 4 Weeks)				\$27,500 per week	
The Owner reserves the right to activate (or not activate) standby time provisions in the form of a change order to the contract.						

Each bid item includes any and all appurtenant work and items necessary for fully functional and operation systems, complete and in place, in accordance with the bidding and contract documents.

Bidder understands and acknowledges that bidder's attendance at a mandatory pre-bid conference is required in order to be eligible for contract award. Contractor shall visit project site prior to submitting bid for project.

C. TOTAL BID PRICE

Subtotal Section 1 – Total Base Bid

\$ 598,606.00**TOTAL BID PRICE**\$ 598,606.00**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 11.03D.1 of the General Conditions unless such reduction exceeds 20% of any individual item.

- BIDDER agrees that the Work will be substantially complete and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- The following documents are attached to and made a condition of this Bid:

City of Seabrook
Pine Gully Jetties

BID FORM

- 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 April 22nd, 2013.

Bidder: Crawley Shoreline Construction, Inc.
(Print or Type full name of your proprietorship, partnership, corporation, or joint venture.)

**By: [Signature] 4-22-13
Signature Date

Name: Robert Crawley President
(Print or Type name) Title

Address: 225 Jordan Rd., Baytown, Texas 77523
(Mailing)

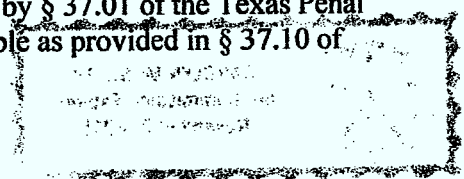
(Street, if different)

Telephone and Fax Number: Phone: 281-383-3665 / Fax: 281-573-4018
(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



City of Seabrook
Pine Gully Jetties

**CHILD SUPPORT
AFFIDAVIT**

Section 00310

CHILD SUPPORT AFFIDAVIT

Under Section 231.006, Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:

(1) receive payments from state funds under a contract to provide property, materials, or services; or

(2) receive a state-funded grant or loan.

To comply with Section 231.006, the affidavit below shall be signed by the person who is authorized to sign and submit a bid, and thereby bind the Bidder, and must be returned with the Bid. A failure to do so will result in the disqualification of the Bid.

"I, Robert Crawley - President am authorized to sign this Bid on behalf of
(Name and Title)

Crawley Shoreline Construction, Inc. a Corporation
(Name of Bidder) (insert type of business, i.e., sole proprietorship, Partnership, corporation or other)

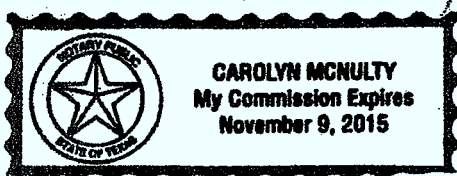
I certify that the individual or business entity named in this contract is not ineligible under Texas Family Code section 231.006 to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

[Signature]
(Affiant's Signature)

4.22.13
(Date)

SWORN AND SUBSCRIBED by me on this 22 day of April,
A. D. 20 13.

Notary Public in and for Chambers County, Texas.



Carolyn McNulty
Notary Public Signature

CAROLYN MCNULTY
Print or Type Notary Public Name

NOTARY SEAL

My Commission Expires: Nov 9, 2015

END OF DOCUMENT

City of Seabrook
Pine Gully Jetties

**STATEMENT OF
BIDDER'S QUALIFICATIONS**

Section 00400
STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

Name of Bidder: Crawley Shoreline Construction, Inc. Date Organized: 02/01/1974

Address: 225 Jordan Rd., Baytown, TX 77523 Date Incorporated 7/24/2006

Number of Years in contracting business under present name 7 years

CONTRACTS ON HAND:

Contract	Amount \$	Completion Date
<u>K-SOLV (Dredging)</u>	<u>\$ 158,560.00</u>	<u>May 25th 2013</u>

Type of work performed by your company: Construction

Have you ever failed to complete any work awarded to you? NO

Have you ever defaulted on a contract? NO

List the projects most recently completed by your firm (include project of similar importance):

Project	Amount \$	Mo/Yr Completed
<u>Seascoasts at Galveston, TX</u>	<u>\$604,546.46</u>	<u>02/2013</u>
<u>Web Fleetings, LP</u>	<u>88,435.86</u>	<u>02/2013</u>
<u>Ft. Bend MUD #46 (Culvert Lanes)</u>	<u>\$ 1,565,000.00</u>	<u>12/2012</u>

Major equipment available for this contract: 42 x 90 Barges, (2) Track-hoes,
Marine Vessels,

Attach resume(s) for the principal member(s) of your organization, including the officers as well as the proposed superintendent for the project.

Credit available: \$ 300,000.00 Bank reference: Community Bank of TX - Dec Kennedy

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Seabrook in verification of the recitals comprising this Statement of Bidder's Qualifications.

Executed this 22nd day of April, 2013.

By: (signature) [Signature] Title: President

(print name) Robert Crawley

City of Seabrook
Pine Gully Jetties

CONTRACTOR CERTIFICATIONS

Section 00410
CONTRACTOR CERTIFICATIONS

U.S. Department of Housing and Urban Development CERTIFICATION OF BIDDER REGARDING CIVIL RIGHTS LAWS AND REGULATIONS	
INSTRUCTIONS	
CERTIFICATION OF BIDDER REGARDING Executive Order 11246 and Federal Laws Requiring Federal Contractor to adopt and abide by equal employment opportunity and affirmative action in their hiring, firing, and promotion practices. This includes practices related to race, color, gender, religion, national origin, disability, and veterans' rights.	
NAME AND ADDRESS OF BIDDER (include ZIP Code)	
<i>Crawley Shoreline Construction, Inc., 225 Jordan Rd., Baytown, TX 77523</i>	
CERTIFICATION BY BIDDER	
Bidder has participated in a previous contract or subcontract subject to Civil Rights Laws and Regulations.	
☒ Yes ☐ No	
The undersigned hereby certifies that:	
☒ The <u>Provision of Local Training, Employment, and Business Opportunities</u> clause (Section 3 provision) is included in the Contract. A written Section 3 plan (Local Opportunity Plan) was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$100,000).	
☒ The <u>Non Segregated Facilities</u> clause (Section 109 provision) is included in the Contract. No segregated facilities will be maintained as required by Title VI of the Civil Rights Act of 1964.	
☒ The <u>Equal Employment Opportunity</u> clause is included in the Contract (if bid equals or exceeds \$10,000).	
☒ The <u>Affirmative Action for Handicapped Workers</u> clause is included in the contract.	
Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?	
☐ Yes ☒ No	
<i>Robert Crawley</i>	
NAME AND TITLE OF SIGNER (Please type)	
SIGNATURE	<i>4-22-13</i> DATE

City of Seabrook
Pine Gully Jetties

**NONCOLLUSION
AFFIDAVIT OF PRIME BIDDER**

Section 00420
NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of Texas

County of Chambers

Robert Crawley, being first duly sworn, deposes and says that:

(1) He is President of Crawley Shoreline Construction, the Bidder that has submitted the attached Bid;

(2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with another Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix an overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Seabrook (Local Public Agency) or any person interested in the proposed Contract; and

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) [Signature]

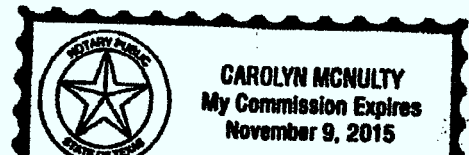
PRESIDENT
Title

Subscribed and sworn to me this 22 day of April.

By: [Signature]
Notary Public

My commission expires Nov 9 2015

00420-1
END OF DOCUMENT



00430
COPELAND ACT

Copeland Act Regulations

Title 29 LABOR

Subtitle A — Office of the Secretary of Labor

PART 3 — CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Sec.

- 3.1 Purpose and scope
- 3.2 Definitions
- 3.3 Weekly statement with respect to payment of wages
- 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.
- 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.
- 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.
- 3.7 Applications for the approval of the Secretary of Labor
- 3.8 Action by the Secretary of Labor upon applications.
- 3.9 Prohibited payroll deductions.
- 3.10 Methods of payment of wages.
- 3.11 Regulations part of contract.

AUTHORITY: The provisions of this Part 3 issued under R.S. 161, sec. 2, 48 Stat. §48; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 5 U.S.C. 301; 40 U.S.C. 276c.

SOURCE: The provisions of this Part 3 appear at 29 F.R. 97, Jan. 4, 1964, unless otherwise noted.

Section 3.1 Purpose and Scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the

minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally-assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the

foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State

TITLE 29 LABOR

agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction," "prosecution," "completion," or "repair" mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentality's of the United States and of

the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentality's.

{29 FR 97, Jan. 4, 1964, as amended at 33 FR 32575, Nov. 27, 1973}

Section 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, "Statement of Compliance," or on an identical form on the back of WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office,

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

{29 F.R. 95, Jan. 4, 1964, as amended at 33 F.R. 10186, July 17, 1968}

Section 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under §3.3 shall be delivered by the contractor or subcontractor, within seven days after the

regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

Section 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless, the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions, or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either: (I) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by

law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of this title. When such a deduction is made the additional records required under §516.27(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either (1) voluntarily consented to be the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

{36 F.R. 9770, May 28, 1971.}

Section 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which

the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

Section 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under §3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of §3.6, and specifies any conditions which have changed in regard to the payroll deductions.

{36 F.R. 9770, May 28, 1971.}

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of §3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

Section 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of §3.6; and shall notify the applicant in writing of his decision.

Section 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under §3.6 are prohibited.

Section 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Section 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.

City of Seabrook
Pine Gully Jetties

LOBBYING DISCLOSURE FORMS

Certification Regarding Lobbying for
Contracts, Grants, Loans, and Cooperative Agreements

The undersigned _____ of _____
certifies, to the best of its knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form — LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more that \$100,000 for each such failure.

Signed: _____

Date: _____

Title: _____

City of Seabrook
Waterfront Drive Reconstruction

LOBBYING DISCLOSURE FORMS

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)Approved by OMB
0348-0046

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance		2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award		3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____	
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known:			5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:		
6. Federal Department/Agency:			7. Federal Program Name/Description: CFDA Number, if applicable: _____		
8. Federal Action Number, if known:			9. Award Amount, if known: \$ _____		
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):			b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):		
(attach Continuation Sheet(s) SF-LLLA, if necessary)					
11. Amount of Payment (check all that apply): \$ _____ ☐ actual ☐ planned			13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____		
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____					
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLLA, if necessary)					
15. Continuation Sheet(s) SF-LLLA attached: ☐ Yes ☐ No					
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only:			Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)		

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all Items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to Influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action_
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., 'RFP-DE-90-001.'
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/Fr:lan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provides specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

AGREEMENT

Section 00500

AGREEMENT

THIS AGREEMENT is dated as of June 5, 2013, by and between City of Seabrook (hereinafter called OWNER) and Crawley Shoreline Construction, Inc. (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:

“Pine Gully Jetties”

Article 2. ENGINEER

The project has been designed by Cobb Fendley & Associates, 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 120 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 150 days after the date when the Contract Times commence to run.
- 3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) 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 \$598,606.00.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 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 Paragraph 2.07 of 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 14.7 of the General Conditions. Payment will not be made for materials on site but not construction in place.

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 14.7 of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

Article 6. INTEREST

All moneys not paid when due as provided in Article 14 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:

AGREEMENT

- 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.

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 00500-5, inclusive).
- 8.2 Performance and Payment Bonds
- 8.3 Notice of Award
- 8.4 General Conditions (pages 00700-0 thru 00700-62, inclusive) and
- 8.5 General Conditions Part II (GLO Requirement) (pages 00710-01 thru 00710-20)
- 8.6 Specifications bearing the title “*Construction Documents and Technical Specifications for the Construction of the Pine Gully Jetties*”.
- 8.7 CONTRACTOR’S Bid (pages 00300-1 to 00300-4 inclusive).
- 8.8 Documentation submitted by CONTRACTOR prior to Notice of Award.
- 8.9 Certificate of Insurance.
- 8.10 Drawings consisting of sheets numbered 1 through 7, inclusive, bearing the general title “*Pine Gully Jetties*”.
- 8.11 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 to paragraphs 3.04 and 3.05 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 and 3.05 of the General Conditions.

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

AGREEMENT

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.

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 _____, 2013 (which is the Effective Date of the Agreement).

OWNER

CONTRACTOR:

CITY OF SEABROOK

CRAWLEY SHORELINE
CONSTRUCTION, INC.

By: _____

By: _____

Attest: _____

Attest: _____

Address for giving notice:

Address for giving notice:

1700 First Street

225 Jordan Rd.

Seabrook, Texas 77586

Baytown, Texas 77523

Agent for service of process:

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

END OF SECTION

PERFORMANCE BOND

Section 00610

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That That Crawley Shoreline Construction, Inc. of the City of Baytown of Harris County, and State of Texas, as principal, and _____, 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 \$598,606.00 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 June 5, 2013, for Work associated with the project named:

“Pine Gully Jetties”

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.

PERFORMANCE BOND

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

Contractor

Surety

Crawley Shoreline Construction, Inc.

By: _____

By: _____

Title: _____

Title: _____

Address: 225 Jordan Rd.

Address: _____

Baytown, Texas 77523

Telephone: 281-383-3665

Telephone: _____

Fax: 281-573-4018

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

PAYMENT BOND

Section 00620

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That Crawley Shoreline Construction, Inc. of the City of Baytown of Harris County, and State of Texas, as principal, and _____, 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 \$598,606.00 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 June 5, 2013, for Work associated with the project named:

“Pine Gully Jetties”

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

Surety

Crawley Shoreline Construction, Inc.

By: _____

By: _____

Title: _____

Title: _____

Address: 225 Jordan Rd.

Address: _____

Baytown, Texas 77523

Telephone: 281-383-3665

Telephone: _____

Fax: 281-573-4018

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



CERTIFICATE OF LIABILITY INSURANCE

Attachment 1, Item # 3.1

Page 39 of 238

DATE (MM/DD/YYYY)

4/19/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Commercial Global Insurance 3710 Center #101 Deer Park TX 77536	CONTACT NAME: Debby Biehl PHONE (A/C, No, Ext): (281) 930-1600 FAX (A/C, No): (281) 930-1400 E-MAIL ADDRESS:														
INSURED Crawley Shoreline Construction, Inc. 225 Jordan Road Baytown TX 77523	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Essex Insurance Company</td><td>39020</td></tr><tr><td>INSURER B: American Interstate Inc</td><td>31895</td></tr><tr><td>INSURER C: Continental Insurance Company</td><td></td></tr><tr><td>INSURER D: Westchester Surplus Lines Ins.</td><td></td></tr><tr><td>INSURER E: United States Fire Ins. Co</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Essex Insurance Company	39020	INSURER B: American Interstate Inc	31895	INSURER C: Continental Insurance Company		INSURER D: Westchester Surplus Lines Ins.		INSURER E: United States Fire Ins. Co		INSURER F:	
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INSURER E: United States Fire Ins. Co															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** 12-13 MC **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			9CD21470	6/10/2012	6/10/2013	EACH OCCURRENCE	\$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person)	\$ Excluded
							PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
	☒ POLICY ☐ PROJECT ☐ LOC						PRODUCTS - COMP/OP AGG	\$ 2,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	☐ ANY AUTO						BODILY INJURY (Per person)	\$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	☐ HIRED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	☐ SCHEDULED AUTOS							\$
	☐ NON-OWNED AUTOS							\$
D	☒ UMBRELLA LIAB			866-1000483	07/18/2012	07/18/2013	EACH OCCURRENCE	\$ 1,000,000
	☐ EXCESS LIAB						AGGREGATE	\$ 1,000,000
	☐ CLAIMS-MADE							\$
	DED		RETENTION \$					
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		Y	AVWCTX2118902012	5/31/2012	6/10/2013	☒ WC STATUTORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
C	Rented/Leased Equipment			H0245181	7/2/2012	7/2/2013	\$150,000 limit	\$5000 ded
D	Contractor's Pollution	Y	Y	G24289667001	6/10/2012	6/10/2013	\$1,000,000/\$2,000,000	each cond/agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: Pine Gully Jetties

The Contractors Pollution Liability policy includes blanket automatic additional insured endorsement status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status. The Contractors Pollution Liability & Workers Compensation policies include blanket automatic waiver of subrogation endorsement status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

CERTIFICATE HOLDER

CANCELLATION

City of Seabrook 1700 First Street Seabrook, TX 77586	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2010/05)

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INS025 (201005).01

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COPY

COPY

Bond No. SU01347

BID BOND

KNOW ALL BY THESE PRESENTS, That we, Crawley Shoreline Construction, Inc.
of Baytown, Texas
(hereinafter called the Principal), as Principal, and
SureTec Insurance Company (hereinafter called the Surety),
as Surety, are held and firmly bound unto City Of Seabrook

(hereinafter called the Obligee) in the penal sum of Five Percent of the Greatest Amount Bid
Dollars (\$ 5% G.A.B.)
for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That WHEREAS, the Principal has submitted or is about to submit a proposal to the Obligee on a contract for
Pine Gully Jetties

NOW, THEREFORE, If the said Contract be timely awarded to the Principal and the Principal shall, within such time as may be specified, enter into the Contract in writing, and give bond, if bond is required, with surety acceptable to the Obligee for the faithful performance of the said Contract, then this obligation shall be void; otherwise to remain in full force and effect.

Signed and sealed this 23rd day of April, 2013.

Crawley Shoreline Construction, Inc.
Principal

Witness

By: _____
Title

SureTec Insurance Company

By  _____
Kevin McQuain, Attorney-in-Fact

POA #: 4221392

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Maxine Elaine Lewis, Rosalyn D. Hassell, Scott D. Chapman,
Kevin McQuain, Justin McQuain, Jeanne M. Buchan, Keith M. Illa

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for:

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment shall continue in force until 12/31/2013 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

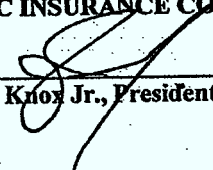
Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 3rd day of September, A.D. 2010.

SURETEC INSURANCE COMPANY

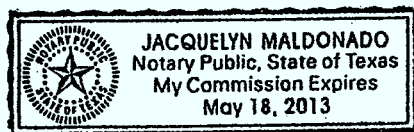
By: 
John Knox Jr., President

State of Texas
County of Harris

SS:



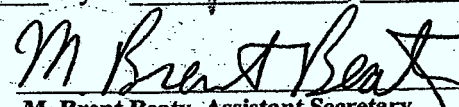
On this 3rd day of September, A.D. 2010 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.




Jacquelyn Maldonado, Notary Public
My commission expires May 18, 2013

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 23rd day of April, 2013, A.D.


M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

SureTec Insurance Company
THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION

Statutory Complaint Notice

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, Tx 78759

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

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-475-1771
Web: <http://www.tdi.state.tx.us>
Email: ConsumerProtection@tdi.state.tx.us

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.

Terrorism Risks Exclusion

The Bond to which this Rider is attached does not provide coverage for, and the surety shall not be liable for, losses caused by acts of terrorism, riot, civil insurrection, or acts of war.

City of Seabrook
Pine Gully Jetties

**ATTORNEY'S REVIEW
CERTIFICATION**

Section 00630
ATTORNEY'S REVIEW CERTIFICATION

I, the undersigned, _____, the duly authorized and
acting legal representative of the _____, do hereby
certify as follows:

I have examined the attached contract(s) and surety bonds and am of the opinion that each of the
agreements may be duly executed by the proper parties, acting through their duly authorized
representatives; that said representatives have full power and authority to execute said
agreements on behalf of the respective parties; and that the agreements shall constitute valid and
legally binding obligations upon the parties executing the same in accordance with terms,
conditions and provisions thereof.

Attorney's signature: _____ Date: _____

Print Attorney's Name: _____

END OF DOCUMENT

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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

A Practice Division of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given 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 under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *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.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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 at the Site.
44. *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 thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, 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 Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. 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 Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. 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 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean 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, shall mean 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, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. 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 Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement 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 Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
 - 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.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial 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 for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall 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 component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier 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 editions; or
2. 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.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

**ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;
HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor 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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- 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 the Work is to be performed 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.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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; or
- 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.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

- 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Contract Documents; or

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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - 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 Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final 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
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price

or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *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.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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; or
 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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by

Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. 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 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. 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, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. 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 or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed 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:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property

insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. 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:
 - 1. loss 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 perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery

against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *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. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *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 at all times maintain good discipline and order at the Site.
- B. 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 shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *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.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall 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 shall 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.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it 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; and
 - 3) it has a proven record of performance and availability of responsive service.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) 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
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and

- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or

other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *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 a particular 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 shall be disclosed by Owner 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.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *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. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *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.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. 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 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 by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall 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 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 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 property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *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. 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, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. 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. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

- D. 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.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.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 (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).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of 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.

6.16 *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 threatened 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 thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will 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 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. 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 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop

Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. 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, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

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.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *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 and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper 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.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
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 or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. 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 performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury 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 6.20.A shall 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.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

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

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *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 Documents.

8.12 *Compliance with Safety Program*

- 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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *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 9.09. 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.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. 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, subject to the provisions of Paragraph 10.05.

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

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 shall 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 Paragraph 14.07.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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the 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; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The

opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall 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. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on

Saturday, Sunday, or legal holidays, shall 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 shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall 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, who 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 shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, 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.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the 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 property insurance established in accordance with Paragraph 5.06.D), 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 shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall 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 telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety 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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the 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.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 *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:*

1. Contractor agrees that:

- a. 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
- b. 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 on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a 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 on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- 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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five 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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will 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 therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.

- 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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. 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.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. 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, or both, 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *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, 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 shall 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.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay 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 correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *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 terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If 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. 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 correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. 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.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay 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) 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 pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *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 rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *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. 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 shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the

Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, 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 9.07, 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 Documents; 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, or

- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. 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;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 *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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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 tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities

pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. 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 tentative list.

14.05 *Partial Utilization*

- 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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

14.06 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) 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.

B. *Engineer's Review of Application and Acceptance:*

1. 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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. 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. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 2. 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
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven 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;
 3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven 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 15.03.
- 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, seven 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. 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.

17.03 *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 Documents. 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.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

Section 00710

**GENERAL CONTRACT CONDITIONS
FOR CONSTRUCTION
PART II (GLO REQUIREMENT)**

1. Contract and Contract Documents

- (a) The project to be constructed pursuant to this contract will be financed with assistance from the CDBG and is subject to all applicable Federal and State laws and regulations.
- (b) The Plans, Specifications and Addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions shall form part of this contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth.

2. Definitions

Whenever used in any of the contract Documents, the following meanings shall be given to the terms here in defined:

- (a) The term "Contract" means the Contract executed between the City of Seabrook hereinafter called the Locality and _____(Name of Construction Co.), hereinafter called Contractor, of which these GENERAL CONDITIONS, form a part.
- (b) The term "Project Area" means the area within which are the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.
- (c) The term "Engineer" means Cobb, Fendley & Associates, Inc., Engineer in charge, serving the Locality with architectural or engineering services, his successor, or any other person or persons, employed by the Locality for the purpose of directing or having in charge the work embraced in this Contract.
- (d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

3. Supervision By Contractor

- (a) Except where the Contractor is an individual and gives his personal supervision to the work, the Contractor shall provide a competent superintendent, satisfactory to the Local Public Agency and the Engineer, on the work at all times during working hours with full authority to act for him. The Contractor shall also provide an adequate staff for the proper coordination and expediting of his work.
- (b) The Contractor shall lay out his own work and he shall be responsible for all work executed by him under the Contract. He shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

4. Subcontracts

- (a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until he has verified the subcontractor as eligible to participate in federally funded contracts.
- (b) No proposed subcontractor shall be disapproved by the city/county except for cause.
- (c) The Contractor shall be as fully responsible to the city/county for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them.
- (d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.
- (e) Nothing contained in the Contract shall create any contractual relation between any subcontractor and the Locality.

5. Fitting and Coordination of Work

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material suppliers engaged upon this Contract.

6. Payments to Contractor

(a) Partial Payments

- 1) The Contractor shall prepare his requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for his approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount, to be retained until final payment and (2) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.
- 2) Monthly or partial payments made by the Locality to the Contractor are moneys advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Locality. Such payments shall not constitute a waiver of the right of the Locality to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Locality in all details.

(b) Final Payment

- 1) After final inspection and acceptance by the Locality of all work under the Contract, the Contractor shall prepare his requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Agreement. The

total amount of the final payment due the Contractor under this contract shall be the amount computed as described above less all previous payments.

- 2) The Locality before paying the final estimate, shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor, if the Locality deems it necessary in order to protect its interest. The Locality may, if it deems such action advisable, make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.
- 3) Any amount due the Locality under Liquidated Damages, shall be deducted from the final payment due the contractor.

(c) Payments Subject to Submission of Certificates

Each payment to the Contractor by the Locality shall be made subject to submission by the Contractor of all written certifications required of him and his subcontractors.

(d) Withholding Payments

The Locality may withhold from any payment due the Contractor whatever is deemed necessary to protect the Locality, and if so elects, may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Locality and will not require the Locality to determine or adjust any claims or disputes between the Contractor and his subcontractors or material dealers, or to withhold any moneys for their protection unless the Locality elects to do so. The failure or refusal of the Locality to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

7. Changes in the Work

- (a) The Locality may make changes in the scope of work required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders must be approved by the CDBG staff prior to execution of same.
- (b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Locality authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.
- (c) If applicable unit prices are contained in the Agreement, the Locality may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement

by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%).

(d) Each change order shall include in its final form:

- 1) A detailed description of the change in the work.
- 2) The Contractor's proposal (if any) or a confirmed copy thereof.
- 3) A definite statement as to the resulting change in the contract price and/or time.
- 4) The statement that all work involved in the change shall be performed in accordance with contract requirements except as modified by the change order.
- 5) The procedures as outlined in this Section for a unit price contract also apply in any lump sum contract.

8. Claims for Extra Cost

- (a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the Locality, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.
- (b) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to the Locality and work shall not proceed except at the Contractor's risk, until written instructions have been received by him from the Locality.
- (d) If, on the basis of the available evidence, the Locality determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

9. Termination, Delays, and Liquidated Damages

- (a) Right of the Locality to Terminate Contract.
- (b) In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Locality may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Locality shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of

notice of termination, the Locality may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to the Locality for any excess cost incurred. In such event the Locality may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

(c) Liquidated Damages for Delays.

(d) If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the Locality as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$500.00 for each calendar day of delay, until the work is completed. The Contractor and his sureties shall be liable to the Locality for the amount thereof.

(e) Excusable Delays.

- 1) The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:
- 2) Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
- 3) Any acts of the Locality;
- 4) Causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other contract with the Locality, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.
- 5) Provided, however, that the Contractor promptly notifies the Locality within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the Locality shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the Locality shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

10. Assignment or Novation

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Locality; provided, however, that assignments to banks or other financial institutions may be made without the consent of the Locality. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

11. Disputes

- (a) All disputes arising under this Contract or its interpretation except those disputes covered by FEDERAL LABOR STANDARDS PROVISIONS whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall, within ten (10) days of commencement of the dispute, be presented by the Contractor to the Locality for decision. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt of the Locality.
- (b) The Contractor shall submit in detail his claim and his proof thereof.
- (c) If the Contractor does not agree with any decision of the Locality, he shall in no case allow the dispute to delay the work but shall notify the Locality promptly that he is proceeding with the work under protest.

12. Technical Specifications and Drawings

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa, shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Locality, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

13. Shop Drawings

- (a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in 7 copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.
- (b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.
- (c) If a shop drawing is in accordance with the contract or involves only a minor adjustment in the interest of the Locality not involving a change in contract price or time; the engineer may approve the drawing. The approval shall not relieve the Contractor from his responsibility for adherence to the contract or for any error in the drawing.

14. Requests for Supplementary Information

It shall be the responsibility of the Contractor to make timely requests of the Locality for any additional information not already in his possession which should be furnished by the Locality under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section.

15. Materials and Workmanship

- (a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.
- (b) The Contractor shall furnish to the Locality for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.
- (c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- (d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.
- (e) The Locality may require the Contractor to dismiss from the work such employee or employees as the Locality or the Engineer may deem incompetent, or careless, or insubordinate.

16. Samples, Certificates and Tests

- (a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.
- (b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or

letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.

- (c) Approval of any materials shall be general only and shall not constitute a waiver of the Locality's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.
- (d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
 - 1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
 - 2) The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
 - 3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
 - 4) The Locality will pay all other expenses.

17. Permits and Codes

- (a) The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers. Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the Locality. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the Locality will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.
- (b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to the Locality.
- (c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement

cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.

- (d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Improvements contained in this Contract.
- (e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.
- (f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by the Locality, shall moisten the bank and surrounding area to prevent a dusty condition.

18. Care of Work

- (a) The Contractor shall be responsible for all damages to person or property that occur as a result of his fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.
- (b) The Contractor shall provide sufficient competent watchmen, both day and night, including Saturdays, Sundays, and holidays, from the time the work is commenced until final completion and acceptance.
- (c) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the Locality is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the Locality.
- (d) D The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and he shall at his own expense completely repair any damage thereto caused by his operations.
- (e) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the Locality from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Locality may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

19. Accident Prevention

- (a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his

health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

- (b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.
- (c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Locality with reports concerning these matters.
- (d) The Contractor shall indemnify and save harmless the Locality from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.
- (e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. All OSHA Standards for trench safety must be adhered to by the Contractor.
- (f) The contractor shall at all times conduct his work in such a manner as to insure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of the Locality, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the Locality at the expense of the Contractor.

20. Sanitary Facilities

The Contractor shall furnish, install and maintain ample sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

21. Use of Premises

- (a) The Contractor shall confine his equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the Locality, and shall not unreasonably encumber the site or public rights of way with his materials and construction equipment.
- (b) The Contractor shall comply with all reasonable instructions of the Locality and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

22. Removal of Debris, Cleaning, Etc.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities,

debris and unused materials provided for work, and put the whole site of the work and public rights of way in a neat and clean condition.

23. Inspection

- (a) All materials and workmanship shall be subject to inspection, examination, or test by the Locality and Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs. The Locality shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the Locality may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any Monies which may be due the Contractor, without prejudice to any other rights or remedies of the Locality.
- (b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by the Locality will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.
- (c) The Contractor shall notify the Locality sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the Locality, the Contractor shall uncover for inspection and recover such facilities at his own expense, when so requested by the Locality.
- (d) Should it be considered necessary or advisable by the Locality at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.
- (e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.
- (f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the Locality or its agents shall relieve the Contractor or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

24. Review by Locality

The Locality and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Locality through its authorized representatives or agents.

25. Final Inspection

When the Improvements included in this Contract are substantially completed, the Contractor shall notify the Locality in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The Locality will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable.

26. Deduction for Uncorrected Work

If the Locality deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and the Locality and subject to settlement, in case of dispute, as herein provided.

27. Insurance

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Locality.

- (a) Compensation Insurance: The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.
- (b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts: See Section 00800 – Supplementary Conditions – Article 5.
- (c) Proof of Insurance: The Contractor shall furnish the Locality with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Locality."

28. Warranty of Title

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all

materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed by him to the Locality free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the Contractor in the hands of the Locality. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

29. Warranty of Workmanship and Materials

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by the Locality or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of 12 months from the date of final acceptance of the work.

30. Compliance with Air and Water Acts

(a) In compliance with the Clean Air Act, as amended, 41 U.S.C. Sec. 7401 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, the Contractor agrees that:

- 1) Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
- 2) He will comply with all requirements of Section 114 of the Clean Air Act, as amended.
- 3) Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

(b) If the Contractor encounters existing material on sites owned or controlled by the Locality or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Locality. The Locality will be responsible for testing for and removal or disposition of hazardous materials on sites owned or controlled by the Locality. The Locality may suspend the work, wholly or in part during the testing, removal or disposition of hazardous materials on sites owned or controlled by the Locality.

31. Equal Employment Opportunity

(a) The Contractor will not discriminate against any employee or the applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner.

- (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- (d) The Contractor shall take affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions.
- (e) Contractors are encouraged to participate in voluntary associations which assist in fulfilling their affirmative action obligations.
- (f) The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.
- (g) The Contractor shall not use the affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (h) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts.
- (i) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

32. Affirmative Action for Handicapped Workers

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, promotion, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

33. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

34. The Provision of Local Training, Employment, and Business Opportunities

- (a) To the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(b) The Contractor will include this clause in every subcontract for work in connection with the project.

35. Non Segregated Facilities

The Contractor certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees any segregated facilities at any of his establishments, or permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. As used in this paragraph the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

36. Job Offices

- (a) The Contractor and his subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. The Locality shall be consulted with regard to locations.
- (b) Upon completion of the improvements, or as directed by the Locality, the Contractors shall remove all such temporary structures and facilities from the site, and leave the site of the work in the condition required by the Contract.

37. Partial Use of Site Improvements

The Locality may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:

- (a) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- (b) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- (c) The period of guarantee stipulated in the Section 132 hereof shall not begin to run until the date of the final acceptance of all work which the Contractor is required to construct under this Contract.

38. Contract Documents and Drawings

The Local Public Agency will furnish the Contractor without charge 10 copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

39. Contract Period

The work to be performed under this contract shall commence within the time stipulated by the Locality in the Notice to Proceed, and shall be fully completed within 90 calendar days thereafter.

40. Liquidated Damages

Since the actual damages for any delay in completion of the work under this contract are impossible to determine, the Contractor and his Sureties shall be liable for and shall pay to the Locality the sum of Five Hundred Dollars (\$500.00) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for completion.

41. Signage Requirement at Construction Site

Public buildings, facilities, and centers, constructed with Texas General Land Office TxCDBG-DRS assistance shall have permanent signage placed in a prominent visible public area with the wording provided below. The formatting of such signage will be at local discretion to best fit the architectural design of the facility constructed but should be legible from at least three (3) feet distance. The Texas General Land Office and United States Department of Housing and Urban Development logos should be included on the sign.

Other construction projects, e.g., water transmission lines, sewer collection lines, drainage, roadways, housing rehabilitation, etc. utilizing Texas General Land Office TxCDBG-DRS funding shall have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the locality as directed by the owner.

Project Sign Wording:

“This project is funded by the General Land Office of the State of Texas, to provide for disaster recovery and restoration of infrastructure for communities impacted by the 2008 hurricanes. Funds allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant Program.”



HURRICANE RECOVERY PROJECT

This project is funded by the General Land Office of the State of Texas to provide for disaster recovery and restoration of infrastructure for communities impacted by the 2008 hurricanes.



Funds allocated by the United States Department of Housing and Urban Development through the Community Development Block Grant Program.

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Federal Labor Standards Provisions

U.S. Department of Housing
And Urban Development

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage rate and fringe benefits therefore only when the following criteria have been met.

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of an laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the

contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract, in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates or contributions or costs anticipated for bona fide fringe benefits or cash equivalents there of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-0014-1), U. S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

(4) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration. Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. the ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of ... influencing in any way the action of such Administration... makes, utters or publishes any statement, knowing the same to be false... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat.96).

City of Seabrook
Pine Gully Jetties

GENERAL CONDITIONS PART II

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

END OF DOCUMENT

SUPPLEMENTARY CONDITIONS

Section 00800

SUPPLEMENTARY CONDITIONS

PART 1 – AMENDMENTS TO GENERAL CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (Section 00700 – General Conditions) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.01.B Delete Paragraph 2.01.B of the General Conditions in its entirety and insert the following in its place:

“When delivering executed contracts for the OWNER’s signature, CONTRACTOR shall deliver to OWNER, with a copy to the ENGINEER, certificates and other evidence of insurance requested by OWNER which CONTRACTOR is required to purchase and maintain in accordance with Article 5.”

SC-2.02 Amend the first sentence of Paragraph 2.02 of the General Conditions to read as follows:

“OWNER shall furnish to CONTRACTOR up to five printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.”

ARTICLE 5 – BONDS AND INSURANCE

SC-5.03.B Delete Paragraph 5.03.B in its entirety.

SC-5.04 Add the following new paragraph immediately after Paragraph 5.04.B:

C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers’ Compensation, and related coverages under Paragraphs 5.04.A.1 and A.2 of the General Conditions:
 - a. State: Statutory
 - b. Applicable Federal (e.g., Longshoreman’s): Statutory
 - c. Employer’s Liability:

SUPPLEMENTARY CONDITIONS

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

2. Contactor's General Liability under Paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
 - a. General Aggregate: \$2,000,000
 - b. Products – Completed Operations Aggregate: \$2,000,000
 - c. Personal and Advertising Injury: \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
 - f. Excess or Umbrella Liability
 1. General Aggregate: \$2,000,000
 2. Each Occurrence: \$1,000,000
3. Automobile Liability (including owned, hired, and non-owned vehicles) under Paragraph 5.04.A.6 of the General Conditions:
 - a. Bodily Injury:
Each person: \$1,000,000
Each accident: \$1,000,000
 - b. Property Damage:
Each accident: \$1,000,000
4. The Contractual Liability coverage required by Paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:
 - c. Bodily Injury:
Each accident: \$1,000,000
Annual aggregate: \$2,000,000
 - d. Property Damage:
Each accident: \$1,000,000
Annual aggregate: \$2,000,000

SC-5.06.A Delete Paragraph 5.06.A in its entirety and insert the following in its place:

- A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:

SUPPLEMENTARY CONDITIONS

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
 2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and
 5. allow for partial utilization of the Work by OWNER;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
- B. CONTRACTOR shall be responsible for any deductible or self-insured retention.
- C. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this Paragraph SC-5.06 shall comply with the requirements of Paragraph 5.06.C of the General Conditions.

SC-5.06 Delete Paragraphs 5.06.B, 5.06.D, and 5.06.E in their entirety.

SC-5.07.A Delete Paragraph 5.07.A in its entirety and insert the following in its place:

SUPPLEMENTARY CONDITIONS

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. To the extent that Contractor's insurance conforms to the requirements of the Contract, Owner and Contractor waive all rights against each other and their respective officers, directors, 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 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 Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused.

SC-5.07.B Delete Paragraph 5.07.B in its entirety.

SC-5.08 Delete Paragraphs 5.08.A and 5.08.B in their entirety.

SC-5.09 Delete Paragraph 5.09.A in its entirety and replace with the following:

- A. If Owner has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, Owner shall so notify Contractor in writing. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. Contractor shall purchase or maintain all of the bonds and insurance required by the Contract Documents. Without prejudice to any other right or remedy, the Owner may elect to obtain equivalent bonds or insurance to protect Owner's interests at the expense of the Contractor, and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC-11.03.C Delete Paragraph 11.03.D in its entirety and insert the following in its place:

- D. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:

SUPPLEMENTARY CONDITIONS

1. if the total cost of a particular item of Unit Price Work amounts to 5% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by the Contractor differs by more than 25% from the estimated quantity of such item indicated in the Agreement; and
2. if there is no corresponding adjustment with respect to any other item of Work; and
3. if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof; or if OWNER believes that the quantity variation entitles OWNER to an adjustment in the unit price, either OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

END OF SECTION

SECTION 00805

SECTION 3 CLAUSE

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

City of Seabrook

Pine Gully Jetties

SECTION 3 CLAUSE

- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

END OF DOCUMENT



Texas General Land Office
Community Development Block Grant (CDBG)
Disaster Recovery Program

CERTIFICATION FOR BUSINESS CONCERNS
Seeking Section 3 Preference in Contracting and
Demonstration of Capability

Economic Opportunities for Low and Very Low-Income Persons

Grantee/Subrecipient:	Contract Number:	Date:

CONTRACTOR INFORMATION

Name of Business

Address of Business

Type of Business: ☐ Corporation ☐ Partnership ☐ Non-Profit
☐ Sole Proprietorship ☐ Joint Venture ☐ Consortium

Attach the following documentation as evidence of Section 3 eligible status:
(Definition of "Section 3 Business Concern" in 24 CFR 135 describes the three alternative qualifications.)

For Business claiming status as a Section 3 resident-owned enterprise:

- | | |
|---|---|
| ☐ Copy of resident lease | ☐ Copy of receipt of public assistance |
| ☐ Copy of evidence of participation in a public assistance program | ☐ Other evidence |

For business entity as applicable:

- | | |
|---|---|
| ☐ Copy of Articles of Incorporation | ☐ Certificate of Good Standing |
| ☐ Assumed Business Name Certificate | ☐ Partnership Agreement |
| ☐ List of owners/stockholders and % ownership of each appointed officers | ☐ Corporation Annual Report |
| ☐ Organization chart with names and titles and brief function statement | ☐ Latest Board minutes |
| | ☐ Additional documentation |

For business entity claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business(es):

- ☐ List of subcontracted Section 3 business(es) and subcontract amount

For business claiming Section 3 status, by claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- | | |
|---|---|
| ☐ List of all current full-time employees | ☐ List of employees claiming Section 3 status |
| ☐ PHA/IHA Residential lease less than 3 years from day of employment | ☐ Other evidence of Section 3 status less than 3 years from date of employment |

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- | | |
|---|--|
| ☐ Current financial statement | ☐ Statement of ability to comply with public policy |
| ☐ List of owned equipment | |
| ☐ List of all contracts for the past two years | |

Authorized Name and Signature _____

Date _____

(Corporate Seal)

Attested By: _____

Grantee/Subrecipient:
Include this document in all applicable bid packets.



Texas General Land Office
Community Development Block Grant (CDBG)
Disaster Recovery Program

COPY

**Contractor Certification of Efforts to Fully Comply
with Employment and Training Provisions of Section 3**

Economic Opportunities for Low and Very Low-Income Persons

THE BIDDER REPRESENTS AND CERTIFIES AS PART OF ITS BID/OFFER THAT IT:

- ☐ Is a Section 3 Business Concern. A Section 3 Business Concern means a business concern:
1. That is 51% or more owned by Section 3 Resident(s); or
 2. Whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or
 3. That provides evidence of a commitment to subcontract in excess of 25% of the dollar value of all subcontracts to be awarded to Section 3 Business Concerns, that meet the qualifications set forth in paragraphs 1 or 2 herein.

- ☒ Is **NOT** a Section 3 Business Concern, but who has and will continue to seek compliance with Section 3 by certifying the following efforts to be undertaken.

EFFORTS TO AWARD SUBCONTRACTOR TO SECTION 3 CONCERNS
(Check ALL that apply)

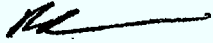
- ☒ By contacting business assistance agencies, minority contractors associations and community organizations to inform them of the contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids for a portion of the work.
- ☐ By advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas of the applicable development(s) owned and managed by the Housing Authority.
- ☐ By providing written notice to all known Section 3 Business Concerns of contracting opportunities. This notice should be in sufficient time to allow the Section 3 Business Concerns to respond to bid invitations
- ☒ By following up with Section 3 Business Concerns that have expressed interest in the contracting opportunities.
- ☐ By coordinating meetings at which Section 3 Business Concerns could be informed of specific elements of the work for which subcontract bids are being sought.
- ☐ By conducting workshops on contracting procedures and specific contracting opportunities in a timely manner so that Section 3 Business Concerns can take advantage of contracting opportunities.
- ☐ By advising Section 3 Business Concerns as to where to seek assistance to overcome barriers such as inability to obtain bonding, lines of credit, financing, or insurance and aiding Section 3 Businesses in qualifying for such bonding, financing, insurance, etc....
- ☐ Where appropriate, by breaking out contract work into economically feasible units to facilitate participation by Section 3 businesses.
- ☐ By developing and using a list of eligible Section 3 Business Concerns.
- ☐ By actively supporting and undertaking joint ventures with Section 3 Businesses.

EFFORTS TO PROVIDE TRAINING AND EMPLOYMENT TO SECTION 3 RESIDENTS

- ☐ By entering into a "first source" hiring agreements with organizations representing Section 3 Residents.
- ☐ By establishing training programs, which are consistent with the requirements of the Department of Labor, specifically for Section 3 Residents in the building trades.
- ☐ By advertising employment and training positions to dwelling units occupied by Category 1 and 2 residents.
- ☐ By contacting resident councils and other resident organizations in the affected housing development to request assistance in notifying residents of the training and employment positions to be filled.
- ☒ By arranging interviews and conducting interviews on the job site.
- ☐ By undertaking such continued job-training efforts as may be necessary to ensure the continued employment of Section 3 Residents previously hired for employment opportunities.
- ☒ By posting job vacancies in Work-In-Texas or with my local Workforce Solutions Center.

Contractor Name/Business Name: Crawley Shoreline Construction, Inc. Date: 4-22-13

Authorized Representative Name: Robert Crawley

Signature: 



Texas General Land Office
Community Development Block Grant (CDBG)
Disaster Recovery Program

**NEW HIRES SECTION 3
MONTHLY COMPLIANCE REPORT**

Reporting Month:

Economic Opportunities for Low and Very Low-Income Persons

This form is distributed to the General Contractor (GC) at the Pre-Construction Meeting. GC is also required to provide this form to any subcontractor firms that they anticipate hiring for this project.

CONTRACTOR INFORMATION

Name of Business:

Address of Business:

Authorized Representative for this contract:

Authorized Signatory:

ADDITIONALLY, PLEASE REVIEW AND COMPLY WITH STEPS 1 - 3 BELOW:

1. You must **sign and date** this form for the each applicable reporting month in connection with awarded project and deliver to:

2. When you **hire** a Section 3 resident in connection with this project, you must also complete this form and submit it to the Section 3 Coordinator identified above. Even if there were no **new hires** this form **must be completed and submitted to the Section 3 Coordinator identified above.**

☐ I have not hired any new employees during the reporting Month specified.

I have hired Section 3 employees and/or non-Section 3 employees during the reporting month shown here.

The following is a list of the new hires and the trades:

	New Hire Name	Job Category/Trade	Full-time? Yes or No
1.			
2.			
3.			
4.			

I have taken one or more of the following recruitment steps to hire a Section 3 Resident with the highest training and employment priority ranking. **Provide a brief description of actions taken:**

I have taken steps to find a Section 3 Resident in the applicable targeted areas where the project(s)/assistance will take place. **List areas:**

- ☐ Placed signs or posters at prominent places in each of the above listed areas. *Photographs were taken to document this action.*

I have advertised to fill vacancy(ies) at the site(s), where work is taking place, in connection with this project.

List advertisements (name publication, e.g. Work in Texas, Houston Chronicle, and/or website(s):

- ☐ Distributed employment flyers to the administrative office of the local Public Housing Authority.
- ☐ Provided notice of positions available to the Texas Workforce Commission for potential applicants. *Provide copy of notice.*
- ☐ Contacted employment referrals or Youthbuild Program referrals. **List contacts:**

- ☐ Contacted with applicable parties to ensure that any HUD Youthbuild programs currently operating in the project(s) area/ assistance will take place.
- ☐ Kept a log of all applicants and indicate the reasons why Section 3 Residents who applied were not hired.
- ☐ Retained copies of any employment applications completed by public housing, Section 8 certificate or voucher holders or other Section 3 Residents.
- ☐ Sent a notice about Section 3 training and employment requirements and opportunities to labor organizations or to worker representatives with whom our firm has a collective bargaining or other agreement.

3. Verification

- ☐ I have attached proof of all checked items.

Authorized Name and Signature

Date/Time Field

Text

Attested By:

DAVIS BACON WAGE RATES

00810

>

General Decision Number: TX130067 01/04/2013 TX67

Superseded General Decision Number: TX20120067

State: Texas

Construction Type: Heavy

Counties: Brazoria, Fort Bend, Galveston, Harris, Matagorda, Montgomery, Waller and Wharton Counties in Texas.

FLOOD CONTROL PROJECTS ONLY, (Does not Include any Water & Sewer Line work; Sewage Collection and Disposal Lines; Sewers (Sanitary Storm, etc.), or Shoreline Maintenance Water Mains and Water Supply Lines).

Modification Number	Publication Date
0	01/04/2013

SUTX1998-009 03/26/1998

	Rates	Fringes
ASPHALT DISTRIBUTOR.....	\$ 9.47	
Asphalt Paving Machine.....	\$ 10.05	
Asphalt Raker.....	\$ 8.28	
Asphalt Shoveler.....	\$ 7.45	
Batching Plant Weigher.....	\$ 11.11	
Broom or Sweeper Operator.....	\$ 8.01	
Bulldozer.....	\$ 9.91	
CARPENTER.....	\$ 10.35	
Concrete Curbing Mach.....	\$ 8.80	
Concrete Finisher-Paving.....	\$ 9.87	
Concrete Finisher-Structures.....	\$ 9.86	
Concrete Finishing Machine.....	\$ 11.79	
Concrete Joint Sealer.....	\$ 10.50	
Concrete Paving Float.....	\$ 9.30	
Concrete Paving Saw.....	\$ 10.01	
Concrete Paving Spreader.....	\$ 9.32	

Concrete Rubber.....	\$ 9.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel.....	\$ 11.35
Crusher or Screening Plant Operator.....	\$ 11.00
ELECTRICIAN.....	\$ 16.15
Flagger.....	\$ 7.25
Form Builder (Structures).....	\$ 9.96
Form Liner - Paving & Curb.....	\$ 9.03
Form Setter (PAVING/CURB).....	\$ 8.86
Form Setter-Structures.....	\$ 9.05
Foundation Drill Operator, Crawler Mounted.....	\$ 12.59
Foundation Drill Operator, Truck Mounted.....	\$ 12.73
Front End Loader.....	\$ 9.29
Labor Common.....	\$ 7.45
Laborer-Utility.....	\$ 8.53
Lineperson.....	\$ 7.50
MANHOLE BUILDER (Brick).....	\$ 8.49
MECHANIC.....	\$ 11.38
Milling Machine Operator.....	\$ 10.43
Mixer.....	\$ 7.94
Motor Grader	
FINE GRADE.....	\$ 11.11
Other.....	\$ 10.67
Oiler.....	\$ 9.56
Painter-Structures.....	\$ 14.00
Pavement Marking Machine.....	\$ 7.45
Piledriver.....	\$ 10.96
Pipe layer.....	\$ 8.49
Reinforcing Steel Setter Paving.....	\$ 12.50
Reinforcing Steel Setter	

Structures.....\$ 12.47

Roller, Pneumatic, Self
Propelled.....\$ 7.96

Roller, Steel Wheel Other
Flatwheel or Tamping.....\$ 7.61

Roller, Steel Wheel Plant Mix
Pavements.....\$ 9.25

Scraper.....\$ 8.69

Servicer.....\$ 9.51

SIGN ERECTOR.....\$ 10.06

Sign Installer.....\$ 7.45

Slipform Machine Operator.....\$ 9.20

Spreader Box Operator.....\$ 9.08

Steelworker Structural.....\$ 10.35

Tractor-Crawler Type.....\$ 10.12

Tractor-Pneumatic.....\$ 8.99

Traveling Mixer.....\$ 9.35

Trenching Machine, Heavy.....\$ 13.56

Trenching Machine, Light.....\$ 10.50

Truck Driver Lowboy Float.....\$ 11.29

Truck Driver Single Axle Heavy...\$ 8.76

Truck Driver Single Axle,
Light.....\$ 8.15

Truck Driver Tandem Axle
Semi-Trailer.....\$ 8.00

Wagon Drill, Boring Machine.....\$ 10.15

WELDER.....\$ 10.43

Work Zone Barricade.....\$ 7.45

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

=====

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after

award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have been found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====
END OF GENERAL DECISION

City of Seabrook
Pine Gully Jetties

**CONTRACTOR'S LOCAL
OPPORTUNITY PLAN**

Section 00815
CONTRACTOR'S LOCAL OPPORTUNITY PLAN

Crawley Shoreline Construction (name of company) agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the (City/County) of Seabrook.

- A. To ascertain from the Locality's CDBG program official the exact boundaries of the project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the city the necessary number of lower income residents through: local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within and servicing the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this plan in all bid documents and to require all bidders on subcontracts to submit an affirmative action plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To insure that subcontracts (greater than \$10,000), which are typically let on a negotiated rather than a bid basis in areas other than the covered project area, are also let on a negotiated basis, whenever feasible, in a covered project area.
- F. To formally contact unions, subcontractors, and trade associations to secure their cooperation in this effort.
- G. To insure that all appropriate project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this plan.
- J. To maintain records concerning the amount and number of contracts, subcontracts, and purchases which contribute to objectives.
- K. To maintain records of all projected work force needs for all phases of the project by occupation, trade, skill level, and number of positions and to update these projections based on the extent to which hiring meets these Local Opportunity objectives.

As officers and representatives of Crawley Shoreline Construction (name of company), we the undersigned have read and fully agree to this Plan, and become a party to the full implementation of the program and its provisions.


Signature

President
Title

4-22-13
Date

CONTRACTOR'S LOCAL OPPORTUNITY PLAN

PROPOSED CONTRACTS BREAKDOWN

[illegible]

ESTIMATED PROJECT WORKFORCE BREAKDOWN

Work Classifications	Total Estimated Positions	No. of Positions Currently Filled	No. of Positions not Filled	No. of Positions to fill with L/M Residents
Totals				

END OF DOCUMENT

SEE ATTACHED

Provision of Local Training, Employment, and Business Opportunities

Crawley Shoreline Construction, Inc. is taking action per Section 3 (Local Opportunity Plan) Crawley Shoreline Construction, Inc. will subcontract all or portions of surveying to Company qualified as per Section 3 plan.



Crawley Shoreline Construction, Inc.

Robert Crawley (President)

COPY

TROY WOODALL

8727 OCEAN DRIVE • BAYTOWN, TEXAS 77523 • PHONE: (713) 518-5919
EMAIL: TWOODALL@CRAWLEYSHORELINE.COM

PROFESSIONAL EXPERIENCE

February 2007 – Current

Crawley Shoreline Construction, Inc.

* Project(s) Superintendent

Baytown, Texas

January 2000 – February 2007

HMS, Inc.

Supervisor

Houston, Texas

- ♦ Supervisor overseeing Day to Day Activities

SKILLS

- ♦ Clear understanding of personal contribution and effort required to assist in the growth and development of a profitable business.
- ♦ Experience in Employee Supervision
- ♦ Dedicated salesperson with a strong work ethic
- ♦ Excellent organizational skills
- ♦ Adept at communicating effectively with customers, vendors, and staff
- ♦ Self-motivated
- ♦ Reliable
- ♦ Strong work ethic
- ♦ Extensive experience in Field Operations

REFERENCES: AVAILABLE UPON REQUEST

ROBERT CRAWLEY

225 JORDAN RD • BAYTOWN, TEXAS 77523 • PHONE: (713) 253-1107
EMAIL: RCRAWLEY51@CRAWLEYSHORELINE.COM

PROFESSIONAL EXPERIENCE

April 1974 – Current

Crawley Shoreline Construction, Inc.

* Owner / President

SKILLS

- ♦ Clear understanding of personal contribution and effort required to assist in the growth and development of a profitable business.
- ♦ Outstanding abilities in customer care
- ♦ Dedicated Businessman with a strong work ethic
- ♦ Excellent organizational skills
- ♦ Adept at communicating effectively with customers, vendors, and staff
- ♦ Self-motivated
- ♦ Reliable
- ♦ Strong work ethic
- ♦ Extensive experience in Construction Industry

REFERENCES: AVAILABLE UPON REQUEST

JEREMY BRENT CRAWLEY

8614 TRI-CITY BEACH RD • BAYTOWN, TEXAS 77520 • PHONE: (832) 784-4758
EMAIL: BCRAWLEY51@AOL.COM

PROFESSIONAL EXPERIENCE

February 2009 – Current
Crawley Shoreline Construction, Inc.
* Office Manager

February 2003 – February 2009
ExecuFocus, LLC
Baytown, Texas
Inside Sales Representative

- ♦ Team leader overseeing 4 other representatives

April 1999 – February 2003
Crawley's Seafood Restaurant
Owner/Manger Baytown, Texas

- ♦ Successfully managed a family restaurant, increasing sales by 40% through quality food and exceptional service.
- ♦ Controlled expenses through accurate planning, waste reduction, purchasing, and cost-effective operating procedures.
- ♦ Recruited, hired, supervised, scheduled, and motivated all restaurant personnel.

February 1997 – April 1999
Bud's BBQ Restaurant Baytown, Texas

- ♦ Served customers
- ♦ Cooked
- ♦ Inventory control
- ♦ Cashier

SKILLS

- ♦ Clear understanding of personal contribution and effort required to assist in the growth and development of a profitable business.
- ♦ Outstanding abilities in customer care
- ♦ Dedicated salesperson with a strong work ethic
- ♦ Excellent organizational skills
- ♦ Adept at communicating effectively with customers, vendors, and staff
- ♦ Self-motivated
- ♦ Reliable
- ♦ Strong work ethic
- ♦ Extensive experience in inside sales

City of Seabrook
Pine Gully Jetties

**POLICY OF
NONDISCRIMINATION**

SECTION 00820
**POLICY OF NONDISCRIMINATION ON THE BASIS
OF HANDICAPPED STATUS**

The Contractors below does not discriminate on the basis of handicapped status in the admission or access to, or treatment or employment in, its federally assisted programs or activities.

(Name) Crawley Shoreline Construction, Inc.

(Address) 225 Jordan Rd.

Begonia TX 77523
City State Zip

Telephone Number (281) 382 - 3665 Voice
() - TDD

has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's (HUD) regulations implementing Section 504 (24 CFR Part 8. dated June 2, 1988).

END OF DOCUMENT

Section 00825
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACTOR'S CERTIFICATION

CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

TO (appropriate recipient)	DATE
	PROJECT NUMBER (if any)
C/O	PROJECT NAME

1. The undersigned, having executed a contract with _____
_____ for the construction of the above-identified project, acknowledges that:

- (a) The Labor Standards provisions are included in the aforesaid contract,
(b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, is his responsibility.

2. He certifies that:

- (a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended.
(b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He certifies that:

- (a) The legal name and the business address of the undersigned are:

- (b) The undersigned is:

(1) A SINGLE PROPRIETORSHIP

(3) A CORPORATION ORGANIZED IN THE STATE OF

(2) A PARTNERSHIP

(4) OTHER ORGANIZATION (Describe)

- (c) The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

- (d) The names and addresses of all other persons having a substantial interest in the undersigned, and the nature of the interest are:

NAME	ADDRESS	NATURE OF INTEREST

- (e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are:

NAME	ADDRESS	TRADE CLASSIFICATION

Date _____

(Contractor)

By _____

END OF DOCUMENT

CHANGE ORDER PROCEDURES

Section 01255

CHANGE ORDER PROCEDURES

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Procedures for processing Change Orders, including:
 - 1. Assignment of a responsible individual for approval and communication of changes in the Work;
 - 2. Documentation of change in Contract Price and Contract Time;
 - 3. Change procedures, using proposals and construction contract modifications, work change directive, stipulated price change order, unit price change order, time and materials change order;
 - 4. Execution of Change Orders;
 - 5. Correlation of Contractor submittals.

1.02 REFERENCES

- A. Rental Rate Blue Book for Construction Equipment (Data Quest Blue Book). Rental Rate is defined as the full unadjusted base rental rate for the appropriate item of construction equipment.

1.03 RESPONSIBLE INDIVIDUAL

- A. Contractor shall provide a letter indicating the name and address of the individual authorized to execute change documents, and who shall also be responsible for informing others in Contractor's employ and Subcontractors of changes to the Work. The information shall be provided at the Preconstruction Conference.

1.04 DOCUMENTATION OF CHANGE IN CONTRACT PRICE AND CONTRACT TIME

- A. Contractor shall maintain detailed records of changes in the Work. Provide full information required for identification and evaluation of proposed changes, and to substantiate costs of changes in the Work.
- B. Contractor shall document each proposal for a change in cost or time with sufficient data to allow evaluation of the proposal.
- C. Proposals shall include, as a minimum, the following information as applicable:
 - 1. Quantities of items in the original Section 00300 – Bid Form with

CHANGE ORDER PROCEDURES

additions, reductions, deletions, and substitutions.

2. When Work items were not included in the Bid Form, Contractor shall provide unit prices for the new items, with supporting information as required by the Engineer.
 3. Justification for any change in Contract Time.
 4. Additional data upon request.
- D. For changes in the Work performed on a time-and-material basis, the following additional information may be required:
1. Quantities and description of products and equipment.
 2. Taxes, insurance and bonds.
 3. Dates and times work was performed, and by whom.
 4. Invoices and receipts for products, rented equipment, and subcontracts, similarly documented.
- E. For changes in the work performed on a time-and-materials basis, rental equipment will be paid as follows:
1. Rented equipment will be paid by actual invoice cost for the duration of time required to complete the extra work without markup for overhead and profit. If the extra work comprises only a portion of the rental invoice where the equipment would otherwise be on the site, the Contractor shall compute the hourly equipment rate by dividing the actual monthly invoice by 176. (One day equals 8 hours and one week equals 40 hours.)
 2. Operating costs shall not exceed the estimated operating costs given in the Blue Book for the item of equipment. Overhead and profit will be allowed on operating cost.
- F. For changes in the work performed on a time-and-materials basis using Contractor-owned equipment, use Blue Book rates as follows:
1. Contractor-owned equipment will be paid at the Blue Book Rental Rate for the duration of time required to complete the extra work without markup for overhead and profit. The Rental Rate utilized shall be the lowest cost combination of hourly, daily, weekly or monthly rates. Use 150 percent of the Rental Rate for double shifts (one extra shift per day) and 200 percent of the Rental Rate for more than two shifts per day. Standby rates shall be 50 percent of the appropriate Rental Rate shown in the Blue Book. No other rate adjustments shall apply.

CHANGE ORDER PROCEDURES

2. Operating costs shall not exceed the estimated operating costs given in the Blue Book for the item of equipment. Overhead and profit will be allowed on operating cost. Operating costs will not be allowed for equipment on standby.

1.05 CHANGE PROCEDURES

- A. Changes to Contract Price or Contract Time can only be made by issuance of a change order. All changes will be in accordance with the requirements of the General Conditions.
- B. The Engineer will advise of minor changes in the Work not involving an adjustment to Contract Price or Contract Time as authorized by the General Conditions by issuing supplemental instructions.
- C. Contractor may request clarification of Drawings, Specifications or Contract Documents or other information. Response by the Engineer to a Request for Information does not authorize the Contractor to perform tasks outside the scope of the Work. All changes must be authorized as described in this section.

1.06 PROPOSALS AND CONTRACT MODIFICATIONS

- A. The Engineer may also request a proposal in the response to a Request for Information. Contractor shall prepare and submit a proposal within 7 days or as specified in the request.
- B. The Contractor may propose an unsolicited change by submitting a proposal to the Engineer describing the proposed change and its full effect on the Work, with a statement describing the reason for the change and the effect on the Contract Price and Contract Time including full documentation.

1.07 WORK CHANGE DIRECTIVE

- A. The Engineer may issue a signed Work Change Directive instructing the Contractor to proceed with a change in the Work. A Work Change Directive will subsequently be incorporated in a Change Order.
- B. The document will describe changes in the Work and will designate a method of determining any change in Contract Price or Contract Time.
- C. Contractor shall proceed promptly to execute the changes in the Work in accordance with the Work Change Directive.

1.08 STIPULATED PRICE CHANGE ORDER

- A. A stipulated price Change Order will be based on an accepted proposal including the Contractor's lump sum price quotation with Schedule of Values.

CHANGE ORDER PROCEDURES

1.09 UNIT PRICE CHANGE ORDER

- A. Where Unit Prices for the affected items of Work are included in Section 00300 – Bid Form, the unit price Change Order will be based on the unit prices, subject to Articles 7 and 9 of the General Conditions.
- B. Where unit prices of Work are not pre-determined in the Section 00300 – Bid Form, the Work Change Directive or accepted proposal will specify the unit prices to be used.

1.10 TIME-AND-MATERIAL CHANGE ORDER

- A. Contractor shall provide an itemized account and supporting data after completion of change, within time limits indicated for claims in the General Conditions.
- B. Engineer will determine the change allowable in Contract Price and Contract Time as provided in the General Conditions.
- C. Contractor shall maintain detailed records of work done on time-and-material basis as specified in paragraph 1.04, Documentation of Change in Contract Price and Contract Time.
- D. Contractor shall provide full information required for evaluation of changes and shall substantiate costs for changes in the Work.

1.11 EXECUTION OF CHANGE DOCUMENTATION

- A. Engineer will issue Change Orders, Work Change Directives, or accepted proposal for signatures of parties as described in the General Conditions.

1.12 CORRELATION OF CONTRACTOR SUBMITTALS

- A. For Stipulated Price Contracts, Contractor shall promptly revise the Schedule of Values and Application for Payment forms to record each authorized Change Order as a separate line item.
- B. For Unit Price Contracts, the next monthly estimate of work after acceptance of a Change Order will be revised to include any new items not previously included and the appropriate unit rates.
- C. Contractor shall promptly revise progress schedules to reflect any change in Contract Time, and shall revise schedules to adjust time for other items of work affected by the change, and resubmit for review.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

MEASUREMENT AND PAYMENT

Section 01270

MEASUREMENT AND PAYMENT

PART 1 G E N E R A L

1.01 SECTION INCLUDES

- A. Procedures for measurement and payment plus conditions for nonconformance assessment and nonpayment for rejected products.

1.02 AUTHORITY

- A. Measurement methods delineated in Specification sections are intended to complement the criteria of this section. **In the event of conflict, the Items listed in Section 00300 – Bid Form shall govern.**
- B. The Engineer will take all measurements and compute quantities accordingly.
- C. Contractor shall assist by providing necessary equipment, workers, and survey personnel as required by the Engineer.

1.03 UNIT QUANTITIES SPECIFIED

- A. Quantity and measurement estimates stated in the Agreement are for contract purposes only. Quantities and measurements supplied or placed in the Work and verified by the Engineer shall determine payment as stated in Article 9 of the General Conditions.
- B. If the actual Work requires greater or lesser quantities than those quantities indicated in the Bid Form, provide the required quantities at the unit prices contracted, except as otherwise stated in Article 9 of the General Conditions.
- C. Items of work required for completion of the project, but not listed in Section 00300 – Bid Form are considered incidental to the items listed. The cost of incidental work is to be included in the listed pay items.

1.04 MEASUREMENT OF QUANTITIES

- A. Measurement by Weight: Reinforcing steel, rolled or formed steel, fittings, or other metal shapes will be measured by CRSI or AISC Manual of Steel Construction weights. Welded assemblies will be measured by CRSI or AISC Manual of Steel Construction or scale weights.
- B. Measurement by Volume:

MEASUREMENT AND PAYMENT

1. Stockpiles: Measured by cubic dimension using mean length, width, and height or thickness.
 2. Excavation and Embankment Materials: Measured by cubic dimension using the average end area method.
- C. Measurement by Area: Measured by square dimension using mean length and width or radius.
- D. Linear Measurement: Measured by linear dimension, at the item centerline or mean chord.
- E. Stipulated Price Measurement: By unit designated in the agreement.
- F. Other: Items measured by weight, volume, area, or lineal means or combination, as appropriate, as a completed item or unit of the Work.

1.05 PAYMENT

- A. Payment Includes: Full compensation for all required supervision, labor, products, tools, equipment, plant, transportation, services, and incidentals; and erection, application or installation of an item of the Work; and Contractor's overhead and profit.
- B. Total compensation for required Unit Price Work shall be included in Unit Price bid in Section 00300 – Bid Form. Claims for payment as Unit Price Work, but not specifically covered in the list of unit prices contained in Section 00300, will not be accepted.
- C. Interim payments for stored materials will be made only for materials to be incorporated under items covered in unit prices, unless disallowed in Supplementary Conditions.
- D. Progress payments will be based on the Engineer's observations and evaluations of quantities incorporated in the Work multiplied by the unit price.
- E. Final payment for Work governed by unit prices will be made on the basis of the actual measurements and quantities determined by Engineer multiplied by the unit price for Work which is incorporated in or made necessary by the Work.

1.06 NONCONFORMANCE ASSESSMENT

- A. Remove and replace the Work, or portions of the Work, not conforming to the Contract Documents.
- B. If, in the opinion of the Engineer, it is not practical to remove and replace the Work, the Engineer will direct one of the following remedies:

MEASUREMENT AND PAYMENT

1. The nonconforming Work will remain as is, but the unit price will be adjusted to a lower price at the discretion of Engineer.
 2. The nonconforming Work will be modified as authorized by the Engineer, and the unit price will be adjusted to a lower price at the discretion of the Engineer, if the modified work is deemed to be less suitable than originally specified.
- C. Specification sections may modify the above remedies or may identify a specific formula or percentage price reduction.
- D. The authority of the Engineer to assess the nonconforming work and identify payment adjustment is final.

1.07 NONPAYMENT FOR REJECTED PRODUCTS

- A. Payment will not be made for any of the following:
1. Products wasted or disposed of in a manner that is not acceptable to Engineer.
 2. Products determined as nonconforming before or after placement.
 3. Products not completely unloaded from transporting vehicle.
 4. Products placed beyond the lines and levels of the required Work.
 5. Products remaining on hand after completion of the Work, unless specified otherwise.
 6. Loading, hauling, and disposing of rejected products.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

CONSTRUCTION PHOTOGRAPHS

Section 01321

CONSTRUCTION PHOTOGRAPHS

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Photographic requirements for construction photographs and submittals.

1.02 SUBMITTALS

- A. Refer to Section 01330 for submittal requirements.
- B. Prints: Prepare 2 prints of each view and submit 1 print directly to the Engineer within 7 days of taking photographs. One print shall be retained by the Contractor in the field office at the Project site and available at all times for reference.
- C. Extra Prints: When requested by the Engineer, the Contractor shall submit extra prints of photographs, with distribution directly to designated parties who will pay the costs for the extra prints directly to the photographer.
- D. When required by individual sections, submit photographs taken prior to start of construction to show original site conditions.
- E. When required by Contract Documents, submit photographs monthly, with Pay Estimate.

1.03 QUALITY ASSURANCE

- A. Contractor shall be responsible for the timely execution of the photographs, their vantage point, and quality.

PART 2 PRODUCTS

2.01 PRECONSTRUCTION PHOTOGRAPHS

- A. Prior to the commencement of any construction, take 35mm or digital color photographs of the entire route of the project and present two set of prints to the City Engineer for their use in contract administration and inspection.
- B. Photographs: Two prints; color, matte finish; 3 x 5 -inch size, mounted on 8-1/2 x 11- inch soft card stock, with left edge binding margin for three hole punch.
- C. The photographs shall show on a non-reflective chalkboard readable in the photograph:

CONSTRUCTION PHOTOGRAPHS

1. Job number.
 2. Date and time photographs were taken.
 3. Location of the photograph, house number and street, along with the project number.
- D. Indicate the condition of the following:
1. Esplanades and boulevards.
 2. Yards (near side and far side of street).
 3. Housewalk and sidewalk.
 4. Curb.
 5. Area between walk and curb.
 6. Particular features (yard light, shrubs, fences, trees, etc.).
 7. Date shall be on negative or file.
 8. Provide notation of vantage point marked for location and direction of shot, on a key plan of the site.
- E. Sufficient number of photographs shall be taken to show the existence or non-existence of cracked concrete and the condition of trees, shrubs, and grass.
- F. Identify each photograph with an applied label or rubber stamp on the back with the following information:
1. Name of the Project.
 2. Name and address of the photographer (if a professional photographer is used).
 3. Name of the Contractor.
 4. Date the photograph was taken.
 5. Photographs to be in plastic pockets and bound in three-ring notebook for easy access and viewing.

2.02 PROGRESS PHOTOGRAPHS

- A. Take photographs at intervals, coinciding with the cutoff date associated with each application for payment. Select the vantage points for each shot each month

CONSTRUCTION PHOTOGRAPHS

to best show the status of construction and progress since the last photographs were taken.

1. Vantage Points: Follow direction by the Engineer to select vantage points. During each of the following construction phases take not less than 2 of the required shots from the same vantage point each time to create a time-lapse sequence.

PART 3 EXECUTION - Not Used

END OF SECTION

Section 01340

SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Methods, schedule, and process to be followed for shop drawings, product data and sample submittals.

1.02 REQUIREMENT

- A. Submit shop drawings, product data and samples as required by the General Conditions and as designated in the Specifications using the procedures specified in Section 01330 - Submittal Procedures and the requirements of this Section.
- B. Shop drawings, product data and samples are not considered Contract Documents.

1.03 SHOP DRAWING/SUBMITTAL SCHEDULE

- A. Submit a separate Shop Drawing/Submittal schedule at the same time the construction schedule is submitted. List products, materials and equipment for which Shop Drawings and other submittals are required in the order in which they appear in the Specifications. Including product data and sample submittals in schedule.

1.04 SHOP DRAWINGS

- A. Submit shop drawings for review as required by the Specifications. Have shop drawings reviewed and signed by a registered professional.
- B. Place Contractor's Stamp on each drawing as described in Section 01300 - Submittal Procedures.
- C. On the drawings, show accurately and distinctly, the following:
 - 1. Field and erection dimensions clearly identified as such;
 - 2. Arrangement and section views;
 - 3. Relation to adjacent materials or structure, including complete information for making connections between work under this Contract and work under other contracts;
 - 4. Kinds of materials and finishes;
 - 5. Parts list and descriptions;

6. Assembly drawings of equipment components and accessories showing their respective positions and relationships to the complete equipment package;
 7. Where necessary for clarity, identify details by reference to drawing sheet and detail numbers, schedule or room numbers as shown on the Contract Drawings.
- D. Make drawings to scale providing a true representation of the specific equipment or item to be furnished.

1.05 PRODUCT DATA

- A. Submit product data for review as required in Specification sections.
- B. Place Contractor's Stamp, on each data item submitted, as described in Section 01330 - Submittal Procedures.
- C. Mark each copy to identify applicable products, models, options to be used in this Project. Supplement manufacturers' standard data to provide information unique to this Project, where required by the Specifications.
- D. For products specified only by reference standard, give manufacturers, trade name, model or catalog designation and applicable reference standard.

1.06 SAMPLES

- A. Submit samples for review as required by the Specifications. Have samples reviewed and signed by a registered professional.
- B. Place Contractor's Stamp on each sample or a firmly attached sheet of paper, as described in Section 01330 - Submittal Procedures.
- C. Submit the number of samples specified in Specifications; one of which will be retained by the Engineer.
- D. Reviewed samples which may be used in the Work are identified in Specifications.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

CONTRACTOR'S QUALITY CONTROL

Section 01450

CONTRACTOR'S QUALITY CONTROL

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Quality assurance and control of installation and manufacturer's field services and reports.

1.02 MEASUREMENT AND PAYMENT

- A. No payment will be made for this item. Include the cost of Contractor's quality control in overhead cost for this project.

1.03 QUALITY ASSURANCE/CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply fully with manufacturers' installation instructions, including each step in sequence.
- C. Request clarification from the Engineer before proceeding should manufacturers' instructions conflict with Contract Documents.
- D. Comply with specified standards as minimum requirements for the Work except when more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Perform work by persons qualified to produce the specified level of workmanship.

1.04 REFERENCES

- A. Obtain copies of standards and maintain at job site when required by individual Specification sections.

1.05 MANUFACTURERS' FIELD SERVICES AND REPORTS

- A. When specified in individual Specification sections, provide material or product suppliers' or manufacturers' technical representative to observe site conditions, conditions of surfaces and installation, quality of workmanship, start-up of equipment, operator training, test, adjust, and balance of equipment as applicable, and to initiate operation, as required. Conform to minimum time requirements for start-up operations and operator training if defined in Specification sections.

CONTRACTOR'S QUALITY CONTROL

- B. At the Engineer's request, submit qualifications of manufacturer's representative to the Engineer 15 days in advance of required representative's services. The representative shall be subject to approval of the Engineer.
- C. Manufacturer's representative shall report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturers' written instructions. Submit report within 14 days of observation to the Engineer for review.

PART 2 P R O D U C T S - Not Used

PART 3 E X E C U T I O N - Not Used

END OF SECTION

INSPECTION SERVICES

Section 01452

INSPECTION SERVICES

PART 1 G E N E R A L

1.1 SECTION INCLUDES

- A. Inspection services and references

1.2 INSPECTION

- A. The Engineer will appoint an Inspector as a representative of the Owner to perform inspections, tests, and other services specified in individual specification Sections
- B. Alternately, the Engineer may appoint, employ, and pay an independent firm to provide additional inspection or construction management services as indicated in Section 01454 - Testing Laboratory Services.
- C. Reports will be submitted by the independent firm to the Engineer, Architect/Engineer, and Owner, indicating observations and results of tests and indicating compliance or non-compliance with Contract Documents.
- D. Assist and cooperate with the Inspector; furnish samples of materials, design mix, equipment, tools, and storage.
- E. Notify the Engineer 24 hours prior to expected time for operations requiring services. Notify Architect/Engineer and independent firm when noted.
- F. Sign and acknowledge report for Inspector.

PART 2 P R O D U C T S - Not Used

PART 3 E X E C U T I O N - Not Used

END OF SECTION

Section 01502

MOBILIZATION

1.01 SECTION INCLUDES

- A. Mobilization of construction equipment and facilities onto the site.

1.02 MEASUREMENT AND PAYMENT

- A. Unit Price Contracts. If Contract is Unit Price Contract, measurement for mobilization is on a lump sum basis.
- B. Stipulated Price (Lump Sum) Contract. If Contract is Stipulated Price Contract, payment for Work in this Section is included in total Stipulated Price.
- C. Mobilization payments will be included in monthly payment estimates upon written application by Contractor subject to the following provisions:
 - 1. Authorization for payment of 50 percent of that portion of Contract Price designated for mobilization will be made upon receipt and approval by Project Manager of the following items, as applicable:
 - a. Safety Program (Document 00700, Paragraph 10.1.1).
 - b. Site Utilization Plan (Section 01145).
 - c. Schedule of Values (Section 01292), if any.
 - d. Initial Construction Photographs (Section 01321), if needed.
 - e. Preliminary Construction Schedule and Billing Forecast (Section 01325).
 - f. Construction Schedule (Section 01325 or Section 01326, as applicable).
 - g. Submittal Schedule (Section 01330).
 - h. Site specific Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) along with storm water application fee (Section 01410), if required.
 - i. Contractor's Quality Control Plan (Section 01450), if required.
 - j. Establishment of a Field Office for Project Manager meeting requirements of Section 01520 - Temporary Field Office.

MOBILIZATION

- k. Traffic Control Plan (Section 01555), if required.
 - l. Plan for Control of Ground and Surface Water (Section 01578), if required.
 - m. Project Signs Submittal (Section 01580).
 - n. Trench Safety Program (Section 02260), if required.
 - o. Dewatering plan, when required.
- 2. Authorization for payment of the balance of that portion of Contract Price designated for mobilization will be made upon completion of the Work amounting to five percent of Original Contract Price. The amount of Contract Price designated for mobilization may not be applied in computing whether or not five percent of the Original contract Price has been obtained.
 - 3. Mobilization payments will be subject to retainage amounts stipulated in Document 00700 – General Conditions.

PART 2 P R O D U C T S -Not Used

PART 3 E X E C U T I O N -Not Used

END OF SECTION

WASTE MATERIAL DISPOSAL

Section 01576

WASTE MATERIAL DISPOSAL

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Disposal of waste material and salvageable material.

1.02 UNIT PRICES

- A. No separate payment will be made for waste material disposal under this Section. Include payment in unit price for related sections.

1.03 SUBMITTALS

- A. Submittals shall conform to requirements of Section 01330 - Submittal Procedures.
- B. Submit a copy of an approved Permit, issued by the Flood Plain Manager having jurisdiction over the site, prior to disposal of excess material in areas designated as being in a "100-year Flood Hazard Area".
- C. Obtain and submit disposal permits for proposed disposal sites if required by local ordinances.
- D. Submit a copy of written permission from property owner, along with description of property, prior to disposal of excess material adjacent to the Project. Submit a written and signed release from property owner upon completion of disposal work.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION

3.01 SALVAGEABLE MATERIAL

- A. Excavated Material: When indicated on Drawings, load, haul, and deposit excavated material at a location selected by the Contractor and approved by the Engineer.
- B. Base, Surface, and Bedding Material: Load shell, gravel, bituminous, or other base and surfacing material shall be disposed of offsite to a location selected by the Contractor and approved by the Engineer.
- C. Pipe Culvert: Load culverts shall be disposed of offsite to a location selected by the Contractor and approved by the Engineer.

WASTE MATERIAL DISPOSAL

- D. Other Salvageable Materials: Conform to requirements of individual Specification Sections.

3.02 EXCESS MATERIAL

- A. Vegetation, rubble, broken concrete, debris, asphaltic concrete pavement, excess soil, and other materials not designated for salvage, shall become the property of Contractor and shall be removed from the job site and legally disposed of.
- B. Excess soil may be deposited on private property adjacent to the Project when written permission is obtained from property owner. See Paragraph 1.03 D above.
- C. Verify the flood plain status of any proposed disposal site. Do not dispose of excavated materials in an area designated as within the 100-year Flood Hazard Area unless a Permit has been obtained. Excess material placed in a "100-year Flood Hazard Area" without a Permit, shall be removed by Contractor at no additional cost to the Owner.
- D. Waste materials shall be removed from the site on a daily basis, such that the site is maintained in a neat and orderly condition.

END OF SECTION

PROJECT RECORD DOCUMENTS

Section 01785

PROJECT RECORD DOCUMENTS

PART 1 G E N E R A L

1.01 SECTION INCLUDES

- A. Maintenance and Submittal of Record Documents.

1.02 MAINTENANCE OF DOCUMENTS

- A. Maintain one record copy of documents at the site in accordance with Section GC - General Conditions, paragraph 6.12, Record Documents.
- B. Store Record Documents in field office if a field office is required by Contract Documents, or in a secure location. Provide files, racks, and secure storage for Record Documents and samples.
- C. Label each document "PROJECT RECORD" in neat, large, printed letters.
- D. Maintain Record Documents in a clean, dry, and legible condition. Do not use Record Documents for construction purposes.
- E. Keep Record Documents available for inspection by Engineer.

1.03 RECORDING

- A. Record information concurrently with evaluation progress. Do not abandon work site until required information is recorded.
- B. Drawings: Legibly record all actual work, or "as built" conditions observed in the field on the district overall plan provided by the Engineer when a discrepancy is noted.

1.04 SUBMITTALS

- A. At contract closeout, deliver Project Record Documents to the Engineer.

PART 2 P R O D U C T S - Not Used

PART 3 E X E C U T I O N - Not Used

END OF SECTION

**TECHNICAL SPECIFICATIONS FOR
THE CONSTRUCTION OF
PINE GULLY JETTIES**

Prepared for:
Cobb Fendley & Associates
3027 Marina Bay Drive, Suite 105
League City, Texas 77573

Prepared by:
Moffatt & Nichol
11011 Richmond Ave. #200
Houston, Texas 77042-6601

PROJECT NO. 1012-003-05-51

**FINAL – ISSUED FOR CONSTRUCTION
February 28, 2013**



A handwritten signature in black ink, appearing to read "Larry A. Wise", written over the bottom portion of the professional engineer seal.

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Larry A. Wise, P.E. (#88879) Moffatt & Nichol (TBPE F-3953)

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SECTION 01 11 00

SUMMARY OF WORK

PART 1 GENERAL

1.1 WORK COVERED BY CONTRACT DOCUMENTS

1.1.1 Project Description

The work includes construction of two new stone jetties and incidental related work.

1.1.2 Location

The work shall be located at the mouth of Pine Gully in Seabrook, Texas, approximately as indicated. The exact location will be shown by the Engineer.

1.2 SUBSURFACE UTILITIES

Scan the construction site with electromagnetic or sonic equipment, and mark the surface of the ground where existing underground utilities are discovered. Verify the elevations of existing piping, utilities, and any type of underground obstruction not indicated to be specified or removed but indicated or discovered during scanning in locations to be traversed by piping, ducts, and other work to be conducted or installed.

1.2.1 Excavation

Notify the Engineer at least 48 hours prior to starting excavation work.

PART 2 PRODUCTS

Not used.

PART 3 EXECUTION

Not used.

-- End of Section --

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SECTION 01 33 00

SUBMITTAL PROCEDURES

PART 1 GENERAL

1.1 DEFINITIONS

1.1.1 Submittal Descriptions (SD)

Submittals requirements are specified in the technical sections.
Submittals are identified by Submittal Description (SD) numbers and titles as follows:

SD-01 Preconstruction Submittals

Submittals which are required prior to start of construction (work)

Certificates of insurance

List of proposed Subcontractors

List of proposed products

Construction Progress Schedule

Submittal register

Health and safety plan

Work plan

Quality Control(QC) plan

Environmental protection plan

SD-03 Product Data

Catalog cuts, illustrations, schedules, diagrams, performance charts, instructions and brochures illustrating size, physical appearance and other characteristics of materials, systems or equipment for some portion of the work.

Samples of warranty language when the contract requires extended product warranties.

SD-04 Samples

Fabricated or unfabricated physical examples of materials, equipment or workmanship that illustrate functional and aesthetic characteristics of a material or product and establish standards by which the work can be judged.

Color samples from the manufacturer's standard line (or custom color samples if specified) to be used in selecting or approving colors for the project.

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Field samples and mock-ups constructed on the project site establish standards by which the ensuring work can be judged. Includes assemblies or portions of assemblies which are to be incorporated into the project and those which will be removed at conclusion of the work.

SD-06 Test Reports

Report signed by authorized official of testing laboratory that a material, product or system identical to the material, product or system to be provided has been tested in accord with specified requirements. (Testing must have been within three years of date of contract award for the project.)

Report which includes findings of a test required to be performed by the Contractor on an actual portion of the work or prototype prepared for the project before shipment to job site.

Report which includes finding of a test made at the job site or on sample taken from the job site, on portion of work during or after installation.

Investigation reports.

Daily logs and checklists.

Final acceptance test and operational test procedure.

SD-07 Certificates

Statements printed on the manufacturer's letterhead and signed by responsible officials of manufacturer of product, system or material attesting that product, system or material meets specification requirements. Must be dated after award of project contract and clearly name the project.

Document required of Contractor, or of a manufacturer, supplier, installer or Subcontractor through Contractor, the purpose of which is to further quality of orderly progression of a portion of the work by documenting procedures, acceptability of methods or personnel qualifications.

SD-11 Closeout Submittals

Special requirements necessary to properly close out a construction contract. For example, Record Drawings and as-built drawings. Also, submittal requirements necessary to properly close out a major phase of construction on a multi-phase contract.

1.1.2 Approving Authority

Office or designated person authorized to approve submittal.

1.2 SUBMITTALS

Owner approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. Submit the following in accordance with this section.

SD-01 Preconstruction Submittals

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Submittal Register; G

1.3 SUBMITTAL REGISTER

Prepare and maintain submittal register, as the work progresses. A submittal register showing items of equipment and materials for which submittals are required by the specifications is provided as an attachment. This list may not be all inclusive and additional submittals may be required. The Owner will provide the initial submittal register in electronic format. Thereafter, the Contractor is to track all submittals by maintaining a complete list, including dates on which submittals are received and returned by the Owner.

1.4 DISAPPROVED SUBMITTALS

Contractor shall make corrections required by the Engineer. If the Contractor considers any correction or notation on the returned submittals to constitute a change to the contract drawings or specifications; notice as required under the clause entitled, "Changes," is to be given to the Engineer. Contractor is responsible for the dimensions and construction of work. Failure to point out deviations may result in the Owner requiring rejection and removal of such work at the Contractor's expense.

If changes are necessary to submittals, the Contractor shall make such revisions and submission of the submittals in accordance with the procedures above. No item of work requiring a submittal change is to be accomplished until the changed submittals are approved.

1.5 APPROVED SUBMITTALS

The Engineer's approval or acceptance of submittals is not to be construed as a complete check, and indicates only that

Approval or acceptance will not relieve the Contractor of the responsibility for any error which may exist, as the Contractor under the Contractor Quality Control (CQC) requirements of this contract is responsible for dimensions and the satisfactory construction of all work.

After submittals have been approved or accepted by the Engineer, no resubmittal for the purpose of substituting materials or equipment will be considered unless accompanied by an explanation of why a substitution is necessary.

1.6 APPROVED SAMPLES

Approval of a sample is only for the characteristics or use named in such approval and is not to be construed to change or modify any contract requirements. Before submitting samples, the Contractor to assure that the materials or equipment will be available in quantities required in the project. No change or substitution will be permitted after a sample has been approved.

Match the approved samples for materials and equipment incorporated in the work. If requested, approved samples, including those which may be damaged in testing, will be returned to the Contractor, at his expense, upon completion of the contract. Samples not approved will also be returned to the Contractor at its expense, if so requested.

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Failure of any materials to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material. Owner reserves the right to disapprove any material or equipment which previously has proved unsatisfactory in service.

Samples of various materials or equipment delivered on the site or in place may be taken by the Engineer for testing. Samples failing to meet contract requirements will automatically void previous approvals. Contractor to replace such materials or equipment to meet contract requirements.

Approval of the Contractor's samples by the Engineer does not relieve the Contractor of his responsibilities under the contract.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

-- End of Section --

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SECTION 01 42 00

SOURCES FOR REFERENCE PUBLICATIONS

PART 1 GENERAL

1.1 REFERENCES

Various publications are referenced in other sections of the specifications to establish requirements for the work. These references are identified in each section by document number, date and title. The document number used in the citation is the number assigned by the standards producing organization, (e.g. ASTM B 564 Nickel Alloy Forgings). However, when the standards producing organization has not assigned a number to a document, an identifying number has been assigned for reference purposes.

1.2 ORDERING INFORMATION

The addresses of the standards publishing organizations whose documents are referenced in other sections of these specifications are listed below, and if the source of the publications is different from the address of the sponsoring organization, that information is also provided. Documents listed in the specifications with numbers which were not assigned by the standards producing organization should be ordered from the source by title rather than by number.

ASTM INTERNATIONAL (ASTM)
100 Barr Harbor Drive, P.O. Box C700
West Conshohocken, PA 19428-2959
Ph: 610-832-9585
Fax: 610-832-9555
E-mail: service@astm.org
Internet: <http://www.astm.org>

U.S. ARMY CORPS OF ENGINEERS (USACE)
Order CRD-C DOCUMENTS from:
Headquarters Points of contact
441 G Street NW
Washington, DC 20314-1000
Ph: 202-761-0011
E-mail: hq-publicaffairs@usace.army.mil
Internet: <http://www.wes.army.mil/SL/MTC/handbook.htm>
Order Other Documents from:
USACE Publications Depot
Attn: CEHEC-IM-PD
2803 52nd Avenue
Hyattsville, MD 20781-1102
Ph: 301-394-0081
Fax: 301-394-0084
E-mail: pubs-army@usace.army.mil
Internet: <http://www.usace.army.mil/publications>
or <http://www.hnd.usace.army.mil/techinfo/engpubs.htm>

PART 2 PRODUCTS

Not Used

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PART 3 EXECUTION

Not used

-- End of Section --

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SECTION 01 57 20.00 10

ENVIRONMENTAL PROTECTION

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

U.S. ARMY CORPS OF ENGINEERS (USACE)

WETLANDS DELINEATION MANUAL (1987) Corps of Engineers Wetlands
Delineation Manual

1.2 DEFINITIONS

1.2.1 Environmental Pollution and Damage

Environmental pollution and damage is the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the environment aesthetically, culturally and/or historically.

1.2.2 Environmental Protection

Environmental protection is the prevention/control of pollution and habitat disruption that may occur to the environment during construction. The control of environmental pollution and damage requires consideration of land, water, and air; biological and cultural resources; and includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive material as well as other pollutants.

1.2.3 Contractor Generated Hazardous Waste

Contractor generated hazardous waste means materials that, if abandoned or disposed of, may meet the definition of a hazardous waste. These waste streams would typically consist of material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction. Examples include, but are not limited to, excess paint thinners (i.e. methyl ethyl ketone, toluene etc.), waste thinners, excess paints, excess solvents, waste solvents, and excess pesticides, and contaminated pesticide equipment rinse water.

1.2.4 Surface Discharge

The term "Surface Discharge" implies that the water is discharged with possible sheeting action and subsequent soil erosion may occur. Waters that are surface discharged may terminate in drainage ditches, storm sewers, creeks, and/or "waters of the United States" and would require a permit to discharge water from the governing agency.

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1.2.5 Waters of the United States

All waters which are under the jurisdiction of the Clean Water Act, as defined in 33 CFR 328.

1.2.6 Wetlands

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs. Official determination of whether or not an area is classified as a wetland must be done in accordance with USACE WETLANDS DELINEATION MANUAL.

1.3 GENERAL REQUIREMENTS

Minimize environmental pollution and damage that may occur as the result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work must be protected during the entire duration of this contract. Comply with all applicable environmental Federal, State, and local laws and regulations. Any delays resulting from failure to comply with environmental laws and regulations will be the Contractor's responsibility.

1.4 SUBMITTALS

Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Preconstruction Submittals

Environmental Protection Plan

The environmental protection plan.

1.5 ENVIRONMENTAL PROTECTION PLAN

Prior to commencing construction activities or delivery of materials to the site, submit an Environmental Protection Plan for review and approval by the Owner. The purpose of the Environmental Protection Plan is to present a comprehensive overview of known or potential environmental issues which the Contractor must address during construction. Issues of concern must be defined within the Environmental Protection Plan as outlined in this section. Address each topic at a level of detail commensurate with the environmental issue and required construction task(s). Topics or issues which are not identified in this section, but are considered necessary, must be identified and discussed after those items formally identified in this section. Prior to submittal of the Environmental Protection Plan, meet with the Engineer for the purpose of discussing the implementation of the initial Environmental Protection Plan; possible subsequent additions and revisions to the plan including any reporting requirements; and methods for administration of the Contractor's Environmental Plans. The Environmental Protection Plan must be current and maintained onsite by the Contractor.

1.5.1 Compliance

No requirement in this Section will relieve the Contractor of any

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applicable Federal, State, and local environmental protection laws and regulations. During Construction, the Contractor will be responsible for identifying, implementing, and submitting for approval any additional requirements to be included in the Environmental Protection Plan.

1.5.2 Contents

Include in the environmental protection plan, but not limit it to, the following:

- a. Name(s) of person(s) within the Contractor's organization who is(are) responsible for ensuring adherence to the Environmental Protection Plan.
- b. An erosion and sediment control plan which identifies the type and location of the erosion and sediment controls to be provided. The plan must include monitoring and reporting requirements to assure that the control measures are in compliance with the erosion and sediment control plan, Federal, State, and local laws and regulations. A Storm Water Pollution Prevention Plan (SWPPP) may be substituted for this plan.
- c. Drawings showing locations of proposed temporary excavations or embankments for haul roads, stream crossings, material storage areas, structures, sanitary facilities, and stockpiles of excess or spoil materials including methods to control runoff and to contain materials on the site.
- d. Traffic control plans including measures to reduce erosion of temporary roadbeds by construction traffic, especially during wet weather. Plan shall include measures to minimize the amount of mud transported onto paved public roads by vehicles or runoff.
- e. Work area plan showing the proposed activity in each portion of the area and identifying the areas of limited use or nonuse. Plan should include measures for marking the limits of use areas including methods for protection of features to be preserved within authorized work areas.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

3.1 ENVIRONMENTAL PERMITS AND COMMITMENTS

This paragraph supplements the Contractor's responsibility under the contract clause "PERMITS AND RESPONSIBILITIES" to the extent that the Owner has obtained the U.S. Army Corps of Engineers Section 10/404 Permit and TCEQ Section 401 Water Quality Certification. Comply with the terms and conditions of the attached Permits at the end of this section.

3.2 LAND RESOURCES

Confine all activities to areas defined by the drawings and specifications. Identify any land resources to be preserved within the work area prior to the beginning of any construction. Do not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and land forms without approval, except in areas indicated on the drawings or specified to be cleared. Ropes, cables, or

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guys will not be fastened to or attached to any trees for anchorage unless specifically authorized. Provide effective protection for land and vegetation resources at all times, as defined in the following subparagraphs. Remove stone, soil, or other materials displaced into uncleared areas.

3.2.1 Work Area Limits

Mark the areas that need not be disturbed under this contract prior to commencing construction activities. Mark or fence isolated areas within the general work area which are not to be disturbed. Protect monuments and markers before construction operations commence. Where construction operations are to be conducted during darkness, any markers must be visible in the dark. The Contractor's personnel must be knowledgeable of the purpose for marking and/or protecting particular objects.

3.2.2 Erosion and Sediment Controls

Providing erosion and sediment control measures in accordance with Federal, State, and local laws and regulations is the Contractor's responsibility. Select and maintain the erosion and sediment controls such that water quality standards are not violated as a result of construction activities. The area of bare soil exposed at any one time by construction operations should be kept to a minimum. Construct or install temporary erosion and sediment control best management practices (BMPs) as approved in ENVIRONMENTAL PERMITS AND COMMITMENTS. BMPs may include silt fences or hay bale dikes in accordance with TCEQ Sec. 401 Water Quality Certification Description of BMPs (Tier I Projects). Remove any temporary measures after the area has been stabilized.

3.2.3 Contractor Facilities and Work Areas

Place field offices, staging areas, stockpile storage, and temporary buildings in areas designated on the drawings or as directed by the Engineer. Temporary movement or relocation of Contractor facilities will be made only when approved. Erosion and sediment controls must be provided for onsite borrow and spoil areas to prevent sediment from entering nearby waters. Temporary excavation and embankments for plant and/or work areas must be controlled to protect adjacent areas.

3.3 HISTORICAL, ARCHAEOLOGICAL, AND CULTURAL RESOURCES

Existing historical, archaeological, and cultural resources within the Contractor's work area are shown on the drawings. Protect these resources and be responsible for their preservation during the life of the Contract. If during excavation or other construction activities any previously unidentified or unanticipated historical, archaeological, and cultural resources are discovered or found, all activities that may damage or alter such resources will be temporarily suspended. Resources covered by this paragraph include but are not limited to: any human skeletal remains or burials; artifacts; shell, midden, bone, charcoal, or other deposits; rock or coral alignments, pavings, wall, or other constructed features; and any indication of agricultural or other human activities. Upon such discovery or find, immediately notify the Engineer so that the appropriate authorities may be notified and a determination made as to their significance and what, if any, special disposition of the finds should be made. Cease all activities that may result in impact to or the destruction of these resources. Secure the area and prevent employees or other persons from trespassing on, removing, or otherwise disturbing such resources.

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3.4 BIOLOGICAL RESOURCES

Minimize interference with, disturbance to, and damage to fish, wildlife, and plants including their habitat. The protection of threatened and endangered animal and plant species, including their habitat, is the Contractor's responsibility in accordance with Federal, State, Regional, and local laws and regulations.

3.5 TRAINING OF CONTRACTOR PERSONNEL

The Contractor's personnel must be trained in all phases of environmental protection and pollution control. Conduct environmental protection/pollution control meetings for all personnel prior to commencing construction activities. Additional meetings must be conducted for new personnel and when site conditions change. Include in the training and meeting agenda: methods of detecting and avoiding pollution; familiarization with statutory and contractual pollution standards; installation and care of devices, vegetative covers, and instruments required for monitoring purposes to ensure adequate and continuous environmental protection/pollution control; anticipated hazardous or toxic chemicals or wastes, and other regulated contaminants; recognition and protection of archaeological sites, artifacts, wetlands, and endangered species and their habitat that are known to be in the area.

3.6 POST CONSTRUCTION CLEANUP

The Contractor will clean up all areas used for construction in accordance with Contract Clause: "Cleaning Up". Unless otherwise instructed in writing by the Engineer, obliterate all signs of temporary construction facilities such as haul roads, work area, structures, foundations of temporary structures, stockpiles of excess or waste materials, and other vestiges of construction prior to final acceptance of the work. The disturbed area must be graded, filled and the entire area seeded unless otherwise indicated.

-- End of Section --

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SECTION 01 78 00

CLOSEOUT SUBMITTALS

PART 1 GENERAL

1.1 SUBMITTALS

Owner approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-11 Closeout Submittals

Record Drawings

1.2 PROJECT RECORD DOCUMENTS

1.2.1 Record Drawings

Drawings showing final as-built conditions of the project. This paragraph covers record drawings complete, as a requirement of the contract. The terms "drawings," "contract drawings," "drawing files," "working record drawings" and "final record drawings" refer to contract drawings which are revised to be used for final record drawings showing as-built conditions.

1.2.1.1 Owner Furnished Materials

One set of mylar drawings revised to reflect all bid amendments will be provided by the Owner at the preconstruction conference for projects requiring manually prepared record drawings .

1.2.1.2 Working Record and Final Record Drawings

Revise 1 sets of paper drawings by red-line process to show the as-built conditions during the prosecution of the project. Keep these working as-built marked drawings current on a weekly basis and at least one set available on the jobsite at all times. Changes from the contract plans which are made in the work or additional information which might be uncovered in the course of construction must be accurately and neatly recorded as they occur by means of details and notes. Prepare final record (as-built) drawings after the completion of each definable feature of work as listed in the Contractor Quality Control Plan. The working as-built marked prints and final record (as-built) drawings will be jointly reviewed for accuracy and completeness by the Engineer and the Contractor prior to submission of each monthly pay estimate. If the Contractor fails to maintain the working and final record drawings as specified herein, the Engineer will deduct from the monthly progress payment an amount representing the estimated cost of maintaining the record drawings. This monthly deduction will continue until an agreement can be reached between the Engineer and the Contractor regarding the accuracy and completeness of updated drawings. Show on the working and final record drawings , but not limited to, the following information:

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- a. Correct grade, elevations, cross section, or alignment of earthwork or structures if any changes were made from contract plans.
- b. Changes in details of design or additional information obtained from working drawings specified to be prepared and/or furnished by the Contractor.
- c. Changes or modifications which result from the final inspection.
- d. Where contract drawings or specifications present options, show only the option selected for construction on the final as-built prints.

1.2.1.3 Drawing Preparation

Modify the record drawings as may be necessary to correctly show the features of the project as it has been constructed by bringing the contract set into agreement with approved working as-built prints, and adding such additional drawings as may be necessary. These working as-built marked prints must be neat, legible and accurate. These drawings are part of the permanent records of this project and must be returned to the Engineer after approval by the Owner. Any drawings damaged or lost by the Contractor must be satisfactorily replaced by the Contractor at no expense to the Owner.

1.2.1.4 Payment

No separate payment will be made for record drawings required under this contract, and all costs accrued in connection with such drawings are considered a subsidiary obligation of the Contractor.

1.3 CLEANUP

Leave premises "broom clean." Sweep paved areas and rake clean landscaped areas. Remove waste and surplus materials, rubbish and construction facilities from the site.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

-- End of Section --

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SECTION 31 05 19

GEOTEXTILE

PART 1 GENERAL

1.1 MEASUREMENT

Installed geotextile will not be measured for payment.

1.2 PAYMENT

All costs associated with furnishing plant, labor, material, and equipment and performing operations necessary to complete and satisfactorily install the geotextile are incidental to the bid item under which they are specified and required.

1.3 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

ASTM INTERNATIONAL (ASTM)

ASTM D 123	(2000; R 2009) Standard Terminology Relating to Textiles
ASTM D 4354	(1999; R 2009) Sampling of Geosynthetics for Testing
ASTM D 4355	(2007) Deterioration of Geotextiles from Exposure to Light, Moisture and Heat in a Xenon-Arc Type Apparatus
ASTM D 4491	(1999a; R 2004e1) Water Permeability of Geotextiles by Permittivity
ASTM D 4533	(2004) Trapezoid Tearing Strength of Geotextiles
ASTM D 4632	(2008) Grab Breaking Load and Elongation of Geotextiles
ASTM D 4751	(2004) Determining Apparent Opening Size of a Geotextile
ASTM D 4759	(2002; R 2007) Determining the Specification Conformance of Geosynthetics
ASTM D 4873	(2002; R 2009) Identification, Storage, and Handling of Geosynthetic Rolls and Samples
ASTM D 4886	(2002) Standard Test Method for Abrasion Resistance of Geotextiles (Sand Paper/Sliding Block Method)

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ASTM D 6241

(2009) Standard Test Method for the Static
Puncture Strength of Geotextiles and
Geotextile-Related Products Using a 50-mm
Probe

1.4 SUBMITTALS

Owner approval is required for submittals with a "G" designation; submittals having a "FIO" designation are for information only. Submit the following in accordance with Section titled SUBMITTAL PROCEDURES:

SD-04 Samples

Geotextile

Geotextile samples for testing, if requested, to determine compliance with the requirements in this specification, a minimum of 14 days prior to the beginning of installation of the same textile. Upon delivery of the geotextile, submit duplicate copies of the written certificate of compliance signed by a legally authorized official of the manufacturer. The certificate shall state that the geotextile shipped to the site meets the chemical requirements and exceeds the minimum average roll value listed in TABLE 1. Upon request, supply quality control and quality assurance tests for the geotextile. Provide all samples from the same production lot as will be supplied for the contract, a minimum of 5-foot by 5-foot sample and at least two (2) temporary textile pins. Samples submitted for testing shall be identified by manufacturers lot designation.

Textile Pins

At least two (2) temporary textile pins shall be submitted prior to delivery of material to the worksite.

SD-07 Certificates

Geotextile; G

All brands of geotextile and all seams to be used will be accepted on the basis of mill certificates or affidavits. Submit duplicate copies of the mill certificate or affidavit signed by a legally authorized official from the company manufacturing the geotextile. A certificate of compliance, attesting that the geotextile meets the chemical, physical, and manufacturing requirements specified herein, shall be submitted prior to delivery of the material to the work site.

SD-09 Manufacturer's Field Reports

Geotextile; G

Records of inspections, tests and corrective actions shall be submitted.

1.5 DELIVERY, STORAGE, AND HANDLING

Deliver, store, and handle geotextile in accordance with ASTM D 4873.

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1.5.1 Delivery

Notify the Engineer a minimum of 24 hours prior to delivery and unloading of geotextile rolls packaged in an opaque, waterproof, protective plastic wrapping. The plastic wrapping shall not be removed until deployment. If quality assurance samples are collected, immediately rewrap rolls with the plastic wrapping. Geotextile or plastic wrapping damaged during storage or handling shall be repaired or replaced, as directed. Label each roll with the manufacturer's name, geotextile type, roll number, roll dimensions (length, width, gross weight), and date manufactured.

1.5.2 Storage

Synthetic geotextiles that are not to be installed immediately, and during periods of shipment and storage, shall be protected from direct sunlight, ultra-violet rays, temperatures greater than 140 degrees Fahrenheit, mud, dirt, dust, debris, construction equipment, chemicals, sparks and flames, or any other environmental condition that may damage the physical properties of the geotextile. To the extent possible, the fabric shall be maintained wrapped in a heavy-duty protective covering. To protect geotextile from becoming saturated, either elevate rolls off the ground or place them on a sacrificial sheet of plastic in an area where water will not accumulate. Geotextile or plastic wrapping damaged as a result of delivery, storage or handling shall be repaired or replaced, as directed, at no additional cost to the Owner.

1.5.3 Handling

Handle and unload geotextile rolls with load carrying straps, a fork lift with a stinger bar, or an axial bar assembly. Rolls shall not be dragged along the ground, lifted by one end, or dropped to the ground.

PART 2 PRODUCTS

2.1 MATERIALS

2.1.1 Geotextile

Geotextile shall be a woven pervious sheet of plastic yarn in accordance with ASTM D 123. The geotextile shall meet the physical requirements listed in the Table 1 below. The geotextile fiber shall consist of long-chain synthetic polymers composed of at least 85 percent by weight propylene, ethylene, ester, amide, or vinyliden-chloride and shall contain stabilizers and/or inhibitors added to the base plastic if necessary to make the filaments resistant to deterioration due to ultra-violet light, oxidation, and heat exposure. Geotextile shall be formed into a network such that the filaments or yarns retain dimensional stability relative to each other, including the edges. The edges of the geotextile shall be finished to prevent the outer fiber from pulling away from the geotextile.

TABLE 1 MINIMUM PHYSICAL REQUIREMENTS FOR DRAINAGE GEOTEXTILE			
PROPERTY	UNITS	ACCEPTABLE VALUES	TEST METHOD
GRAB STRENGTH	LB/PERCENT STRAIN	250/15%	ASTM D 4632

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TABLE 1 MINIMUM PHYSICAL REQUIREMENTS FOR DRAINAGE GEOTEXTILE			
FACTORY SEAM STRENGTH	LB	225	ASTM D 4632
CBR PUNCTURE	LB	120	ASTM D 6241
TRAPEZOID TEAR	LB	55	ASTM D 4533
APPARENT OPENING SIZE	U.S. SIEVE	#70	ASTM D 4751
PERMITTIVITY	SEC ⁻¹	0.28 (MIN)	ASTM D 4491
FLOW RATE	GAL/MIN/FT ²	18	ASTM D 4491
ULTRAVIOLET DEGRADATION	PERCENT	70 at 500 HRS	ASTM D 4355
ABRASION	LBS	*	ASTM D 4886
OPEN AREA	PERCENT	4	

*55% residual breaking load in any principal direction.

2.1.2 Seams

Construct sewn seams with thread of a material meeting the chemical requirements given above for geotextile yarn or shall be bonded by cementing or by heat. The sheets of geotextile shall be attached at the factory or another approved location, if necessary, to form sections not less than 18 feet wide. Factory seams shall be tested in accordance with ASTM D 4632, using 1-inch square jaws and 12 inches per minute constant rate of traverse. The strengths shall be not less than 90 percent of the required tensile strength, listed in the Table above, of the unaged geotextile in any principal direction.

2.2 INSPECTION, VERIFICATION AND TESTING

2.2.1 Manufacturing and Sampling

The Manufacturer is responsible for establishing and maintaining a quality control program to assure compliance with the requirements of the specification. Documentation describing the quality control program shall be made available upon request. Perform manufacturing quality control sampling and testing in accordance with the manufacturer's approved quality control manual. As a minimum, geotextiles shall be randomly sampled for testing in accordance with ASTM D 4354, Procedure A. Acceptance of geotextile shall be in accordance with ASTM D 4759. Tests not meeting the specified requirements will result in the rejection of applicable rolls.

2.2.2 Site Verification and Testing

Provide assistance to the Engineer in the collection of quality assurance samples. The Contractor shall inspect for compliance with the contract requirements and record the inspection of operations, including but not limited to the following: Geotextile - Materials and installation. A copy of the records of inspections, tests, and records of corrective action taken shall be submitted as directed. Samples shall be collected upon delivery to the site for quality assurance testing at the request of the

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Engineer in accordance with ASTM D 4354, Procedure B. Lot size for quality assurance sampling shall be considered to be the shipment quantity of the product or a truckload of the product, whichever is smaller. The unit size shall be considered one roll of geotextile at a frequency of one per 100,000 square feet. Identify samples with a waterproof marker by manufacturer's name, product identification, lot number, roll number, and machine direction. The date and a unique sample number shall also be noted on the sample. Discard the outer layer of the geotextile roll prior to sampling a roll. Samples shall then be collected by cutting the full-width of the geotextile sheet a minimum of 3 feet long in the machine direction. Rolls which are sampled shall be immediately resealed in their protective covering. The Contractor shall provide quality assurance samples to an Independent Laboratory. Samples will be tested to verify that geotextile meets the requirements specified in Table 1. Test method ASTM D 4355 shall not be performed on the collected samples. Geotextile product acceptance shall be based on ASTM D 4759. Tests not meeting the specified requirements will result in the rejection of applicable rolls.

2.2.3 Acceptance Requirements

Brands of geotextile to be used shall be accepted on the following basis. The Contractor shall submit in duplicate, a mill certificate or affidavit signed by a legally authorized official from the company manufacturing the geotextile. The mill certificate or affidavit shall attest that the geotextile meets the chemical, physical, and manufacturing requirements specified in the Section.

PART 3 EXECUTION

3.1 INSTALLATION

3.1.1 Subgrade Preparation

The surface underlying the geotextile shall be prepared to a relatively smooth condition free of obstructions, depressions, debris, and soft or low-density pockets of material. Erosion features including rills or gullies, shall be graded out of the surface before geotextile placement.

3.1.2 Placement

Notify the Engineer a minimum of 24 hours prior to installation of geotextile. The Contractor shall have sufficient personnel and equipment at the worksite to begin required operations. Upon successful completion of the work specified herein, the Contractor shall remove the construction equipment, materials, and supplies from the site after acceptance of the work by the Engineer. The geotextile shall be placed as specified and at the locations shown. At the time of installation, the geotextile shall be rejected if it has defects, rips, holes, flaws, deterioration, or damage incurred during manufacture, transportation, storage or handling. The geotextile shall be placed with long dimension perpendicular to centerline of the top of slope and laid smooth and free of tension, stress, folds, wrinkles or creases. Each sheet of geotextile placed shall overlap the neighboring sheet by no less than 3 feet. The strips shall be placed to provide a minimum width of 18 inches of overlap for each seam after stone or concrete block revetment is placed. Temporary pinning of geotextile to help hold it in place until the stone or concrete block revetment is placed shall be allowed. The temporary pins in the geotextile on the soil slope shall be removed as the stone or concrete block revetment is placed to relieve the high tensile stress that may occur during placement of material

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on the geotextile. Prior to and during the placement of stone or concrete block revetment, the geotextile shall be held in place, following the manufacturer's recommended method or by using other suitable methods as approved. Where necessary, trimming shall be performed using only an upward cutting hook blade. No hooks, tongs, or other sharp instruments shall be used for handling geotextile. Geotextile shall not be dragged along the ground.

3.2 PROTECTION

Protect the geotextile during installation from clogging, tears, and other damage. If geotextile is damaged during the installation process or by placement of materials on top of the geotextile, it shall be replaced by the Contractor at no cost to the Owner. The work shall be scheduled so that covering the geotextile with a layer of the specified material is accomplished within 3 calendar days after placement of the geotextile. Failure to comply shall require replacement of geotextile. Before placement of the stone or concrete block revetment and specified materials, the Contractor shall demonstrate that the placement technique will prevent damage to the geotextile. No equipment shall be allowed on unprotected geotextile. Use adequate ballast (e.g. sand bags) to prevent uplift by wind, waves or current.

3.3 PENETRATIONS

Construct engineered penetrations of the geotextile by methods recommended by the geotextile manufacturer.

3.4 COVERING

Do not cover geotextile prior to approval by the Engineer. Place cover rock in a manner that prevents soil from entering the geotextile overlap zone, prevents tensile stress from being mobilized in the geotextile, and prevents wrinkles from folding over onto themselves. On side slopes, rock backfill shall be placed from the bottom of the slope upward. No equipment shall be operated directly on top of the geotextile without approval of the Engineer. Use equipment with ground pressures less than 7 psi to place the first lift over the geotextile. A minimum of 12 inches of rock shall be maintained between full-scale construction equipment and the geotextile. Equipment placing cover rock shall not stop abruptly, make sharp turns, spin their wheels, or travel at speeds exceeding 5 mph.

3.5 Contractor Quality Control

3.5.1 Compliance Inspection

The Contractor shall inspect for compliance with the contract requirements and record the inspection of operations, including but not limited to the following: Geotextile - Materials and installation.

3.5.2 Records

A copy of the records of inspections, tests, and records of corrective action taken shall be submitted as directed.

3.6 Acceptance

The geotextile fabric will be accepted in place and in conjunction with acceptance of the shore protection. The Contractor shall refrain from

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covering any fabric without giving the Engineer or his designated
representatives sufficient notice for inspection.

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SECTION 31 23 00.00 20

EXCAVATION AND FILL

PART 1 GENERAL

PART 2 PRODUCTS

2.1 SOIL MATERIALS

2.1.1 Satisfactory Materials

Existing materials free of debris, roots, wood, scrap material, vegetation, refuse, soft unsound particles, and deleterious, or objectionable materials.

2.1.2 Unsatisfactory Materials

Materials which do not comply with the requirements for satisfactory materials. Unsatisfactory materials also include man-made fills, trash, refuse, or backfills from previous construction. Unsatisfactory material also includes material classified as satisfactory which contains root and other organic matter. The Engineer shall be notified of any contaminated materials.

2.1.3 Common Fill

Approved, unclassified soil material with the characteristics required to compact to the soil density specified for the intended location.

2.1.4 Backfill and Fill Material

Satisfactory material as defined herein.

PART 3 EXECUTION

3.1 PROTECTION

3.1.1 Underground Utilities

Location of the existing utilities indicated is approximate. The Contractor shall physically verify the location and elevation of the existing utilities indicated prior to starting construction. The Contractor shall contact the appropriate utility location service (i.e., 1-800-DIG-TESS or Texas One-Call) for assistance in locating existing utilities. The Contractor shall scan the construction site with electromagnetic and sonic equipment and mark the surface of the ground where existing underground utilities are discovered.

3.2 SURFACE PREPARATION

3.2.1 Clearing and Grubbing

Unless indicated otherwise, remove trees, stumps, logs, shrubs, brush and vegetation and other items that would interfere with construction operations within the within lines of structure(s). Remove stumps entirely. Grub out matted roots and roots over 2 inches in diameter to at

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least 18 inches below existing surface.

3.2.2 Stripping

Strip suitable soil from the site where excavation or grading is indicated and stockpile separately from other excavated material. Material unsuitable for use as topsoil shall be stockpiled and used for backfilling. Locate topsoil so that the material can be used readily for the finished grading. Where sufficient existing topsoil conforming to the material requirements is not available on site, provide borrow materials suitable for use as topsoil. Protect topsoil and keep in segregated piles until needed.

3.2.3 Unsuitable Material

Remove vegetation, debris, decayed vegetable matter, sod, mulch, and rubbish underneath paved areas or concrete slabs.

3.3 EXCAVATION

Excavate to contours, elevation, and dimensions indicated. Reuse excavated materials that meet the specified requirements for the material type required at the intended location. Keep excavations free from water. Excavate soil disturbed or weakened by Contractor's operations, soils softened or made unsuitable for subsequent construction due to exposure to weather. Excavations below indicated depths will not be permitted except to remove unsatisfactory material. Unsatisfactory material encountered below the grades shown shall be removed as directed. Refill with satisfactory material and compact to match surrounding soils. Unless specified otherwise, refill excavations cut below indicated depth with satisfactory material and compact to match surrounding soils. Satisfactory material removed below the depths indicated, without specific direction of the Engineer, shall be replaced with satisfactory materials to the indicated excavation grade; except as specified for spread footings. Determination of elevations and measurements of approved overdepth excavation of unsatisfactory material below grades indicated shall be done under the direction of the Engineer.

3.3.1 Excavated Materials

Satisfactory excavated material required for fill or backfill shall be placed in the proper section of the permanent work required or shall be separately stockpiled if it cannot be readily placed. Satisfactory material in excess of that required for the permanent work and all unsatisfactory material shall be disposed of as specified in Paragraph "DISPOSITION OF SURPLUS MATERIAL."

3.4 SUBGRADE PREPARATION

Unsatisfactory material in surfaces to receive fill or in excavated areas shall be removed and replaced with satisfactory materials as directed by the Engineer. The surface shall be scarified to a depth of 6 inches before the fill is started. Sloped surfaces steeper than 1 vertical to 4 horizontal shall be plowed, stepped, benched, or broken up so that the fill material will bond with the existing material. When subgrades are less than the specified density, the ground surface shall be broken up to a minimum depth of 6 inches, pulverized, and compacted to the specified density. When the subgrade is part fill and part excavation or natural ground, the excavated or natural ground portion shall be scarified to a

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depth of 12 inches and compacted as specified for the adjacent fill. Material shall not be placed on surfaces that are muddy, frozen, or contain frost. Compaction shall be accomplished by sheepsfoot rollers, pneumatic-tired rollers, steel-wheeled rollers, or other approved equipment well suited to the soil being compacted. Material shall be moistened or aerated as necessary to provide the moisture content that will readily facilitate obtaining the specified compaction with the equipment used. Minimum subgrade density shall be as specified herein.

3.5 FILLING AND BACKFILLING

Fill and backfill to contours, elevations, and dimensions indicated. Compact each lift before placing overlaying lift.

3.5.1 Common Fill Placement

Use satisfactory materials. Place in 12 inch lifts. Compact areas not accessible to rollers or compactors with mechanical hand tampers. Aerate material excessively moistened by rain to a satisfactory moisture content. Finish to a smooth surface by blading, rolling with a smooth roller, or both.

3.6 BORROW

Where satisfactory materials are not available in sufficient quantity from required excavations, approved borrow materials shall be obtained as specified herein.

3.7 FINISH OPERATIONS

3.7.1 Grading

Finish grades as indicated within one-tenth of one foot. Grade areas to drain water away from structures. Maintain areas free of trash and debris. For existing grades that will remain but which were disturbed by Contractor's operations, grade as directed.

3.7.2 Protection of Surfaces

Protect newly backfilled, graded, and topsoiled areas from traffic, erosion, and settlements that may occur. Repair or reestablish damaged grades, elevations, or slopes.

3.8 DISPOSITION OF SURPLUS MATERIAL

Waste in Owner disposal area indicated surplus or other soil material not required or suitable for filling or backfilling, and brush, refuse, stumps, roots, and timber.

-- End of Section --

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SECTION 35 31 19

STONE STRUCTURES

PART 1 GENERAL

1.1 MEASUREMENT AND PAYMENT

1.1.1 JETTIES

1.1.1.1 Payment

Payment for stone placed for bedding and/or armor will be made at the applicable contract Lump Sum price. Price(s) and payment(s) shall include all costs of furnishing, hauling, placing and maintaining the material until placement of the armor is completed and accepted. Geotextiles used as filters will be paid for in accordance with provisions of Section 31 05 19 GEOTEXTILE. Preparation of the base will not be paid for separately and all costs incidental thereto shall be included in contract prices for other items for which payment will be made. No payment will be made for excess thickness of bedding and/or armor material, nor for material required to replace subgrade material lost by rainwash, erosion, overexcavation or otherwise.

1.2 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

ASTM INTERNATIONAL (ASTM)

ASTM C 127	(2007) Standard Test Method for Density, Relative Density (Specific Gravity), and Absorption of Coarse Aggregate
ASTM C 136	(2006) Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates
ASTM C 295	(2008) Petrographic Examination of Aggregates for Concrete
ASTM C 33/C 33M	(2008) Standard Specification for Concrete Aggregates
ASTM D 3740	(2010) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction
ASTM D 4791	(2010) Flat Particles, Elongated Particles, or Flat and Elongated Particles in Coarse Aggregate
ASTM D 4992	(2007) Evaluation of Rock to be Used for Erosion Control

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U.S. ARMY CORPS OF ENGINEERS (USACE)

COE CRD-C 148 (1969) Method of Testing Stone for
Expansive Breakdown on Soaking in Ethylene
Glycol

COE CRD-C 169 (1997) Standard Test Method for Resistance
of Rock to Wetting and Drying

1.3 SUBMITTALS

Owner approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. The following shall be submitted in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-03 Product Data

Bulk Specific Gravity of Stone; G

SD-06 Test Reports

Gradation Test; G

The gradation tests using the GRADATION TEST DATA SHEET enclosed at end of this section for riprap or stone.

Bulk Specific Gravity

At least 30 calendar days in advance of shipment of stone to the work site, a copy of bulk specific gravity test results for each gradation range of stone proposed to be furnished. The information shall be furnished prior to preparation of pre-production demonstration stockpiles.

SD-07 Certificates

Stone
Bedding Material

Certificates of compliance attesting that the materials meet specification requirements.

1.4 QUALITY ASSURANCE

1.4.1 Stone

1.4.1.1 General

All stone shall be durable material as approved by the Engineer. Stone shall be of a suitable quality to ensure permanence in the structure and in the climate in which it is to be used. It shall be free from cracks, blast fractures, bedding, seams and other defects that would tend to increase its deterioration from natural causes. Inspections for cracks, fractures, seams and defects shall be made by visual examination. If, by visual examination, it is determined that 20 percent or more of the stone produced contains hairline cracks, then all stone produced by the means and measures which caused the fractures shall be rejected. A hairline crack that is

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defined as being detrimental shall have a minimum width of 4 mil and shall be continuous for one-third the dimension of at least two sides of the stone. The stone shall be clean and reasonably free from soil, quarry fines, and shall contain no refuse.

1.4.1.2 Sources

Stone shall be furnished from any source designated by the Contractor and accepted by the Engineer, subject to the conditions herein stated. The Engineer will evaluate quality data provided by the Contractor to determine whether acceptable stone can be produced from the proposed source.

Satisfactory service records on other work may be acceptable. In order for stone to be acceptable on the basis of service records, stone of a similar size must have been placed in a similar thickness and exposed to weathering under similar conditions as are anticipated for this contract, and must have satisfactorily withstood such weathering for a minimum of 5 years. If no such records are available, the Engineer will conduct tests to assure the acceptability of the stone.

- a. Selection of Source. Designate in writing only one source or one combination of sources from which he proposes to furnish stone. It is the Contractor's responsibility to determine that the stone source or combination of sources selected is capable of providing the quality, quantities and gradation needed and at the rate needed to maintain the scheduled progress of the work.
- b. Acceptance of Materials. During the contract period, both prior to and after materials are delivered to the job site, visual inspections and measurements of the stone materials may be performed by the Engineer. If the Engineer, during the inspections, finds that the stone quality, gradation or weights of stone being furnished are not as specified or are questionable, re-sampling and re-testing is required. Sampling of the delivered stone for testing and the manner in which the testing is to be performed shall be as directed by the Engineer. This additional sampling and testing shall be performed at the Contractor's expense when test results indicate that the materials do not meet specified requirements. When test results indicate that materials meet specified requirements, an equitable adjustment in the contract price will be made for the sampling and testing. Any material rejected shall be removed or disposed of as specified and at the Contractor's expense.

1.5 CONSTRUCTION TOLERANCES

The finished surface and stone layer thickness shall not deviate from the lines and grades shown by more than the tolerances listed below. Tolerances are measured perpendicular to the indicated neatlines. Extreme limits of the tolerances given shall not be continuous in any direction for more than five times the nominal stone dimension nor for an area greater than 100 square feet of the structure surface.

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NEATLINE TOLERANCES		
MATERIAL	ABOVE NEATLINE (inches)	BELOW NEATLINE (inches)
Bedding	6	0
Armor	3	3

The intention is that the work shall be built generally to the required elevations, slope and grade and that the outer surfaces shall be even and present a neat appearance. Placed material not meeting these limits shall be removed or reworked as directed by the Engineer. Payment will not be made for excess material which the Engineer permits to remain in place.

PART 2 PRODUCTS

2.1 BEDDING MATERIAL

2.1.1 Material

Bedding material shall be composed of tough, durable particles, adequately free from thin, flat and elongated pieces, and shall contain no organic matter nor soft, friable particles in quantities considered objectionable by the Engineer. The aggregates shall meet the quality requirements of ASTM C 33/C 33M. Gradation shall conform to the following requirements:

U.S. STANDARD SIEVE	PERMISSIBLE LIMITS PERCENT BY WEIGHT, PASSING
BEDDING STONE NO. 1 - GRAVEL OR CRUSHED STONE	
4 in.	100
3-1/2 in.	90-100
2-1/2 in.	25-60

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U.S. STANDARD SIEVE	PERMISSIBLE LIMITS PERCENT BY WEIGHT, PASSING
BEDDING STONE NO. 1 - GRAVEL OR CRUSHED STONE	
1-1/2 in.	0-15
3/4in.	0-5

Provide bedding material well-graded between the limits shown. Perform at least one test on each 1000 tons placed for each specified gradation in accordance with ASTM C 136. All points on individual grading curves obtained from representative samples of bedding material shall lie between the boundary limits as defined by smooth curves drawn through the tabulated gradation limits plotted on ENG FORM 2087 or similar form. The individual gradation curves within these limits shall not exhibit abrupt changes in slope denoting either gap grading or scalping of certain sizes or other irregularities which would be detrimental to the proper functioning of the bedding layers.

2.2 STONE

2.2.1 General

2.2.1.1 Evaluation Testing of Stone

If the Contractor proposes to furnish stone from an unlisted source, have evaluation tests performed on stone samples collected from the proposed source. The quarry investigation shall be performed by a registered geologist or registered engineer. The tests to which the stone shall be subjected include petrographic examination (ASTM C 295), bulk specific gravity (SSD), absorption (ASTM C 127), and if argillaceous limestone and sandstone are used, resistance to wetting and drying (COE CRD-C 169). The laboratory to perform the required testing shall be validated based on relevant paragraphs of ASTM D 3740, and no work requiring testing shall be permitted until the laboratory has been inspected and validated. The first inspection of the facilities shall be at the expense of the Government and any subsequent inspections required because of failure of the first inspection shall be at the expense of the Contractor.

- a. Unit Weight and Absorption. Stone shall have a bulk specific gravity, saturated surface dry, greater than 2.60. The stone shall have an absorption less than 3 percent unless other tests and service records show that the stone is satisfactory. The method of test for unit weight and absorption shall be ASTM C 127.
- b. Petrographic Examination. Stone shall be evaluated in accordance with ASTM C 295 which shall include information required by ASTM D 4992, paragraph 10. COE CRD-C 148 shall be used to perform Ethylene glycol tests required on rocks containing smectite as specified in ASTM D 4992 and on samples identified to contain swelling clays.
- c. Samples. Samples of stone from a source not listed at the end of this section shall be taken by a representative of the Quarry for testing and acceptance prior to delivery of any stone from this source to the site of the work. Information provided with the samples shall include

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the location within the quarry from which the sample was taken along with a field examination of the quarry. The field examination shall include the information outline in ASTM D 4992, paragraph 7. Samples shall consist of at least three pieces of stone, roughly cubical in shape and weighing not less than 150 pounds each from each unit that shall be used in the production of the required stone. If the source is an undeveloped quarry, or if the operation has been dormant for more than one year such that fresh samples are not available, expose fresh rock for 20 feet horizontally and for the full height of the face proposed for production, prior to the field evaluation. The samples shall be shipped at the Contractor's expense to a laboratory validated by the government to perform the required tests.

- d. Tests. Conduct the tests in accordance with applicable ASTM and Corps of Engineers methods of tests, given in the Handbook for Concrete and Cement, in a laboratory validated by the government. The cost of testing shall be borne by the Contractor.

2.2.1.2 Quarry Operations

Conduct quarry operations in a manner to produce stone conforming to the requirements specified, this may involve selective quarrying, handling, processing, blending, and loading as necessary, all of which shall be as specified in Section QUALITY CONTROL. Control blasting and handling of rock to produce rock of the size ranges and quality specified. Techniques such as the use of proper hole diameter, hole depth, hole angle, burden and spacing distances, types and distribution of explosives, delay intervals and sequence, removal of muck piles between each shot, and special handling techniques are required as necessary to produce the specified materials. All aspects of blasting operations shall be specifically designed so that the end product is not damaged from the blasting technique and that the stone is suitable for the intended purpose.

a. Curing Stone

Conduct curing operations on freshly quarried stone to allow it to release stored energy and moisture and to allow the stone to demonstrate that it will not fracture during the energy release and drying-out phase. Stones of sizes which are individually picked shall be temporarily stockpiled at the quarry site a minimum of 28 calendar days before being shipped to the project site, unless this requirement is waived by the Engineer. Such waiver will be granted only if the stone has characteristics that make curing unnecessary.

2.2.1.3 Gradation Test

Perform a gradation test or tests on the riprap, stone, or bedding stone at the quarry in accordance with paragraph Evaluation Testing of Stone. Take the sample in the presence of the Engineer. Notify the Engineer not less than 3 days in advance of each test. In the event of unavailability of the Contracting Office, perform the tests and certify to the Engineer that the riprap, stone, or bedding stone shipped complies with the specifications. At least one gradation test(s) shall be performed per 5,000 tons of each size of riprap, stone, or bedding stone placed, but not less than one test shall be performed. Failure of the test on the initial sample and on an additional sample will be considered cause for rejection of the quarry and/or quarry process, and all riprap, stone, or bedding stone represented by the failed tests shall be set aside and not incorporated into the work. Any additional tests required because of the failure of an initial

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test sample will not be considered as one of the other required tests. If collected by the truckload, each truckload shall be representative of the gradation requirements. The Engineer may direct additional testing of the riprap, stone or bedding stone at the project site if the riprap, stone, or bedding stone appears, by visual inspection, to be out of gradation. The additional tests shall be performed on in-place materials at the locations directed, or on random loads selected by the Engineer..

2.2.1.4 Proportional Dimension Limitations

A maximum of 10 percent flat and elongated pieces by weight will be acceptable. A flat and elongated piece of riprap is defined as having a ratio of width to thickness or length to width greater than 3:1. ASTM D 4791 shall be used as a guide to perform the test.

2.2.1.5 Stone Stockpile

Storage of stone at the worksite is not to be confused with off-site stockpiling of riprap, stone, or bedding stone. If the Contractor elects to provide off-site stockpiling areas, the Engineer shall be notified of all such areas. The first layer shall be a maximum of 6 feet high. After being stockpiled, any riprap, stone, or bedding stone which has become contaminated with soil or refuse shall not be put into the work unless the contaminating material has been removed from the riprap, stone, or bedding stone prior to placement.

- a. Worksite Stockpile. Temporary storage of riprap, stone, or bedding stone at the worksite will be allowed, provided the stockpile toe of the riprap, stone, or bedding stone be no closer than 60 linear feet from the closest edge of the top slope, and the amount shall not exceed 200 tons unless otherwise approved.
- b. Off-site Stockpile. In areas where riprap, stone, or bedding stone is stockpiled for placement, the area shall have excess rock removed prior to completion of work. All rock and spalls greater than 3 inches in diameter shall be removed. Where rocks may have become buried due to soft ground or operation of the equipment, the rock shall be disposed of as directed. After the rock has been removed, the storage area shall be graded, dressed, and filled to return the ground surface as near as practical to the condition that existed prior to construction.

2.2.2 Stone Weight Limits

Only quarried stone shall be used. Stone shall be well graded and shall conform to the table(s) below.

TABLE ARMOR STONE	
PERCENT LIGHTER BY WEIGHT (SSD)	LIMITS OF STONE WEIGHT, LB.
100	650 - 260
50	280 - 130
15	130 - 40

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TABLE TOE STONE	
PERCENT LIGHTER BY WEIGHT (SSD)	LIMITS OF STONE WEIGHT, LB.
100	200 - 80
50	80 - 40
15	40 - 10

PART 3 EXECUTION

3.1 STONE WORK

Stone shall be placed on the designated area by crane or dragline equipped with skip, grapple, clamshell, or rock bucket; by front-end loader; or by trucks or other methods approved by the Engineer. Unless otherwise approved by the Engineer, the maximum capacity of dragline buckets used to place stone will be limited to 3 cubic yards.

3.2 PLACEMENT OF SHORELINE PROTECTION

3.2.1 Bedding Stone

Place stone to the lines, grades and thickness shown. The method used in placement shall be such that any soft and organic materials on the existing grade will be displaced outward towards the extreme outside toes of the required sections of the structure and in the direction of the construction. Stone placement shall start at the centerline of the stone structure and extend outward to the toes of the structure in a fashion whereby the line of stone advancement takes an inverted "U" shape. Placement shall be with reasonably systematic care that segregation of particle sizes will not occur. If the materials are placed by clam shell, dragline, or other similar equipment, the stone shall not be dropped from a height exceeding two feet above the existing lake bottom or previously placed material. The finished surface of the stone shall be adequately smooth and shall be free of mounds or windrows. The finished work shall be free of clusters or small stones and cluster of larger stones.

3.2.2 Armor Stone and Toe Stone

Place stone in the locations and at the thickness shown without deviating from the lines and grade shown, including allowance for tolerances. Final shaping of the slope shall be performed concurrently with the initial placement of the stone. Stones shall be randomly selected and set in contact with each other so that the interstices between adjacent stones shall be as small as the character of the stone will permit. The face of stone having the largest area shall be placed against the surface of the underlying material. Begin placement at the bottom of the slope. The heaviest stones shall be placed as toe stones. Stones shall be placed in a manner to avoid displacing underlying materials or placing undue impact force on underlying material that would cause the breaking of stones. Unless otherwise specified, stone shall not be dropped from a height greater than two feet. The equipment used in placing the stone shall be suitable for handling materials of the sizes required including the ability to place the stone over its final position before release and if necessary pick up and reposition the stone. Dragline buckets and skips shall not be

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used in placement. Moving stone by drifting or manipulating down the slope will not be permitted. The finished work shall be a well distributed mass, free of pockets of either smaller or larger stone, having a minimum of voids and with the maximum of interlocking of stones. It should be anticipated that rehandling of individual stones after initial placement will be required to achieve the above requirements. Stones required to be placed over or adjacent to drains and subsurface pipes shall not be dropped, but gently lowered and placed in their final position by material handling equipment.

3.3 TESTS AND INSPECTIONS

3.3.1 Placement Control

3.3.1.1 Quality Control Measures

Establish and maintain quality control for all work performed at the job site under this section to assure compliance with contract requirements. Maintain records of the quality control tests, inspections and corrective actions. Quality control measures shall cover all construction operations including, but not limited to, the placement of all materials to the slope and grade lines shown and in accordance with this section.

3.3.1.2 Check Surveys

Surveys made by the Contractor are required on each material placed for determining that the materials are acceptably placed in the work. Make checks as the work progresses to verify lines, grades and thicknesses established for completed work. At least one (1) check survey as specified below shall be made for each twenty-five (25) foot section as shown as practicable after completion following placement of each type of material. Approval of cross sections based upon check surveys shall not constitute final acceptance of the work. Cross sections shall be taken on lines 25 feet apart, measured along the structure reference line, with readings at 5-foot intervals and at beaks along the lines. However, other cross section spacing and reading intervals may be used if determined appropriate by the Engineer. Additional elevations and soundings shall be taken as the Engineer may deem necessary or advisable. The surveys shall be conducted in the presence of an authorized representative of the Engineer, unless this requirement is waived by the Engineer.

- a. Above Water: The elevation of stone above the water surface shall be determined by the use of a leveling instrument and a rod having a base 12 inches in diameter. If approved by the Engineer other means may also be used.
- b. Below Water: For portions of the work that are under water, sounding surveys shall be performed either by means of a sounding pole or a sounding basket weighing about 8 1/2 pounds, each of which has a base measuring 12 inches in diameter.

-- End of Section --

ITEM 407
STEEL PILING

407.1. Description. Furnish and place steel H-piling and sheet piling.

407.2. Materials. Furnish steel H-piling and steel sheet piling in accordance with Item 441, "Steel Structures," and details shown on the plans.

For H-piling, furnish steel that meets ASTM A 572 Grade 50 or ASTM A 588. For hot-rolled sheet piling, furnish steel that meets ASTM A 328 or ASTM A 572 Grade 50. For cold-rolled sheet piling, furnish steel that meets ASTM A 572 Grade 50. Steel sheet piling may be substituted with a section modulus and minimum thickness of material equal to or greater than that of the section specified. If a hot-rolled section is specified, the substitute section must also be hot-rolled.

Furnish piling in the lengths indicated on the plans. Where test piling is required, the Engineer will approve lengths based on test driving data or test load data. Do not fabricate piling until the Engineer has determined the approved lengths.

At the Contractor's expense, the piling may be fabricated by welding together up to 3 sections of piling with a minimum section length of 5 ft.

Unless otherwise shown on the plans, shop-paint piling with 3.0 mils minimum dry film thickness (DFT) inorganic zinc primer in accordance with the System III or IV paint protection system specified in Item 446, "Cleaning and Painting Steel." Do not apply appearance or intermediate coatings unless specified on the plans. Paint the portion of the pile to be above ground, in water, and a minimum distance of 10 ft. below ground based on the ground line shown in the plans.

Reinforce steel H-pile tips as directed when the piling is to be driven into rock, shale, or other material of similar hardness. Use the pile tip reinforcement detail shown in Figure 1 or attach prefabricated pile points manufactured from ASTM A 27 Grade 65-35 or ASTM A 148 Grade 80-50 material. Furnish certification that materials conform to this requirement.

Store piling above ground on adequate blocking. Keep piling clean and fully drained at all times during storage.

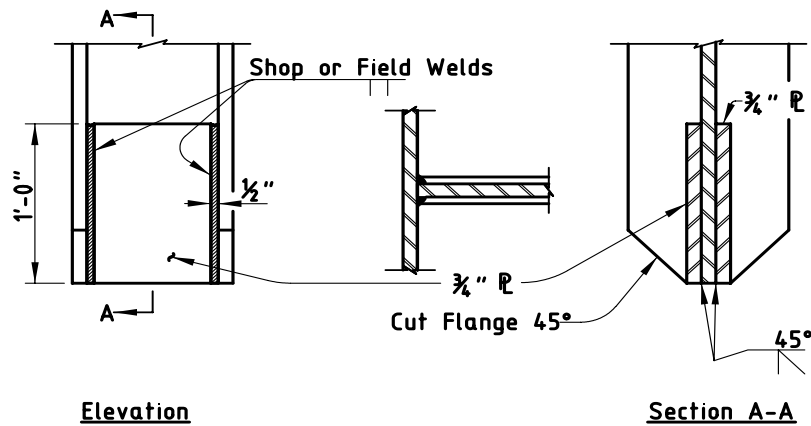


Figure 1

Pile tip reinforcement.

407.3. Construction. Drive piling in accordance with Item 404, "Driving Piling." Test-load, when required, in accordance with Item 405, "Foundation Test Load."

A. Splices and Cutoffs. Make all splices for steel H-piling in accordance with Figure 2. If the required penetration or bearing resistance has not been obtained, drive spliced piling the additional depth required as soon as the splice is completed.

After driving the piling to the approximate penetration and bearing resistance required, cut it off square at plan grade or to the established grade. If the head of the pile is appreciably distorted or otherwise damaged below cutoff level, cut off the damaged portion and splice an undamaged section in its place, at no additional expense to the Department.

Prepare sheet pile splices similar to the details shown for H-piling. Do not interfere with the interlocks.

Weld in accordance with Item 448, "Structural Field Welding."

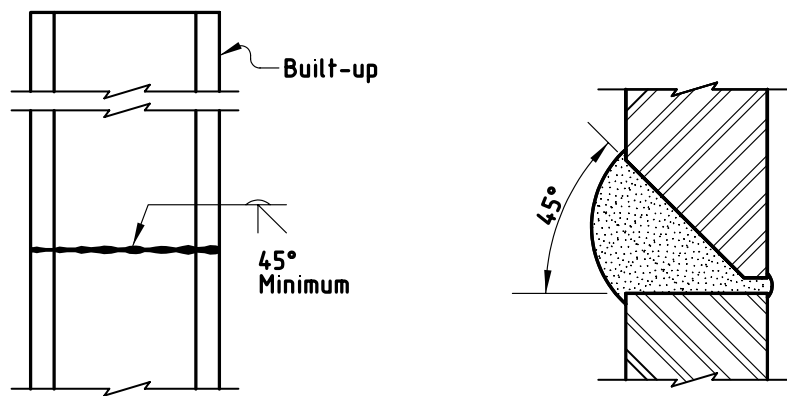


Figure 2
Steel piling splice detail.

- B. Painting.** Apply paint in accordance with Item 446, “Cleaning and Painting Steel.” After driving piling, clean and paint damaged areas, field splices, or areas missing the shop coat with enough epoxy zinc primer to bring the total zinc primer to the minimum 3.0 mils DFT. When a polyurethane appearance coating is specified on the plans, apply at least 2.0 mils DFT each of the System III epoxy intermediate coating and appearance coating. When an acrylic latex appearance coating is specified on the plans, apply at least 2.0 mils DFT of the System IV appearance coating. Use a concrete gray appearance coating unless shown otherwise on the plans. Extend the paint 1 ft. below finished ground line unless the piling is standing in water, in which case extend the paint to the low water line. Replace any earth removed for this painting after the paint has dried.
- C. Test Piling.** Test piling must meet requirements for steel piling. The Engineer may adjust the number of test piling to secure desired information.

407.4. Measurement.

A. Steel H-Piling.

- 1. Steel Piling.** Steel H-piling and Steel H-test piling will be measured by the foot of acceptable piling in place after all cutoffs and splices have been made. When the Contractor elects to drive piling deeper than required to meet the specified length and bearing requirements, no measurement will be made on that portion below the elevation at which length and bearing requirements were first obtained.
- 2. Splices.** Splices will be measured by each authorized splice made necessary by driving beyond the plan pile length to obtain the required bearing resistance.
- 3. Reinforced Tips.** Reinforced tips will be measured by each pile tip, when required.

- B. Steel Sheet Piling.** Steel sheet piling will be measured by the square foot of acceptable piling in place. Sheet piling driven below the elevation required by the plans or the elevation authorized by the Engineer will not be measured for payment.

407.5. Payment. No direct payment will be made for painting or excavation and backfill required for the painting of portions of piling below ground line. Payment for all work and materials required by these items will be included in the unit price bid for “Steel H-Piling,” “Steel H-Test Piling,” or “Sheet Piling.”

The price bid is full compensation for jetting, pilot holes, alignment holes, driving piling, painting, materials, tools, equipment, labor, and incidentals, except that any test load ordered by the Engineer that is not provided for in the Contract will be paid for in accordance with Article 9.4, “Payment for Extra Work.”

A. Steel H-Piling.

- 1. Steel Piling.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for the specified size and weight of “Steel H-Piling” or “Steel H-Test Piling.”
- 2. Splices.** An additional payment for each completed authorized splice for both regular and test piling, regardless of buildup length, will be made at a price equal to 4 times the unit price bid for “Steel H-Piling.”
- 3. Cutoffs.** Cutoffs will not be paid for directly, but will be subsidiary to this Item.
- 4. Reinforced Tips.** An additional payment for each completed authorized pile tip for both regular and test piling will be made at a price equal to 2 times the unit price bid for “Steel H-Piling.”

B. Steel Sheet Piling. Steel sheet piling will be paid for at the unit price bid per square foot for “Sheet Piling” of the type shown on the plans. No payment will be made for cutoffs or splices of sheet piling.

ITEM 636
ALUMINUM SIGNS

636.1. Description.

- **Installation.** Furnish, fabricate, and erect aluminum signs. Sign supports are provided for under other Items.
- **Replacement.** Replace existing signs on existing sign supports.
- **Refurbishing.** Refurbish existing aluminum signs on existing sign supports.

636.2. Materials.

- A. Sign Blanks.** Furnish sign blank substrates in accordance with DMS-7110, "Aluminum Sign Blanks," and in accordance with the types shown on the plans. Use single-piece sheet-aluminum substrates for Type A (small) signs and extruded aluminum substrates for Type G (ground-mounted) or Type O (overhead-mounted) signs.
- B. Sign Face Reflectorization.** Reflectorize the sign faces with flat surface reflective sheeting. Furnish sheeting that meets DMS-8300, "Sign Face Materials." Use reflective sheeting from the same manufacturer for the entire face of a sign.
- C. Sign Messages.** Fabricate sign messages to the sizes, types, and colors shown on the plans. Use sign message material from the same manufacturer for the entire message of a sign.
 - Ensure that the screened messages have clean, sharp edges and exhibit uniform color and reflectivity. Prevent runs, sags, and voids. Furnish screen inks in accordance with DMS-8300.
 - Fabricate colored, transparent film legend and reflectorized sheeting legend from materials that meet DMS-8300.
 - Fabricate nonreflectorized-sheeting legend from materials that meet DMS-8300.
 - Furnish Type A aluminum signs required as part of a message in conformance with the plans and in accordance with this Item.
- D. Hardware.** Use galvanized steel, stainless steel, or dichromate-sealed aluminum for bolts, nuts, washers, lock washers, screws, and other sign assembly hardware. Use plastic or nylon washers to avoid tearing the reflective sheeting. Furnish steel or aluminum products in accordance with DMS-7120, "Sign Hardware."

When dissimilar metals are used, select or insulate metals to prevent corrosion.
- E. Sampling.** The Engineer will sample in accordance with Tex-726-I.

636.3. Construction.

A. Fabrication.

- 1. Sign Blanks.** Furnish sign blanks to the sizes and shapes shown on the plans and that are free of buckles, warps, burrs, dents, cockles, or other defects. Do not splice individual extruded aluminum panel.

Complete the fabrication of sign blanks, including the cutting and drilling or punching of holes, before cleaning and degreasing. After cleaning and degreasing,

ensure that the substrate does not come into contact with grease, oils, or other contaminants before the application of the reflective sheeting.

- 2. Sheeting Application.** Apply sheeting to sign blanks in conformance with the recommended procedures of the sheeting manufacturer. Clean and prepare the outside surface of extruded aluminum flanges in the same manner as the sign panel face.

Minimize the number of splices in the sheeting. Overlap the lap-splices by at least 1/4 in. Use butt splices for Type D and Type E reflective sheeting. Provide a 1-ft. minimum dimension for any piece of sheeting. Do not splice sheeting for signs fabricated with transparent screen inks or colored transparent films.

- 3. Sign Assembly.** Assemble extruded aluminum signs in accordance with the details shown on the plans. Sign face surface variation must not exceed 1/8 in. per foot. Surface misalignment between panels in multi-panel signs must not exceed 1/16 in. at any point.

- 4. Decals.** Code and apply sign identification decals in accordance with Item 643, "Sign Identification Decals."

- B. Storage and Handling.** Ship, handle, and store completed sign blanks and completed signs so that corners, edges, and faces are not damaged. Damage to the sign face that is not visible when viewed at a distance of 50 ft., night or day, will be acceptable. Replace unacceptable signs.

Store all finished signs off the ground and in a vertical position until erected. Store finished signs 60 in. by 60 in. or smaller in a weatherproof building. Larger signs may be stored outside.

- C. Cleaning.** Before shop inspection, wash completed signs with a biodegradable cleaning solution acceptable to the manufacturers of the sheeting, colored transparent film, and screen ink to remove grease, oil, dirt, smears, streaks, finger marks, and other foreign material. Wash again before final inspection after erection.
- D. Installation.** Install signs as shown on the plans or as directed.
- E. Replacement.** Remove the existing signs from the existing supports and replace with new signs, including mounting hardware, as shown on the plans.
- F. Refurbishing.** Refurbish existing signs by providing and installing new messages and mounting hardware. Install new reflectorized legend and supplemental signs as shown on the plans.
- G. Unsalvageable Material.** Accept ownership of unsalvageable materials and dispose of in accordance with federal, state, and local regulations.

636.4. Measurement. Signs installed or replaced will be measured by the square foot of the sign face. Signs refurbished will be measured by each sign.

This is a plans quantity measurement Item. The quantity to be paid is the quantity shown in the proposal, unless modified by Article 9.2, "Plans Quantity Measurement."

Additional measurements or calculations will be made if adjustments of quantities are required.

636.5. Payment. The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for “Aluminum Signs,” “Replacing Existing Aluminum Signs,” or “Refurbishing Aluminum Signs,” of the type specified.

- A. Installation.** This price is full compensation for furnishing and installing new signs and hardware; fabrication of sign panels; treatment of sign panels required before application of the background materials; application of the background materials and messages to the sign panels; furnishing and fabricating frames, wind beams, stiffeners, or required joint backing strips; furnishing bolts, rivets, screws, fasteners, clamps, brackets, and sign support connections; assembling and erecting the signs; preparing and cleaning the signs; and equipment, materials, labor, tools, and incidentals.
- B. Replacement.** This price is full compensation for furnishing and installing new aluminum signs and hardware; removal of existing signs; fabrication of sign panels; treatment of sign panels required before application of the background materials; application of the background materials and messages to the sign panels; furnishing and fabricating frames, wind beams, stiffeners, or required joint backing strips; furnishing bolts, rivets, screws, fasteners, clamps, brackets, and sign support connections; assembling and erecting the signs; preparing and cleaning the signs; salvaging and disposing of unsalvageable material; and equipment, materials, labor, tools, and incidentals.
- C. Refurbishing.** This price is full compensation for modifying existing sign messages; removing and replacing existing route markers, reflectorized legend, or supplemental signs attached to the parent sign; preparing and cleaning the signs; furnishing sheeting and hardware; salvaging and disposing of unsalvageable material; and equipment, materials, labor, tools, and incidentals.

DEPARTMENT OF THE ARMY PERMIT

Permittee City of Seabrook

Permit No. SWG-2009-01192

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To restore a 2,583-linear-foot section of Pine Gully by mechanically excavating 3.8 acres of open water and filling 0.05 acre of open water to reshape the main channel; to reshape 270 linear feet of the north branch of the gully by excavating 0.33 acre of open water, filling 0.01 acre of open water and by filling 2.1 acres of existing wetlands. To discharge fill material into 0.33 acre and 0.28 acre, respectively, of Galveston Bay during the construction of two jetties at the confluence of the Pine Gully and Galveston Bay. The project will be conducted in accordance with the attached plans in 15 sheets.

Project Location: The project site is located in Galveston Bay and portions of Pine Gully located south of Todville Road, near Seabrook, in Harris County, Texas. The project site can be located on the U.S.G.S. quadrangle map titled: Bacliff, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 306830; Northing: 327503.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2018. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee understands and agrees that if future operations by the United States require the removal, relocation or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. The permittee will conduct restoration activities in accordance with Attachment 1 titled "Pine Gully Restoration Plan".

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

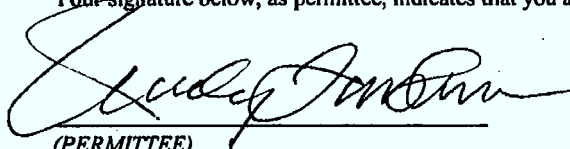
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



(PERMITTEE)

CITY OF SEABROOK

KELLY TEMPLIN

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

23 January 2013

(DATE)



(DISTRICT ENGINEER)

JANET THOMAS BOTELLO, LEADER

NORTH EVALUATION UNIT

FOR COLONEL CHRISTOPHER W. SALLESE

23 January 2013

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE -- Typed/Printed Name)

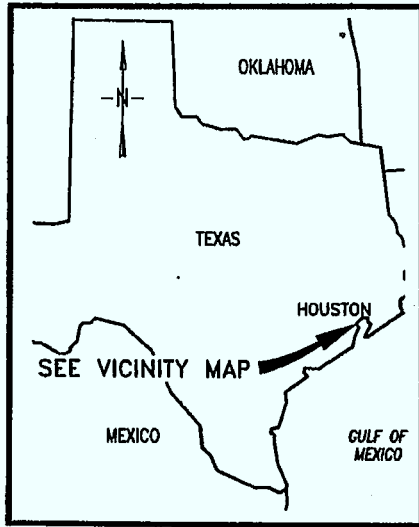
(DATE)

(TRANSFEREE - Signature)

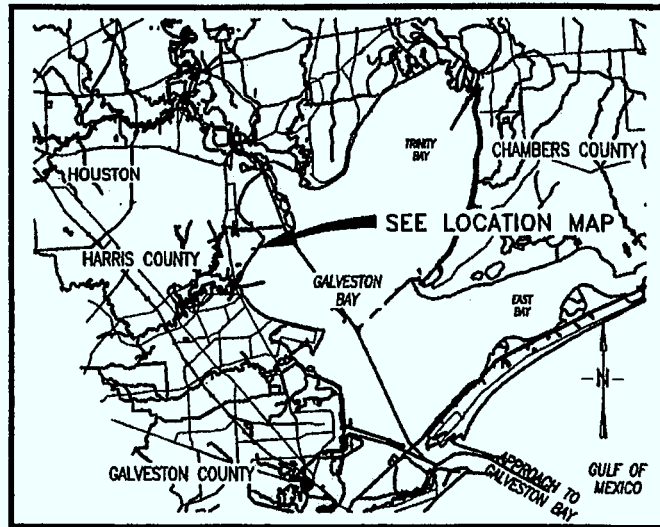
(Mailing Address)

SWG-2009-01192

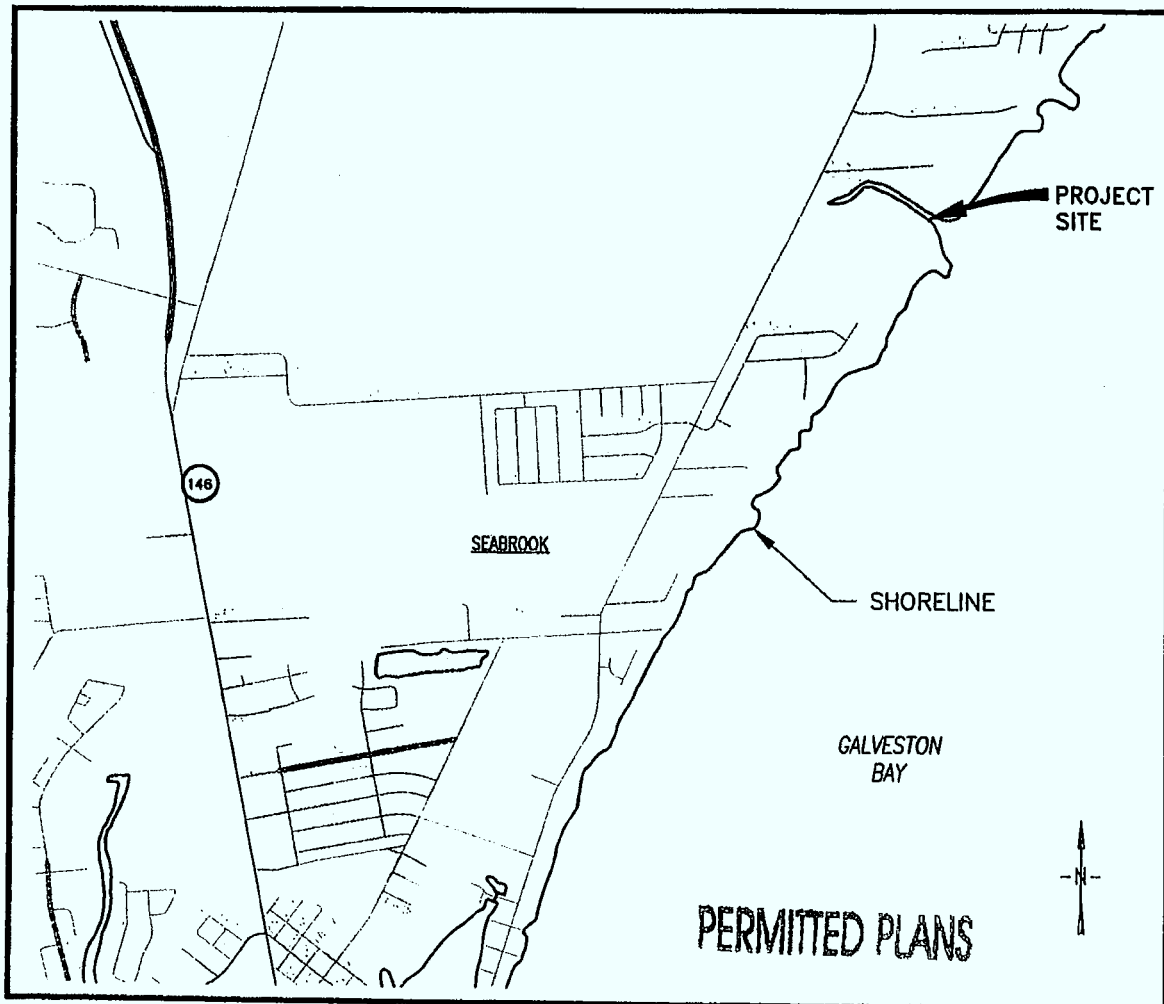
Nov 09, 2012 - 9:59am dcorcoran



AREA MAP
N.T.S.



VICINITY MAP
N.T.S.



LOCATION MAP
N.T.S.

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**GALVESTON BAY
FOUNDATION**

prepared by



MOFFATT & NICHOL

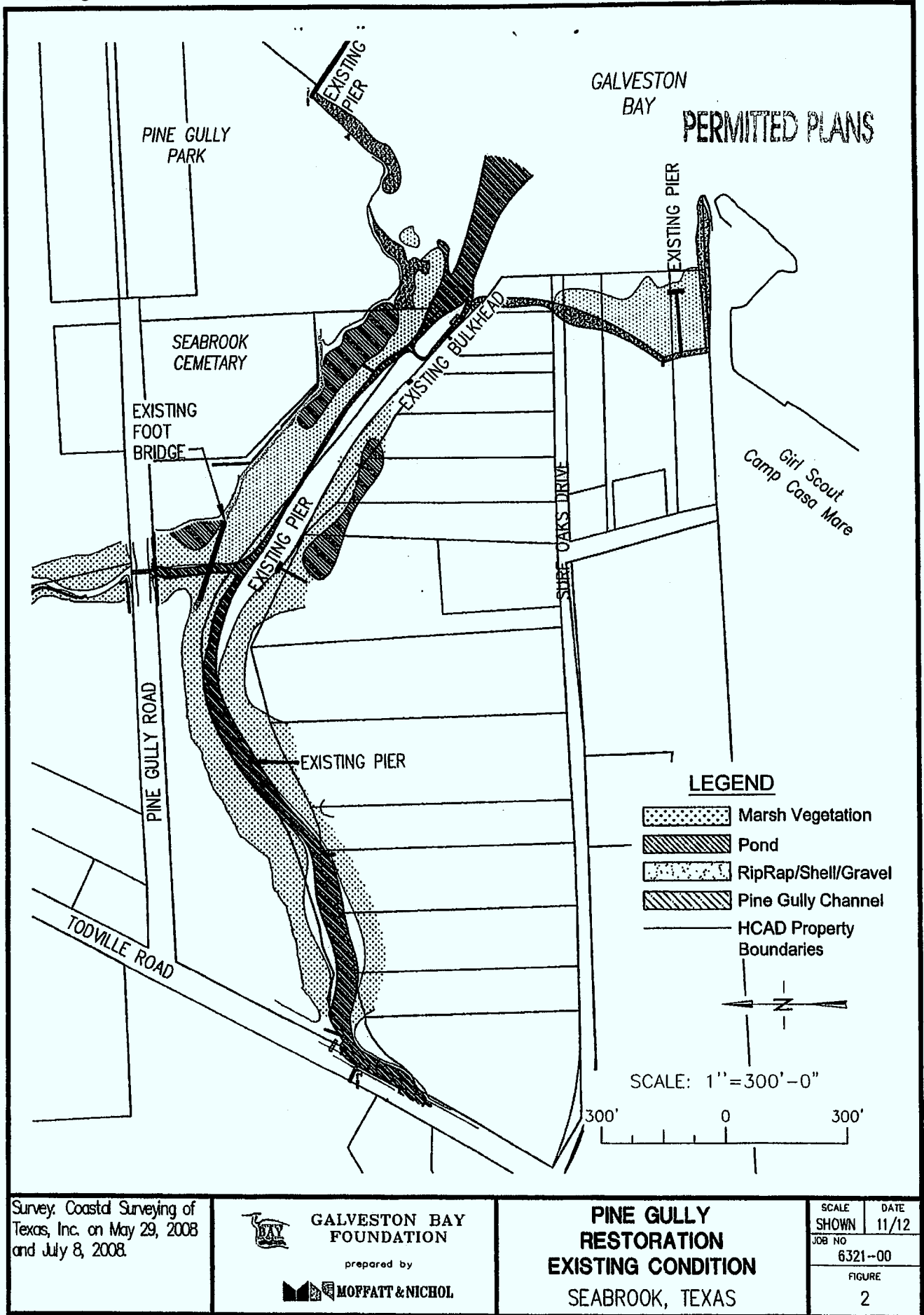
**PINE GULLY
RESTORATION
LOCATION MAP
SEABROOK, TEXAS**

SCALE n.t.s.	DATE 11/12
JOB NO. 6321-00	
FIGURE 1	

SWG-2009-01192

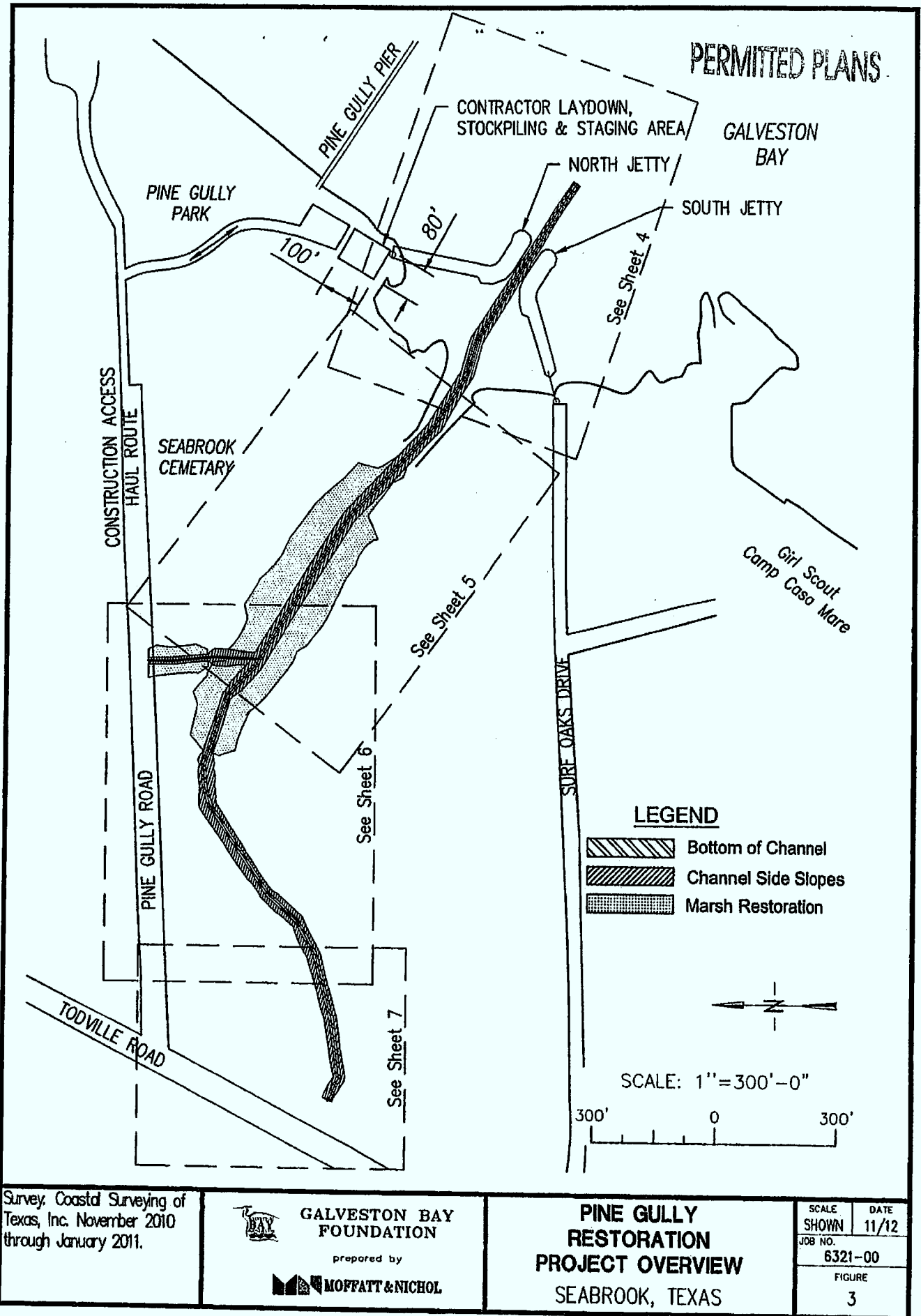
Nov 09, 2012 -- 9:59am dcorcoran

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Nov 09, 2012 - 9:59am doorcorran

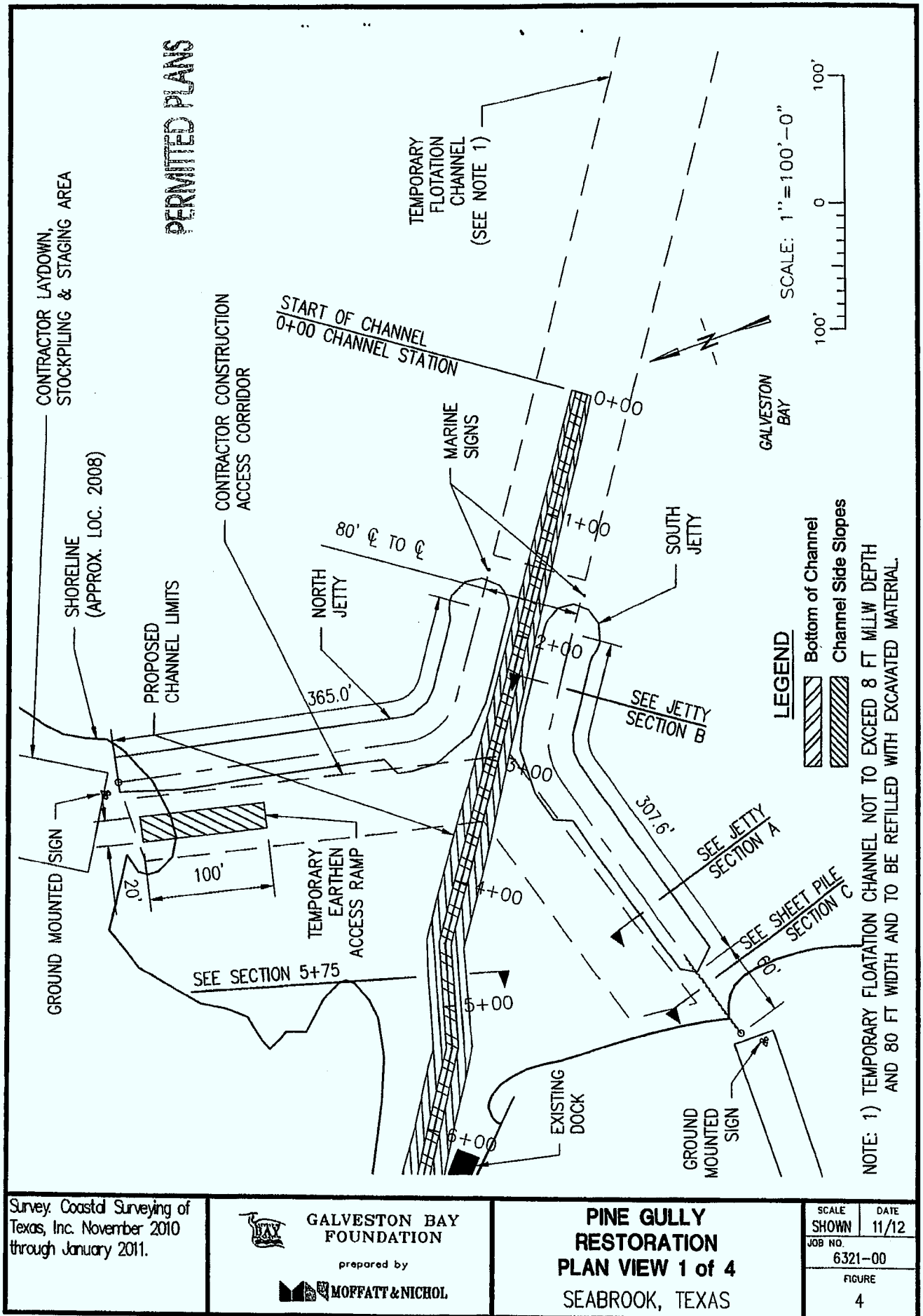
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SWG-2009-01192

Nov 09, 2012 - 10:00am dcorcarran

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Survey: Coastal Surveying of Texas, Inc. November 2010 through January 2011.



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prepared by



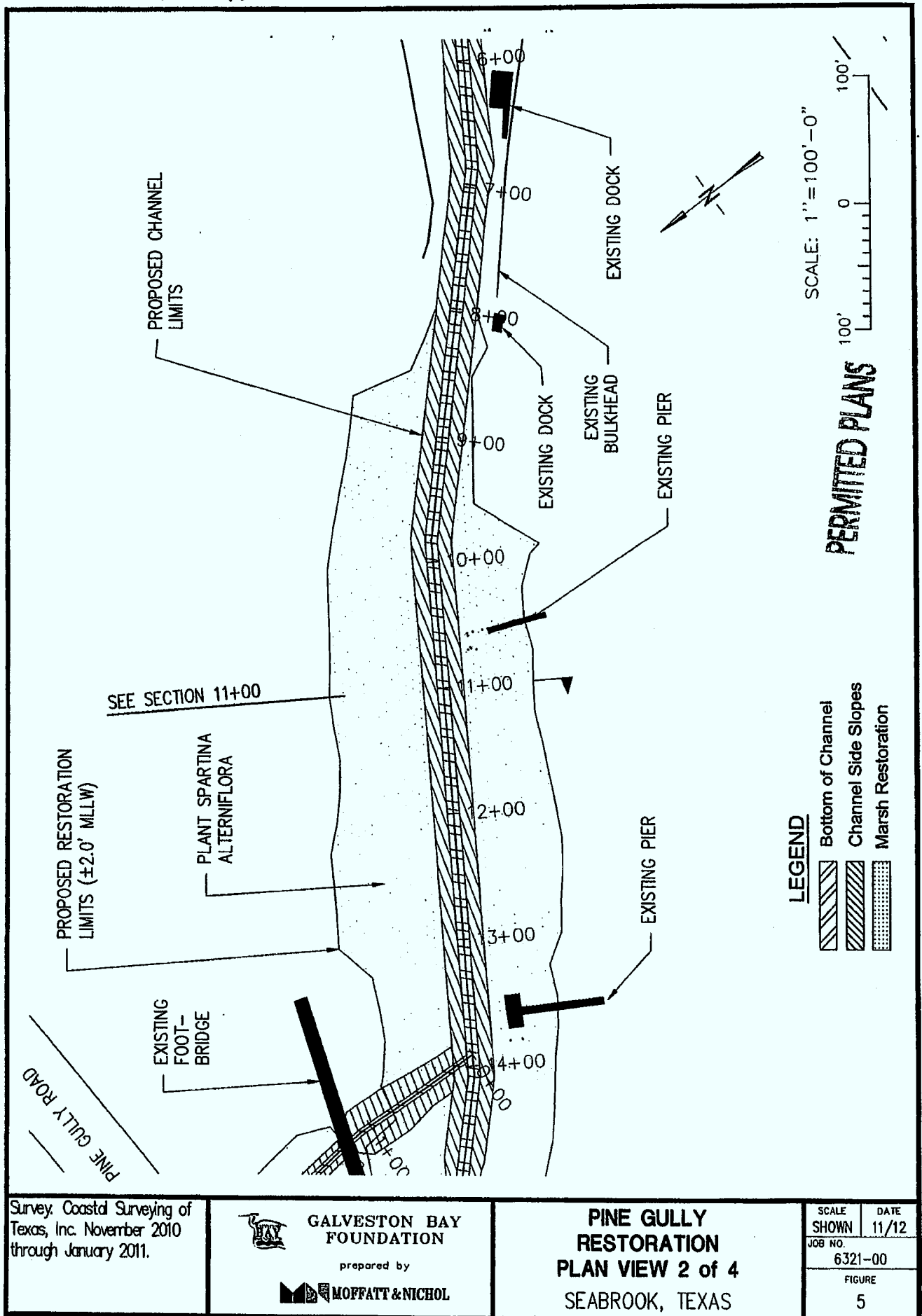
PINE GULLY RESTORATION
PLAN VIEW 1 of 4
SEABROOK, TEXAS

SCALE SHOWN	DATE
JOB NO.	11/12
6321-00	
FIGURE	
4	

SWG-2009-01192

Nov 09, 2012 - 10:00am dcarcarran

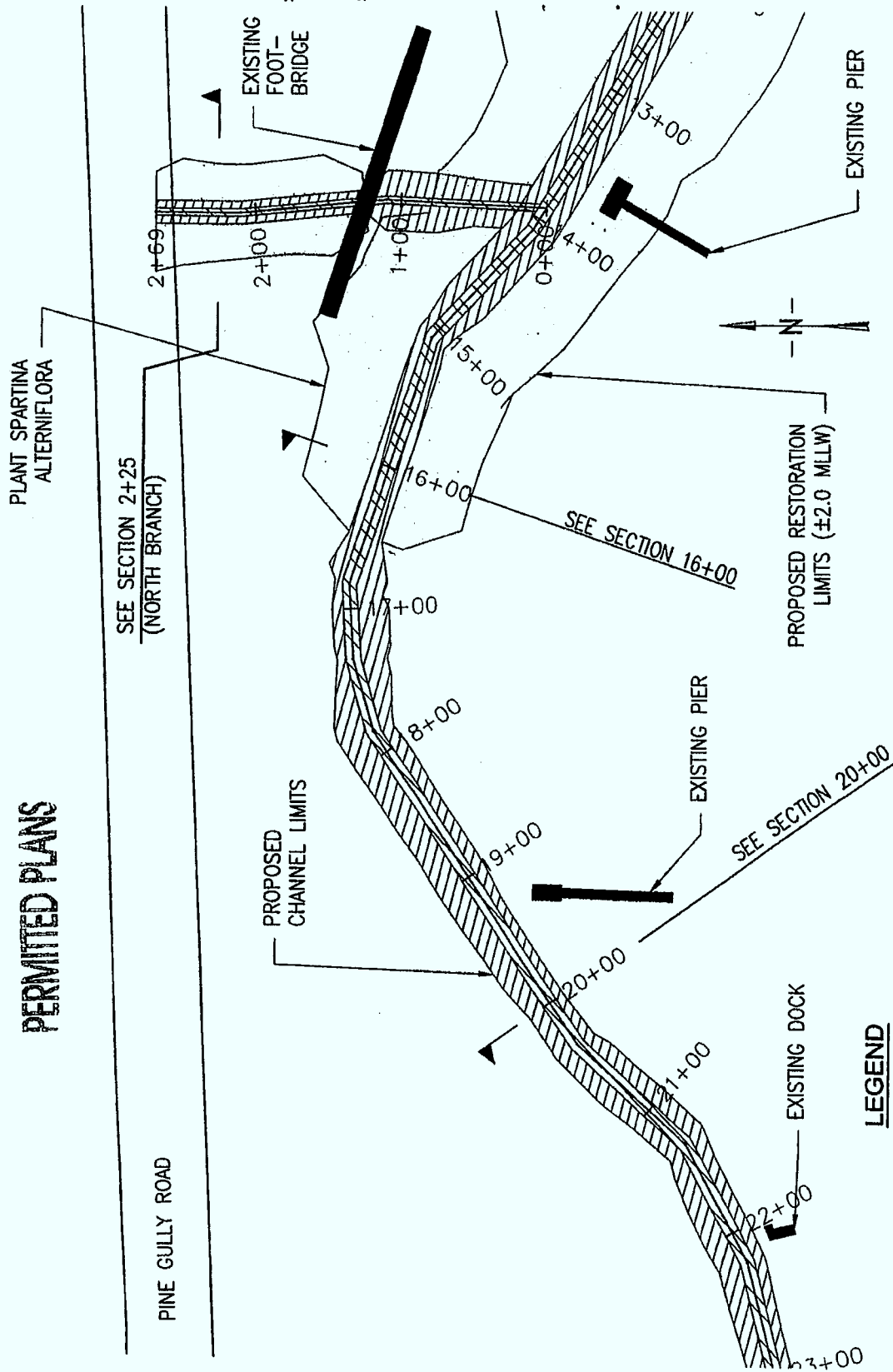
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Nov 09, 2012 - 10:00am dcarcoran

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PERMITTED PLANS



LEGEND	
	Bottom of Channel
	Channel Side Slopes
	Marsh Restoration

Survey, Coastal Surveying of Texas, Inc. November 2010 through January 2011.



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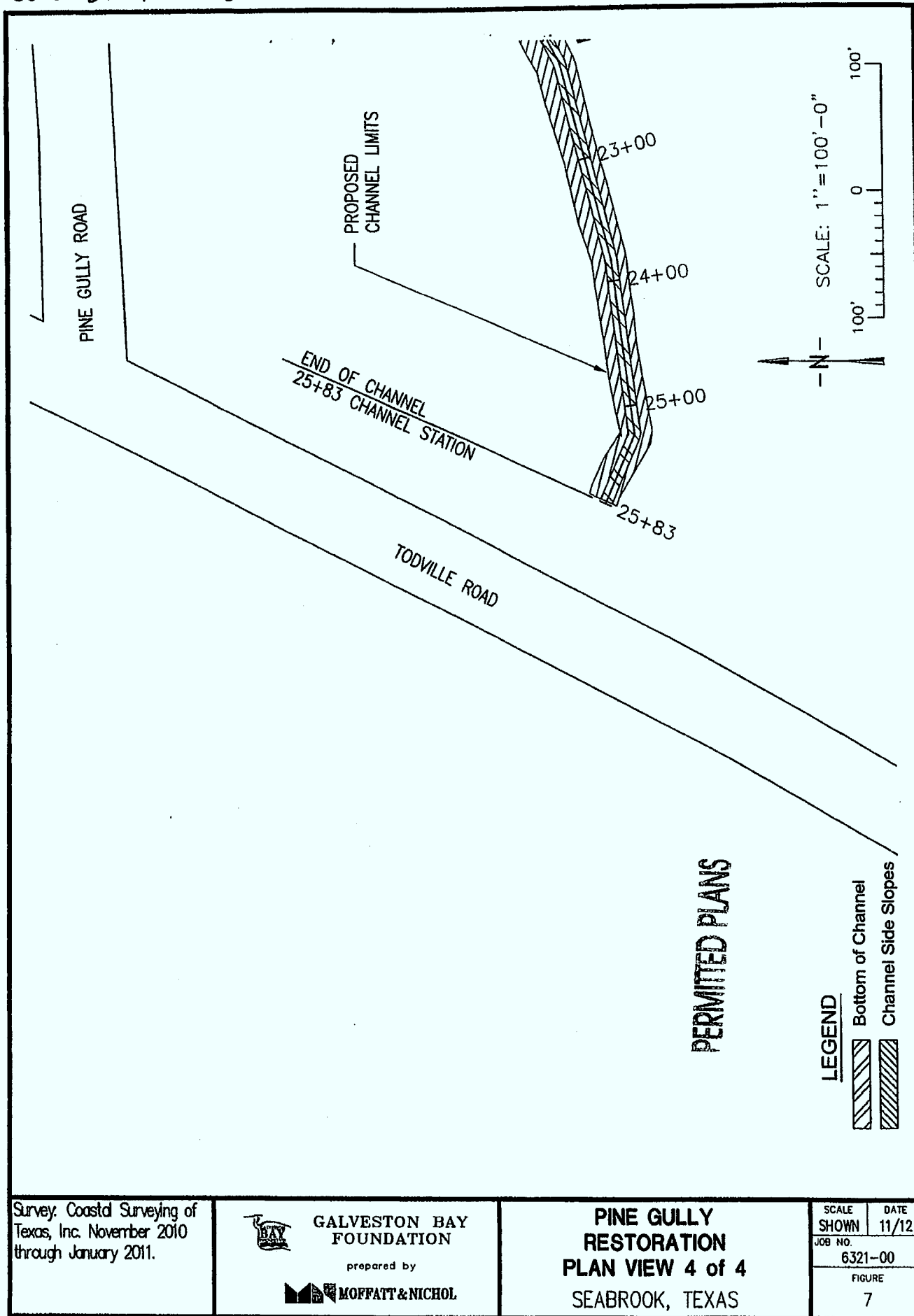
MOFFATT & NICHOL

PINE GULLY RESTORATION
PLAN VIEW 3 of 4
SEABROOK, TEXAS

SCALE SHOWN	DATE
JOB NO.	11/12
6321-00	
FIGURE	
6	

Nov 09, 2012 - 10:00am dcorcoran

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Survey: Coastal Surveying of
Texas, Inc. November 2010
through January 2011.



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FOUNDATION**

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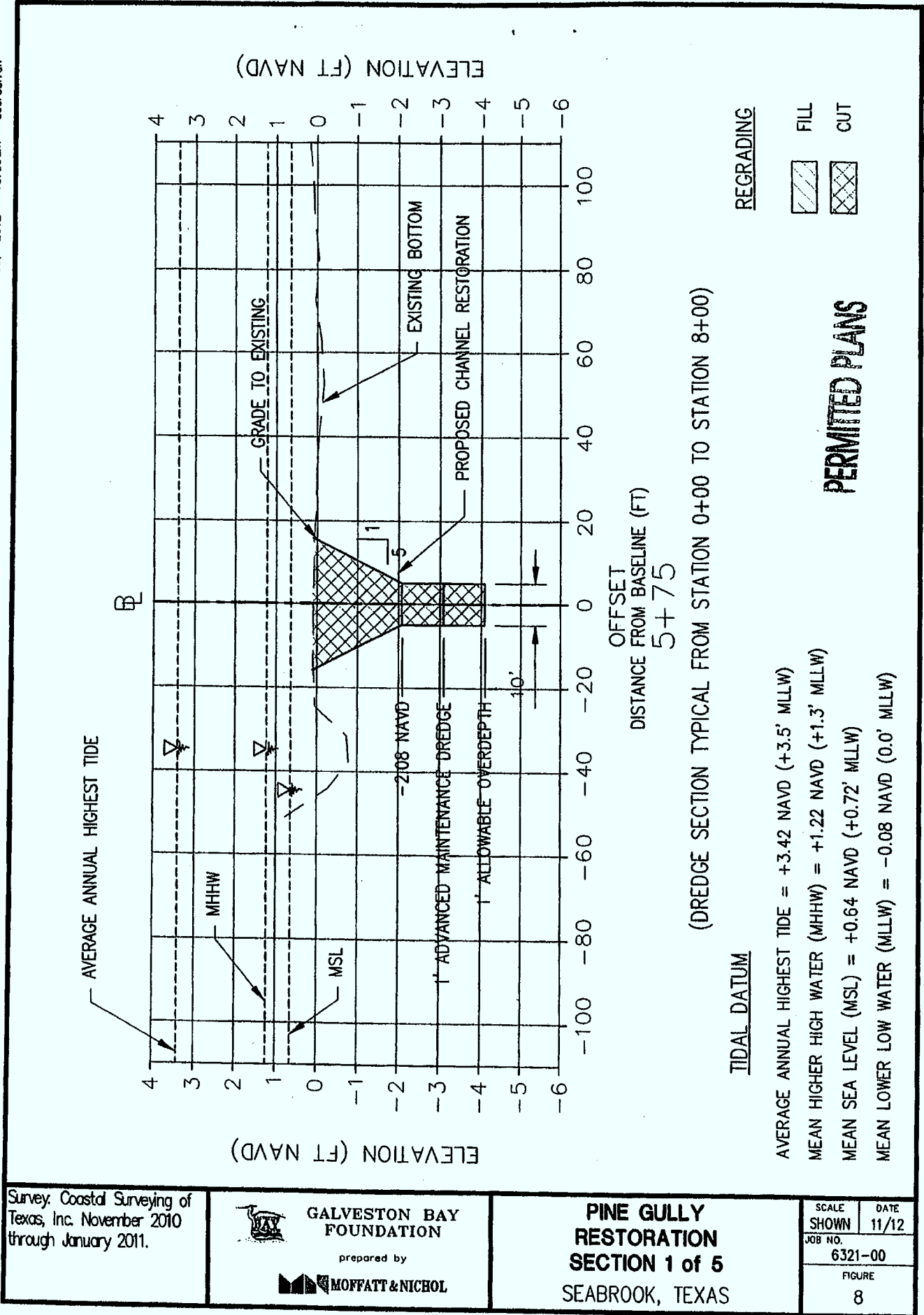
**PINE GULLY
RESTORATION
PLAN VIEW 4 of 4
SEABROOK, TEXAS**

SCALE SHOWN	DATE 11/12
JOB NO. 6321-00	
FIGURE 7	

2006-2009-01192

Nov 09, 2012 - 10:00am dcorcarran

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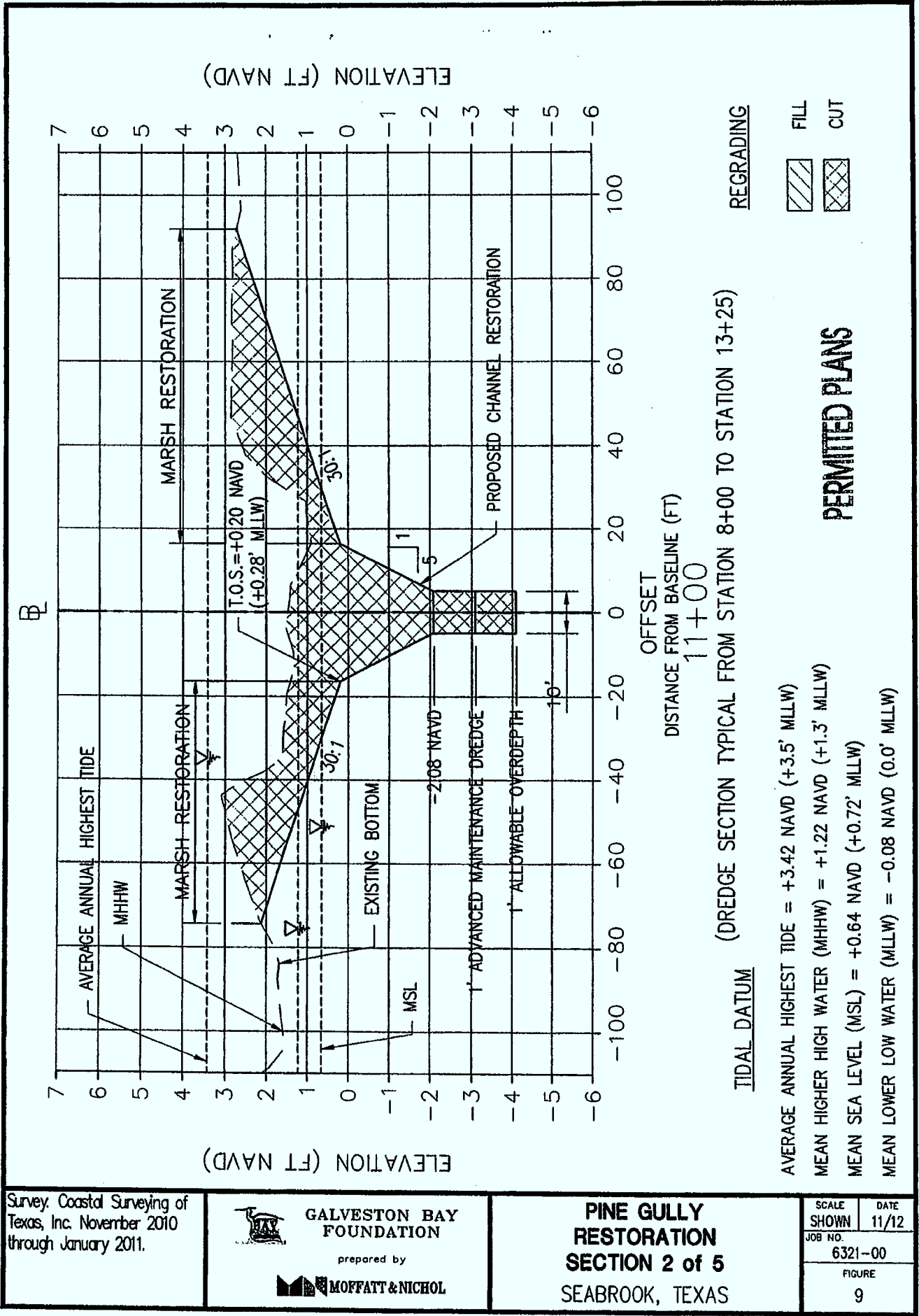


Survey: Coastal Surveying of
Texas, Inc. November 2010
through January 2011.

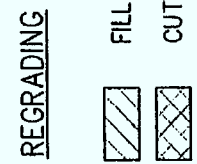
**GALVESTON BAY
FOUNDATION**
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MOFFATT & NICHOL

**PINE GULLY
RESTORATION
SECTION 1 of 5
SEABROOK, TEXAS**

SCALE SHOWN JOB NO.	DATE 11/12
6321-00	
FIGURE 8	



Nov 09, 2012 - 10:01am dcorcorran



TIDAL DATUM.

AVERAGE ANNUAL HIGHEST TIDE = +3.42 NAVD (+3.5' MLLW)
 MEAN HIGHER HIGH WATER (MHHW) = +1.22 NAVD (+1.3' MLLW)
 MEAN SEA LEVEL (MSL) = +0.64 NAVD (+0.72' MLLW)
 MEAN LOWER LOW WATER (MLLW) = -0.08 NAVD (0.0' MLLW)

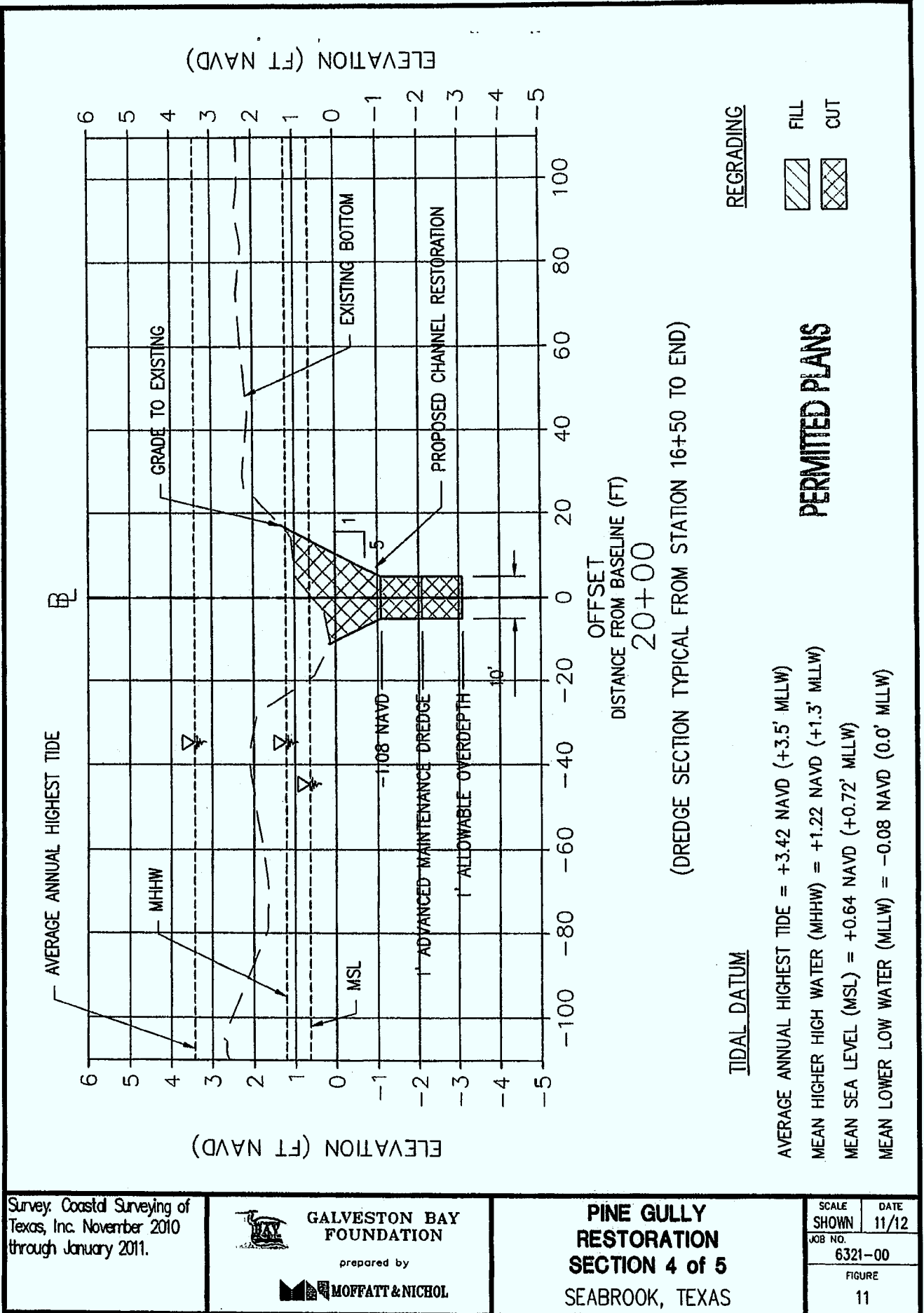
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**PINE GULLY
RESTORATION
SECTION 3 of 5**
SEABROOK, TEXAS

SCALE SHOWN	DATE 11/12
JOB NO. 6321-00	
FIGURE 10	

Nov 09, 2012 - 10:01am dcorcoran

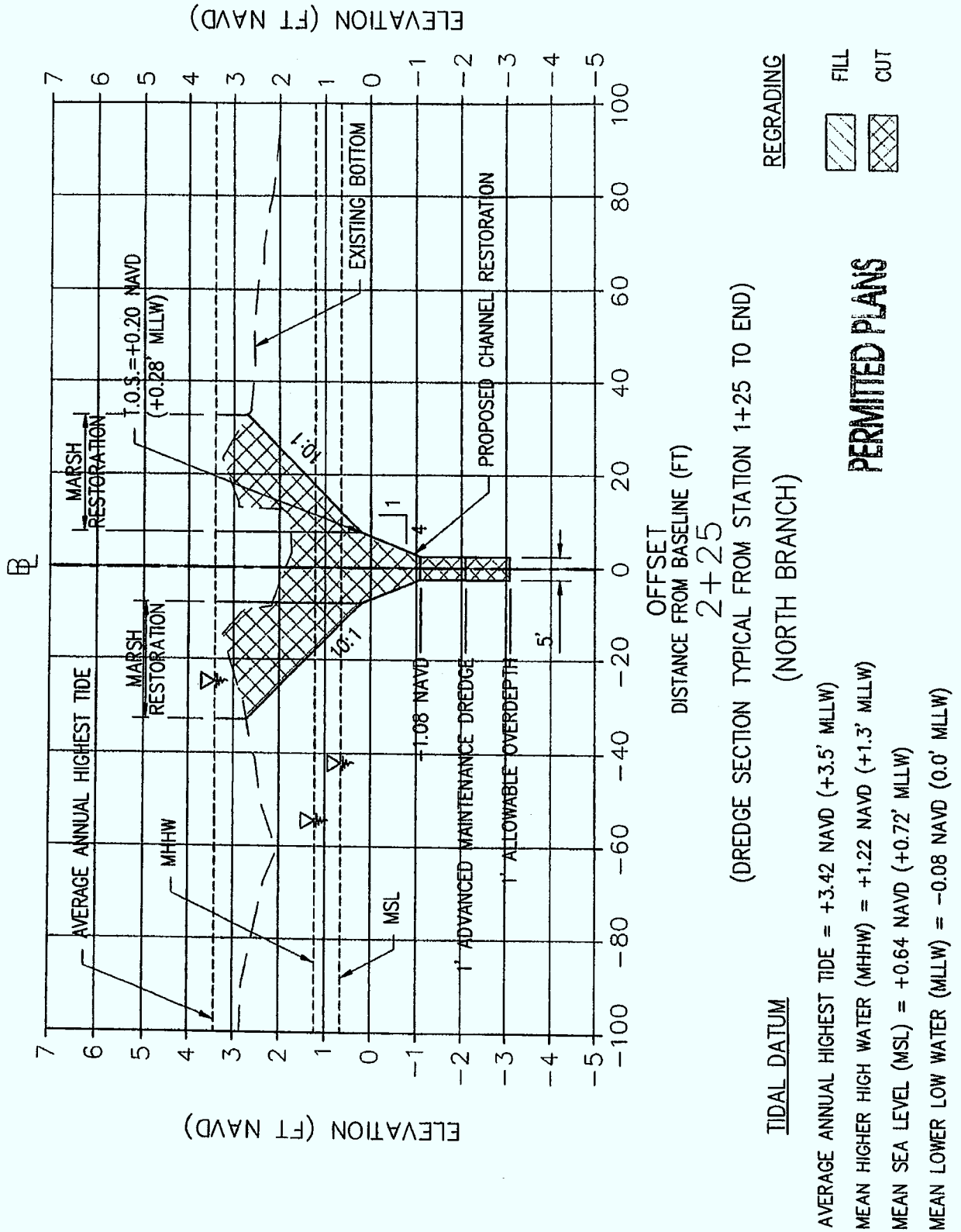
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Nov 09, 2012 - 10:01am dcarcorran

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Survey: Coastal Surveying of
Texas, Inc. November 2010
through January 2011.



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FOUNDATION**

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**PINE GULLY
RESTORATION
SECTION 5 of 5
SEABROOK, TEXAS**

SCALE SHOWN	DATE 11/12
JOB NO. 6321-00	
FIGURE 12	

Nov 09, 2012 - 10:01am dcorcoran

CHANNEL EXCAVATION QUANTITY			
	CUT (C.Y.)	FILL (C.Y.)	NET CUT (C.Y.)
PINE GULLY	8,500	300	8,200
NORTH BRANCH	800	100	700
TOTALS	9,300	400	8,900

ALL VOLUMES BASED ON COASTAL SURVEYING OF TEXAS, INC. SURVEYS DATED NOVEMBER 2010 THROUGH JANUARY 2011.

CHANNEL RESTORATION - SURFACE AREA (ACRES)			
	CUT (Ac.)	FILL (Ac.)	TOTALS (Ac.)
PINE GULLY	3.80	0.05	3.85
NORTH BRANCH	0.33	0.01	0.34
TOTALS	4.13	0.06	4.19

JETTIES - SURFACE AREA			
	NORTH JETTY	SOUTH JETTY	TOTAL ACRES
	AREA (Ac.)	AREA (Ac.)	AREA (Ac.)
AREA	0.33	0.28	0.65

PERMITTED PLANS

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FOUNDATION**

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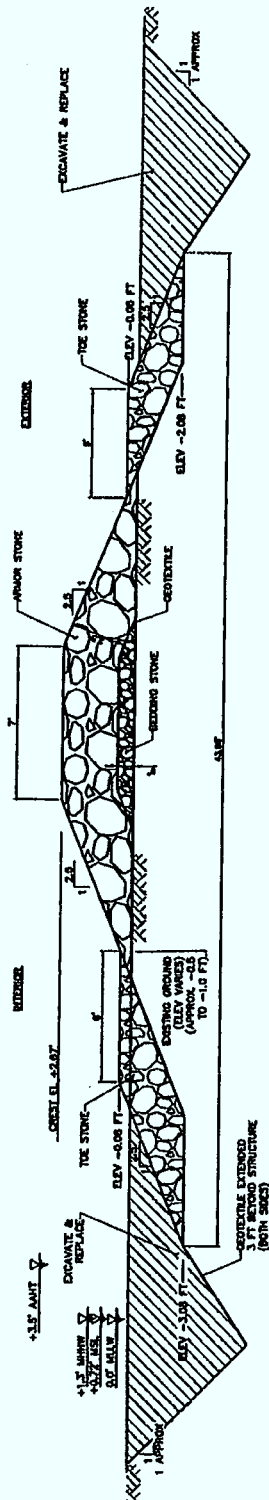
MOFFATT & NICHOL

**PINE GULLY
RESTORATION
VOLUME CALCULATIONS**
SEABROOK, TEXAS

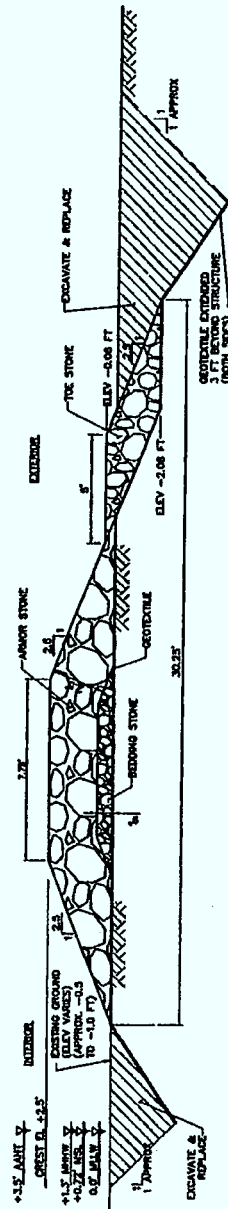
SCALE n.t.s.	DATE 11/12
JOB NO. 6321-00	
FIGURE 13	

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Jan 18, 2013 - 10:41am dcarcoran



SECTION B
JETTY TYPICAL SECTION - CHANNEL



SECTION A
JETTY TYPICAL SECTION - NEAR SHORE

PERMITTED PLANS

TIDAL DATUM

AVERAGE ANNUAL HIGHEST TIDE = +3.42 NAVD (+3.5' MLLW)
MEAN HIGHER HIGH WATER (MHHW) = +1.22 NAVD (+1.3' MLLW)
MEAN SEA LEVEL (MSL) = +0.64 NAVD (+0.72' MLLW)
MEAN LOWER LOW WATER (MLLW) = -0.08 NAVD (0.0' MLLW)

NOTE: JETTY SECTIONS SHOWN, NORTH
SOUTH JETTY SECTIONS ARE OPPOSITE HAND.



**GALVESTON BAY
FOUNDATION**

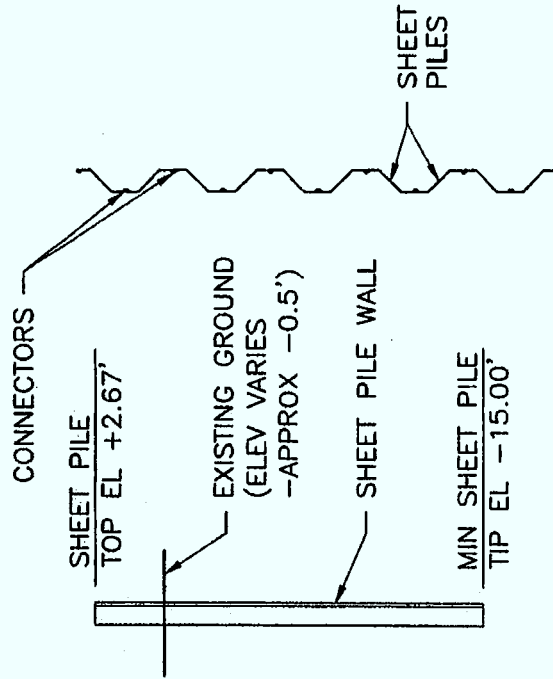
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MOFFATT & NICHOL

**PINE GULLY
RESTORATION
JETTY TYPICAL SECTIONS
SEABROOK, TEXAS**

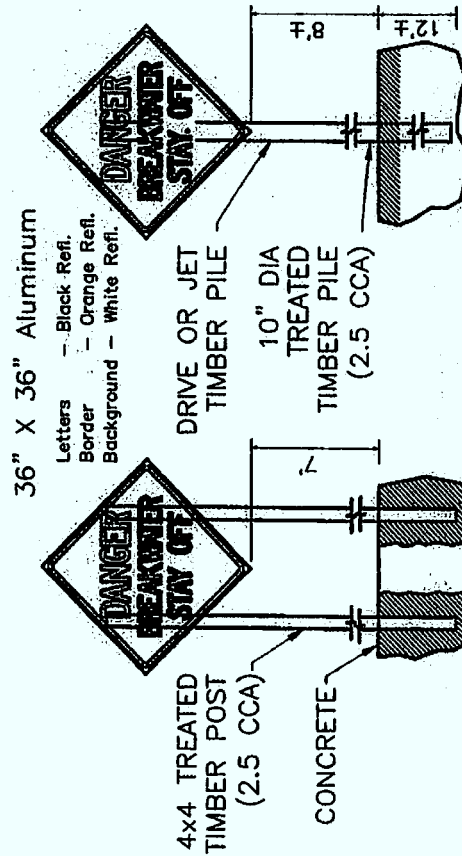
SCALE 1/8"=1'	DATE 01/13
JOB NO. 6321-00	
FIGURE 14	

5206-2009-01192



SECTION C
SHEET PILE WALL

TOP VIEW
SHEET PILE WALL



GROUND MOUNTED
WOODEN SIGN
SUPPORTS

MARINE SIGNS

TIDAL DATUM

AVERAGE ANNUAL HIGHEST TIDE = +3.42 NAVD (+3.5' MLLW)
MEAN HIGHER HIGH WATER (MHHW) = +1.22 NAVD (+1.3' MLLW)
MEAN SEA LEVEL (MSL) = +0.64 NAVD (+0.72' MLLW)
MEAN LOWER LOW WATER (MLLW) = -0.08 NAVD (0.0' MLLW)

PERMITTED PLANS

NOTE:
SHEET PILE ON SOUTH JETTY ONLY.



GALVESTON BAY
FOUNDATION

prepared by

MOFFATT & NICHOL

PINE GULLY
RESTORATION
SHEET PILE AND SIGN DETAILS
SEABROOK, TEXAS

SCALE 1/8"=1'	DATE 11/12
JOB NO. 6321-00	FIGURE 15

NOV 19 2012

**Pine Gully Restoration Plan
SWG-2009-01192**

Construction of the proposed project will re-grade existing shorelines within an area of 3.82 acres, impacting 2.1 acres of intertidal wetland habitat that currently exist in an unstable and degraded state. The objective of this restoration plan is to restore 2.5 acres of intertidal wetlands within the boundary of the 3.82 acre re-graded area. Once established, the restored wetlands should exist in a stable and self-sustaining manner.

The applicant will work directly with the Galveston Bay Foundation (GBF) to ensure the wetland restoration plan is carried out in accordance to this document. GBF, since its inception, has completed numerous wetland restoration projects within the Galveston Bay system and is known nationally for its annual Marsh Mania events in which local citizens gets hands-on wetland restoration experience by planting wetland vegetation at restoration sites baywide.

Restoration work under this plan will take place at the same site of impact to existing wetlands within Pine Gully. The restoration site will be preserved under the control of The City of Seabrook, which owns the adjacent property (Pine Gully Park), and which will execute a lease with the Texas General Land Office for portions of the project that lie on state-owned submerged lands.

Construction, planting, replanting, and monitoring will be performed as follows:
Within 60 days of the completion of project construction, the site will be planted with smooth cordgrass, *Spartina alterniflora*. The cordgrass will be planted on 3-foot centers throughout the project area. Pre- and post-planting activities will be photographically documented, and a report will be submitted to USACE within 30 days of initial planting activity.

Plant material will be obtained from on-site or commercial sources. A transplant permit will be sought and received from Texas Parks and Wildlife Department (TPWD) prior to planting activities. Special Conditions of the TPWD transplant permit will be followed as required.

Initial monitoring will be conducted within 60 days of completion of initial planting. If 50 percent survival is not achieved at this time, a re-planting will be conducted within 45 days. If at least 70% coverage is not achieved within 30 months following the initial planting, an additional re-planting will be performed within 45 days of the survey.

A five-year monitoring study will be conducted following the planting, reporting percent cover of the planting efforts within the restoration area. Progress reports containing the referenced information shall be submitted to USACE and GLO at a 6-month (initial year) and then annually for a period of 5 years following the planting. Re-planting will occur (after 30 months) annually if 70% coverage is not achieved during monitoring efforts.

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 15, 2013

Ms. Janet Thomas Botello
Galveston District CESWG-PE-RE
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Re: USACE Permit Application Number SWG-2009-01192

Dear Ms. Botello:

This letter is in response to the Statement of Findings (SOF) dated January 4, 2013, for the Joint Public Notice dated February 1, 2012, on the City of Seabrook's proposed project to restore a 2,583-linear-foot section of Pine Gully by mechanically excavating 3.8 acres and filling 0.05 acre of open water to reshape the channel. In addition, the applicant proposes to reshape 270 linear feet of the north branch of this section by excavating 0.33 acre of open water, and filling 0.01 acre of open water and 2.1 acres of existing wetlands. The project site is located in Galveston Bay and Pine Gully, near Seabrook, in Harris County, Texas.

The Texas Commission on Environmental Quality (TCEQ) has reviewed the public notice and related application information along with the SOF. On behalf of the Executive Director and based on our evaluation of the information contained in these documents, the TCEQ certifies that there is reasonable assurance that the project will be conducted in a way that will not violate water quality standards.

The TCEQ has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the CMP regulations (Title 31, Texas Administrative Code (TAC), Section (§)505.30) and has determined that the action is consistent with the applicable CMP goals and policies.

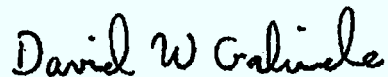
This certification was reviewed for consistency with the CMP's development in critical areas policy (31 TAC §501.23) and dredging and dredged material disposal and placement policy (31 TAC §501.25). This certification complies with the CMP goals (31 TAC §501.12(1, 2, 3, 5)) applicable to these policies.

Ms. Janet Thomas Botello
U.S. Army Corps of Engineers
USACE Permit Application Number SWG-2009-01192
Page 2
January 15, 2013

No review of property rights, location of property lines, nor the distinction between public and private ownership has been made, and this certification may not be used in any way with regard to questions of ownership.

If you require additional information or further assistance, please contact Mr. John Trevino, Water Quality Assessment Section, Water Quality Division (MC-150), at (512) 239-4600.

Sincerely,



David W. Galindo, Director
Water Quality Division
Texas Commission on Environmental Quality

DWG/JT/gg

Attachment

ccs: The City of Seabrook, 1700 1st Street, Seabrook, Texas 77586
Mr. Philip Smith, Galveston Bay Foundation, 17330 Highway 3, Webster, Texas
77598-4133
Ms. Kate Zultner, Secretary, Coastal Coordination Council, P.O. Box 12873, Austin,
Texas 78711-2873

Ms. Janet Thomas Botello
USACE Permit Application Number SWG-2009-01192
Attachment 1 – Dredge and Fill Certification
Page 1 of 3

WORK DESCRIPTION: As described in the public notice dated February 1, 2012, and the January 4, 2013, Environmental Assessment and Statement of Findings.

SPECIAL CONDITIONS: None

GENERAL: This certification, issued pursuant to the requirements of Title 30, Texas Administrative Code, Chapter 279, is restricted to the work described in the January 4, 2013, Environmental Assessment and Statement of Findings and shall be concurrent with the Corps of Engineers (COE) permit. This certification may be extended to any minor revision of the COE permit when such change(s) would not result in an impact on water quality. The Texas Commission on Environmental Quality (TCEQ) reserves the right to require full joint public notice on a request for minor revision. The applicant is hereby placed on notice that any activity conducted pursuant to the COE permit which results in a violation of the state's surface water quality standards may result in an enforcement proceeding being initiated by the TCEQ or a successor agency.

STANDARD PROVISIONS: These following provisions attach to any permit issued by the COE and shall be followed by the permittee or any employee, agent, contractor, or subcontractor of the permittee during any phase of work authorized by a COE permit.

1. The water quality of wetlands shall be maintained in accordance with all applicable provisions of the Texas Surface Water Quality Standards including the General, Narrative, and Numerical Criteria.
2. The applicant shall not engage in any activity which will cause surface waters to be toxic to man, aquatic life, or terrestrial life.
3. Permittee shall employ measures to control spills of fuels, lubricants, or any other materials to prevent them from entering a watercourse. All spills shall be promptly reported to the TCEQ by calling the State of Texas Environmental Hotline at 1-800-832-8224.
4. Sanitary wastes shall be retained for disposal in some legal manner. Marinas and similar operations which harbor boats equipped with marine sanitation devices shall provide state/federal permitted treatment facilities or pump out facilities for ultimate transfer to a permitted treatment facility. Additionally, marinas shall display signs in appropriate locations advising boat owners that the discharge of sewage from a marine sanitation device to waters in the state is a violation of state and federal law.
5. Materials resulting from the destruction of existing structures shall be removed from the water or areas adjacent to the water and disposed of in some legal manner.

Ms. Janet Thomas Botello
USACE Permit Application Number SWG-2009-01192
Attachment 1 – Dredge and Fill Certification
Page 2 of 3

6. A discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color. The use of silt screens or other appropriate methods is encouraged to confine suspended particulates.
7. The placement of any material in a watercourse or wetlands shall be avoided and placed there only with the approval of the Corps when no other reasonable alternative is available. If work within a wetland is unavoidable, gouging or rutting of the substrate is prohibited. Heavy equipment shall be placed on mats to protect the substrate from gouging and rutting if necessary.
8. Dredged Material Placement: Dredged sediments shall be placed in such a manner as to prevent any sediment runoff onto any adjacent property not owned by the applicant. Liquid runoff from the disposal area shall be retained on-site or shall be filtered and returned to the watercourse from which the dredged materials were removed. Except for material placement authorized by this permit, sediments from the project shall be placed in such a manner as to prevent any sediment runoff into waters in the state, including wetlands.
9. If contaminated spoil that was not anticipated or provided for in the permit application is encountered during dredging, dredging operations shall be immediately terminated and the TCEQ shall be contacted by calling the State of Texas Environmental Hotline at 1-800-832-8224. Dredging activities shall not be resumed until authorized by the Commission.
10. Contaminated water, soil, or any other material shall not be allowed to enter a watercourse. Noncontaminated storm water from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000. A copy of the general permit, application (notice of intent), and additional information is available at: http://www.tceq.state.tx.us/nav/permits/wq_construction.html or by contacting the TCEQ Storm Water & Pretreatment Team at (512) 239-4671.
12. Upon completion of earthwork operations, all temporary fills shall be removed from the watercourse/wetland, and areas disturbed during construction shall be seeded, riprapped, or given some other type of protection to minimize subsequent soil erosion.

Ms. Janet Thomas Botello
USACE Permit Application Number SWG-2009-01192
Attachment 1 -- Dredge and Fill Certification
Page 3 of 3

Any fill material shall be clean and of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters.

13. Disturbance to vegetation will be limited to only what is absolutely necessary. After construction, all disturbed areas will be revegetated to approximate the pre-disturbance native plant assemblage.
14. Where the control of weeds, insects, and other undesirable species is deemed necessary by the permittee, control methods which are nontoxic to aquatic life or human health shall be employed when the activity is located in or in close proximity to water, including wetlands.
15. Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the water, or otherwise interfere with reasonable use of the water in the state.
16. Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms, putrescible sludge deposits, or sediment layers which adversely affect benthic biota or any lawful uses.
17. Surface waters shall be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of reservoirs, lakes, and bays.
18. The work of the applicant shall be conducted such that surface waters are maintained in an aesthetically attractive condition and foaming or frothing of a persistent nature is avoided. Surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.
19. This certification shall not be deemed as fulfilling the applicant's/permittee's responsibility to obtain additional authorization/approval from other local, state, or federal regulatory agencies having special/specific authority to preserve and/or protect resources within the area where the work will occur.

Tier II 401 Certification Questionnaire and Alternatives Analysis Checklist

Does your project meet Texas' water quality standards?

The Texas Commission on Environmental Quality (TCEQ) must consider this question for all proposed projects seeking a Section 404 dredge and fill permit.

One of the requirements for obtaining a Corps of Engineers Section 404 permit is certification from the TCEQ that the permit will comply with State water quality standards. This requirement is authorized by Section 401 of the Federal Clean Water Act, and is therefore referred to as 401 certification.

The attached 401 certification questionnaire must be submitted in order for the TCEQ to determine whether or not a project should be granted 401 certification. Please note that the information requested in this questionnaire is not required in order for a Section 404 application to be considered administratively complete by the Corps of Engineers. However, failure to provide this information (including the Alternatives Analysis Checklist) to the TCEQ (within 30 days of the public notice) may cause your project to be denied 401 certification without prejudice.

What do you need to submit to TCEQ?

- 1 A completed 401 certification questionnaire
- 2 A completed Alternatives Analysis Checklist (if your project affects surface water in the State, including wetlands)
- 3 A map with the location of the project clearly marked (A U.S. Geological Survey (USGS) topographic map strongly recommended)
- 4 Photographs or a video cassette showing the project area and any associated disposal areas (Map and photos should be numbered to show where the photos were taken and the area covered by each photo)

What is involved in review of Section 401 certifications?

1. Filing an application with the Corps starts both the 404 permit and the 401 certification processes
2. A Joint Public Notice is issued by the Corps and the TCEQ after receipt by the Corps of a completed application to inform the public and other government agencies of the proposed activity
 - A 30 day comment period follows
 - The TCEQ may hold a public hearing to consider the potential adverse impacts of the proposed project on water quality
 -
3. The TCEQ may request additional information from the application, persons submitting comments or requesting a hearing, or other resource agencies
4. A final 401 certification decision will be provided following the end of the comment period.



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Tier II 401 Certification Questionnaire

The following questions seek to determine how adverse impacts will be avoided during construction or upon completion of the project. If any of the following questions are not applicable to your project, write NA ("not applicable") and continue.

Please include the applicant's name as it appears on the Corps of Engineers' permit application (and permit number, if known) on all material submitted. The material should be sent to:

Texas Commission on Environmental
Quality Attn: 401 Coordinator (MC-150)
P.O. Box 13087 Austin,
TX 78711-3087

I. Impacts to surface water in the State, including wetlands

A. What is the area of surface water in the State, including wetlands, that will be disturbed, altered or destroyed by the proposed activity?

5.98 acres total consisting of approximately: 1.92 acres of open water/sand bottom to dredge channel; 0.24 acres of open water sand bottom impacted by breakwater construction; 3.82 acres re-graded for wetlands restoration activities, of this 3.82 acres approximately 2.1 acres are wetlands.

B. Is compensatory mitigation proposed? *NO*

If yes, submit a copy of the mitigation plan. If no, explain why not. The proposed project goal is to restore Pine Gully to conditions that existed prior to a sand plug forming in the gully which has caused the intertidal wetlands within the Gully to become unstable and exist in a degraded state. Although compensatory mitigation is not being proposed, the applicant will submit a "restoration plan" which resembles typical mitigation plans including site monitoring and success criteria. The restoration plan is attached.

C. *Please complete the attached Alternatives Analysis Checklist.*

II. Disposal of waste materials

A. Describe the methods for disposing of materials recovered from the removal or destruction of existing structures. *Project does not include removal or destruction of existing structures.*

B. Describe the methods for disposing of sewage generated during construction. If the proposed work establishes a business or a subdivision, describe the method for disposing of sewage after completing the project. *Not applicable to project*

C. For marinas, describe plans for collecting and disposing of sewage from marine sanitation devices. Also, discuss provisions for the disposing of sewage generated from day-to-day activities. *Not applicable to project*

III. Water quality impacts

A. Describe the methods to minimize the short-term and long-term turbidity and suspended solids in the waters being dredged and/or filled. Also, describe the type of sediment (sand, clay, etc.) that will be dredged or used for fill. *Material is very fine sand. Turbidity / suspended solids from excavation of material is expected to be minimal and short term impact only. BMP's such as hay bales and/or silt curtain will be used adjacent to de-watering area.*

B. Describe measures that will be used to stabilize disturbed soil areas, including: dredge material mounds, new levees or berms, building sites, and construction work areas. The description should address both short-term (construction related) and long-term (normal operation or maintenance) measures. Typical measures might include containment structures, drainage modifications, sediment fences, or vegetative cover. Special construction techniques intended to minimize soil or sediment disruption should also be described.

Areas which are excavated / re-graded are being returned to more natural grades which existed prior to sedimentation. Short-term stabilization of sediments is not necessary. Long-term the excavated / re-graded areas will be planted with spartina alterniflora at appropriate elevations. The success of the alterniflora plantings will be monitored in accordance with the restoration plan.

C. Discuss how hydraulically dredged materials will be handled to ensure maximum settling of solids before discharging the decant water. Plans should include a calculation of minimum settling times with supporting data (Reference: Technical Report, DS7810, Dredge Material Research Program, GUIDELINES FOR DESIGNING, OPERATING, AND MAINTAINING DREDGED MATERIAL CONTAINMENT AREAS). If future maintenance dredging will be required, the disposal site should be designed to accommodate additional dredged materials. If not, please include plans for periodically removing the dried sediments from the disposal area.

No hydraulic dredging is proposed.

D. Describe any methods used to test the sediments for contamination, especially when dredging in an area known or likely to be contaminated, such as downstream of municipal or industrial wastewater discharges.

There are no known sources of contamination for sediments in the area. Therefore, no contamination testing is proposed.



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Tier II Alternatives Analysis Checklist

I. Alternatives

A. How could you satisfy your needs in ways which do not affect surface water in the State?
Project is specific to the restoration of Pine Gully and its wetland habitat. Project cannot proceed without working in surface water in the State.

B. How could the project be re-designed to fit the site without affecting surface water in the State? *See answer to A. above*

C. How could the project be made smaller and still meet your needs?

D. What other sites were considered? *None*

1 What geographical area was searched for alternative sites? *None*

2 How did you determine whether other non-wetland sites are available for development in the area? *N/A*

3 In recent years, have you sold or leased any lands located within the vicinity of the project? If so, why were they unsuitable for the project? *No*

E. What are the consequences of not building the project? *Pine Gully would remain in a fluctuating condition and its wetland habitat would continue to degrade.*

II. Comparison of alternatives. *Please see following pages for answers to remaining questions.*

A. How do the costs compare for the alternatives considered above?

B. Are there logistical (location, access, transportation, etc.) reasons that limit the alternatives considered?

C. Are there technological limitations for the alternatives considered?

D. Are there other reasons certain alternatives are not feasible?

III. If you have not chosen an alternative which would avoid impacts to surface water in the State, please explain:

A. Why your alternative was selected, and

B. What you plan to do to minimize adverse effects on the surface water in the State impacted.

IV. Please provide a comparison of each criteria (from Part II) for each site evaluation in the alternatives analysis.

Continuation of Tier II Questionnaire:

II. Comparisons of alternatives

A. How do the costs compare for the alternatives considered above? *This project considered the following alternatives (due to the nature of the project activity; stream and wetland restoration; all alternatives have an effect on the waters of the State): See Page 4 of included Memorandum document.*

- a. *Restore Pine Gully to a freshwater wetland system*
- b. *Sediment removal and re-grading to restore saltwater wetland system*
- c. *Increase flow in the Gully*
- d. *Breakwater*
- e. *Groins*
- f. *Jetties*

Alternatives a-c were considered to determine the alternative to restore the hydrology and habitats of Pine Gully. Alternatives d-f were proposed in conjunction with the re-establishment of a saltwater marsh or creation of a freshwater wetland.

In this analysis cost was not compared between alternatives a-c. Associated cost for alternatives d-f were similar.

The alternatives were analyzed using the following criteria based on stakeholder input.

- *Provide Effective Solution*
- *Restore productive and healthy ecosystem*
- *Improve circulation and water quality*
- *Prevent flooding of upland properties*
- *Restore and Protect recreation Uses*
- *Provide long-term sustainable solution*
- *Prevent negative effects on adjacent areas*

B. Are there logistical reasons that limit the alternatives considered? *Due to the nature of the project, all alternatives considered are specific to the issues within Pine Gully. No alternatives outside of Pine Gully could be considered.*

C. Are there technological limitations for the alternatives considered? *No*

D. Are there other reasons certain alternatives are not feasible? *The applicant believes all feasible alternatives were explored within the alternative analysis, especially as it relates the analysis criteria based on local stakeholder recommendations as outlined above.*

III. If you have not chosen an alternative which would avoid impacts to surface water in the State, please explain:

A. Why your alternative was selected? *Please see the attached Memorandum, which includes an updated alternative analysis report (page 2-19). The chosen alternatives provide the most effective and positive results using the selection criteria identified. See table 1 on page 15 of attached memorandum. Several breakwater, groin, and jetty designs were modeled for*

Alternative	Effectiveness	Restore Ecosystem	Improve Water Quality	Prevent Flooding	Recreational Uses	Sustainable	Effect on Adjacent Areas
Restore freshwater wetland system	■	○	●	●	●	■	○
Remove sediment and restore saltwater wetland system	■	■	■	■	■	■	○
Increase flow	●	○	○	●	○	●	○
Breakwater	●	○	●	●	●	●	●
Groins	●	○	●	●	●	●	●
Jetties	■	■	■	●	●	■	■

Key: ● = negative effect / ineffective, ○ = some negative effect / partially effective, ○ = neutral / balanced effect, ■ = some positive effect / partially effective, ■ = positive effect / effective

MEMORANDUM OF UNDERSTANDING PINE GULLY PROJECT PHASE III SERVICE AGREEMENT

CITY: CITY OF SEABROOK, a home rule municipality of the State of Texas

ADDRESS 1700 First Street
Seabrook, Texas 77586

GBF: GALVESTON BAY FOUNDATION

ADDRESS: 17330 Highway 3
Webster, Texas 77598

PHA: PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY,
TEXAS, a political subdivision of the State of Texas

ADDRESS: 111 East Loop North
Houston, Texas 77029
Attn: Executive Director

EFFECTIVE DATE: July 2, 2013

CONTRACT AMOUNT: \$598,606

This Memorandum of Understanding for Pine Gully Project Phase III Service Agreement (the "Agreement") is entered as of the Effective Date between the CITY, PHA and GBF, with reference to the following. Capitalized terms not otherwise defined herein shall have the meanings set forth below.

A. The CITY and PHA previously entered into a Memorandum of Settlement Agreement which was executed by the parties on or about November 5, 2007 ("Settlement Agreement"). The Settlement Agreement generally provides that PHA and CITY will contract with GBF to investigate and mitigate the sedimentation of Pine Gully in the City, and specifically provides in subparagraph 2. "Pine Gully":

a. In the interest of resolving the Pine Gully Dispute, each of the parties has contracted with the Galveston Bay Foundation ("GBF"), under substantially identical agreements providing for equal shares of responsibility and reimbursement in all respects, to investigate and mitigate sedimentation of Pine Gully in Seabrook (the "Pine Gully Project"). In connection therewith, GBF engaged the engineering firm Moffat & Nichols ("M&N") to assist with Pine Gully Creek – Phase I of the Pine Gully Project, as described under the heading of "PHASE I SCOPE OF WORK" in M&N's letter of June 7, 2007.

b. The parties agree to further contract with GBF, under substantially identical agreements acceptable to the parties and providing for equal shares of responsibility and reimbursement in all respects (individually, a "Pine Gully II Agreement"), to assist with Pine Gully Creek – Phase II of the Pine Gully Project ("Pine Gully Project – Phase II"), provided that the cost thereof incurred by each party shall not exceed \$36,400. The parties agree and stipulate that they each have available funds for the expenditure of the subject costs. The parties agree that Pine Gully Project – Phase II shall consist of preliminary engineering design and permitting of the Pine Gully Project, as further described under the heading of "PHASE II OUTLINE OF WORK" in M&N's letters of June 7, 2007 and October 5, 2007. It is the express understanding and intent of the parties that the GBF shall be the permittee of the Pine Gully Project and shall apply for such permits (collectively, the "Pine Gully Permits") on or before one hundred twenty (120) days following the Approval Date.

c. The parties agree to further contract with GBF, under agreements acceptable to the parties providing for equal shares of responsibility, and that PHA shall bear the costs of the work (individually, a "Pine Gully III Agreement"), to assist with Pine Gully Creek – Phase III of the Pine Gully Project ("Pine Gully Project – Phase III"), provided that the cost thereof incurred by the PHA shall not exceed \$302,200. In the event the cost of Pine Gully Project – Phase III exceeds, or is expected to exceed, such amount, the parties shall attempt to resolve the matter using the procedures set forth in Section 10 below. The parties agree that Pine Gully Project – Phase III shall consist of the final design and construction services phase of the Pine Gully Project, as further described under the heading of "PHASE III OUTLINE OF WORK" in M&N's letters of June 7, 2007 and October 5, 2007, and with terms providing for construction to begin on or before three (3) months after GBF obtains all the Pine Gully Permits. It is the express understanding and intent of the parties that the GBF shall manage construction of the Pine Gully Project. The Pine Gully III Agreement shall also provide that GBF shall use its reasonable best efforts to diligently complete the Pine Gully Project – Phase III after obtaining all the Pine Gully Permits and the funds required to complete it.

d. The parties further agree that PHA shall commit and/or set aside an additional \$200,000 that would be available during a period of three (3) years from the completion of the re-vegetation of Pine Gully at the end of Phase III, with such funds to be applied by GBF to any expenditures required for additional rehabilitation of Pine Gully only if future problems, such as re-sedimentation of Pine Gully, arise within that three-year period (Pine Gully Project – Phase IV). The criteria of Pine Gully Project – Phase IV are set forth in Exhibit B-1. PHA stipulates that it has currently available funds for the obligations required herein.

e. The parties acknowledge that they have cooperated to obtain third-party funding for the Pine Gully Project. The parties agree that any third-party funds, including any CEPRAs grant funds from the Texas General Land Office, shall be applied to permissible expenditures relating to the design/permit and/or restoration of Pine Gully, and that funds that Seabrook and/or PHA would have otherwise spent, as described above, shall be applied as necessary to cover monitoring costs associated with Pine Gully restoration. It is further agreed that any remaining funds intended for Phase II or Phase III shall be available for enhancement and improvement of Pine Gully Park within the time limitations of Pine Gully Project – Phase IV in the manner requested by Galveston Bay Foundation and approved by the parties. The parties shall continue to reasonably cooperate to obtain third-party funding.

B. The CITY, GBF and PHA have been working together to investigate and mitigate sedimentation at the mouth of Pine Gully in Seabrook, Texas (the “Pine Gully Project”) under prior corresponding substantially identical Agreements pursuant to the Settlement Agreement. This Agreement is to further confirm the understanding, contracting and funding of the Pine Gully Project- Phase III (“Phase III”) as made the basis of the Settlement Agreement (paragraph 2.c. above quoted provisions) between CITY and PHA, and the additional services and funding necessary for Phase III totaling \$598,606, pursuant to the lowest bid received for such services under the circumstances.

C. The CITY, GBF and PHA desire to accomplish the work required for Phase III. The CITY, with the assistance of GBF, through the competitive bidding process solicited bids for the Phase III project services (“Contractor Services”). The low bid received by the CITY for such restoration services was from Crawley Shoreline Construction, Inc (“Contractor”) in the amount of \$598,606 (“Contract Amount”). The Contract Amount exceeds the amount of \$302,200 committed by PHA in the Settlement Agreement, and requires the CITY and PHA to attempt to reach a resolution for the Contract Amount. In order to reach a resolution for payment of the balance remaining for payment of the Contract Amount, the CITY has committed \$250,000 and GBF has committed \$348,606 for funding (“Pledged Amounts”) for payment of the Contract Amount. Pursuant to the Settlement Agreement, PHA acknowledges and consents to the CITY entering into the agreement with Contractor with respect to the Pledged Amounts for payment of the Contract Amount. GBF represents and confirms that it has received the \$302,200 committed by PHA for Phase III and has current available funds for the above referenced Pledged Amounts for payment to the City for Contractor Services and the Contract Amount as provided hereafter.

For good and valuable consideration, the CITY, PHA and GBF agree as follows:

1. Payment.

a. GBF shall pay to Contractor the total sum of \$348,606 for Contractor Services in such payments and at such times as directed by CITY, following the CITY approval of the agreement for the Contractor Services/Contract Amount.

c. CITY shall pay the total sum of \$250,000 for Contractor Services as required for funding for Contractor Services/Contract Amount.

2. CITY Obligations.

a. CITY shall be responsible for administering the contract with Contractor for the Contract Services in accordance with the contract and bid specifications, which have been provided to GBF and PHA.

b. CITY shall direct the Pledged Amounts to pay Contractor for the Contractor Services in accordance with the contract and bid specifications, which have been provided to GBF and PHA.

3. Independent Contractor. The relationship of CITY, PHA and GBF shall be that of independent contractors. The subject parties shall have no authority to direct day-to-day activities of any of the personnel employed by the other. Conversely, neither party shall have authority to bind the other unless otherwise reflected in this Agreement.

6. Miscellaneous.

a. This Agreement and the legal relations of the parties shall be interpreted and enforced in accordance with the laws of Texas applicable to agreements negotiated, executed, delivered, and fully performed in Harris County, Texas. Venue for any dispute or litigation shall be exclusively in Harris County, Texas.

b. Failure of either party to insist on the strict performance of this Agreement or to exercise any rights or remedies upon default or failure of performance shall not be considered a waiver of the rights to insist upon and to enforce by an appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

c. This Agreement constitutes the entire agreement between the parties hereto, and no prior oral or written agreements, understandings, negotiations, or representations shall serve to modify or amend this Agreement. This Agreement shall not be modified except by written amendment executed by the parties hereto or their heirs, assigns, or successors in interest.

d. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

e. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, assigns or successors in interest.

f. This Agreement shall not bestow any rights upon any third party but rather shall benefit only CITY, PHA and GBF.

g. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any provision of this Agreement void, shall not affect the validity or enforceability of any other provision. Any such provision shall be deemed severed from this Agreement and the remainder hereof shall be construed and enforced as if this Agreement did not contain the particular provision.

h. The parties shall immediately disclose to each other any representation or engagement it has or may undertake in the future that is or could become a conflict with the other's interests in relation to this Agreement.

The parties to this Agreement hereby execute this Agreement in one or more copies, each shall be considered an original, but all shall evidence only one agreement, as of the Effective Date.

GBF:

GALVESTON BAY FOUNDATION

By: _____
Name: _____
Title: _____

PHA:

**PORT OF HOUSTON AUTHORITY
OF HARRIS COUNTY, TEXAS**

By: _____
Executive Director

APPROVED AS TO FORM:

APPROVED:

Deputy Executive Director/General Counsel

Vice President, Strategic Planning

CITY OF SEABROOK:

By: _____
Glenn Royal
Mayor

ATTEST:

Michele L. Glaser, TRMC
City Secretary



June 27, 2013

Mr. Arthur Chairez
Director of Public Works
City of Seabrook
1700 First Street
Seabrook, Texas 77586

Re: **Recommendation of Award**
Pine Gully Jetties
Seabrook Project No. 2013-07

Dear Mr. Chairez,

Bids for the referenced project were received on April 23, 2013, and a tabulation of those is attached to this letter. The low bid was submitted by Crawley Shoreline Construction, Inc. Based on our review of the bids and qualifications of the bidder, we recommend award of the contract to Crawley Shoreline Construction, Inc. for a total Bid Price of \$598,606.00. If you have any questions or require additional information, I can be contacted at 281-993-4952.

Sincerely,

COBB, FENDLEY & ASSOCIATES, INC.

A handwritten signature in blue ink that reads "B Matlock".

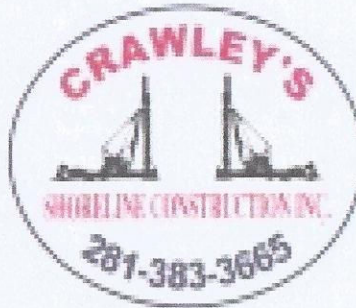
Brad Matlock, P.E.
Senior Project Manager

cc: Kelly Templin, City of Seabrook
Shari Lee, Riveron Corp.
File

Attachment

Client: CITY OF SEABROOK
Project Name: PINE GULLY JETTIES
Bid Date: APRIL 23, 2013

				Bidder No. 1		Bidder No. 2	
				Crawley Shoreline construction, Inc.		Bertucci Contracting Company, LLC	
Item No.	Item Description	Unit	Quantity	Unit Price	Extended Price	Unit Price	Extended Price
	BASE BID JETTIES						
1	Mobilization/Demobilization	LS	1	\$ 5,600.00	\$ 5,600.00	\$ 200,000.00	\$ 200,000.00
2	Jetties	LS	1	\$ 591,006.00	\$ 591,006.00	\$ 1,425,525.00	\$ 1,425,525.00
3	Signs, Complete in Place	EA	4	\$ 500.00	\$ 2,000.00	\$ 4,000.00	\$ 16,000.00
TOTAL BASE BID PRICE				\$ 598,606.00		\$ 1,641,525.00	
	STANDBY TIME						
4	Daily Rate (Up to 6 Days)	Per Day			\$ 6,000.00		\$ 25,172.82
5	Weekly Rate (Up to 4 Weeks)	Per Week			\$ 27,500.00		\$ 176,209.74



June 12th, 2013

To Whom It May Concern,

Crawley Shoreline Construction, Inc. agrees to a extension of the bid prices for an additional 30 days for the Seabrook Pine Gully Jetties Project.

Thank You,

Robert Crawley

President – Crawley Shoreline Construction, Inc.

281-383-3665

bcrawley@crawleyshoreline.com

A handwritten signature in black ink, appearing to be "R. Crawley", written over a horizontal line.

Robert Crawley

6-12-13

Date

The City Council of the City of Seabrook met in regular session on Tuesday, June 18, 2013 at 7:00 p.m. in Seabrook City Hall, 1700 First Street, Seabrook, Texas to discuss, consider and if appropriate, take action on the items listed below.

THOSE PRESENT WERE:

GLENN R. ROYAL	MAYOR
ROBERT LLORENTE	COUNCIL PLACE NO. 1
MIKE GIANGROSSO	COUNCIL PLACE NO. 2
GARY JOHNSON	COUNCIL PLACE NO. 3
DON HOLBROOK	COUNCIL PLACE NO. 4
THOM KOLUPSKI	COUNCIL PLACE NO. 5
LAURA DAVIS	MAYOR PRO TEM & COUNCIL PLACE NO. 6
KELLY TEMPLIN	CITY MANAGER
GAYLE COOK	ASSISTANT CITY MANAGER
STEVEN L. WEATHERED	CITY ATTORNEY
MICHELE L. GLASER	CITY SECRETARY

Mayor Royal called the meeting to order at 7:00 p.m. and led the audience in the United States and Texas Pledges of Allegiance.

1.0 PRESENTATIONS

1.1 Present Certificates of Appreciation to Public Safety Members. (Council)

Mayor Royal presented the proclamations.

1.2 Present a proclamation to John Coggeshall. (Council)

Mr. Coggeshall was unable to attend the meeting.

1.3 Present the quarterly report of the Open Space & Trails Committee's Activities. (Burton)

Open Space and Trails Committee Chair Helen Burton gave an update on recent committee activities, including John Coggeshall's successful grant application for the extension of trails, the progress of the natural playground, planning a formal dedication of the playground and tree planting in the parks. The committee is also considering an adopt-a-park program as well as recycling in the parks. To date, the committee has raised over \$13,000 for the natural playground.

2.0 PUBLIC COMMENTS AND ANNOUNCEMENTS – None.

2.1 Mayor, City Council and/or members of the city staff may make announcements about city/community events. (Council)

Council members announced upcoming events.

3.0 SPECIFIC PUBLIC HEARING(S)

3.1 Request to change the zoning classification of land described below from the current classification of C-3 (Commercial - Heavy) to R-3 (Residential – Medium Density.) Proposed Ordinance No. 2013-09.

Applicant/Owner WMF Investments, Inc. 16865 Diana Lane, Suite 200, Houston, Texas 77058

Legal Description: 3300 Bayport Blvd. TR 21 E 1803.08 ft of Lots 19 & 20 & Adj. 93.13 ft of Lot 21, Ruggle's Subdivision. This property is located immediately east of Bayport Boulevard and immediately north of Seabrook Circle.

Mayor Royal announced that the applicant requested that his application be withdrawn and that such request must be approved by Council. Mayor Royal stated that the city would still hold the public hearing if any member of the public wished to make a comment or speak for or against the request.

Dr. Aquino and Gary Douglas, both owners of property on Seabrook Circle spoke against the zoning change stating that apartments would devalue their property.

3.2 Request to change the zoning classification of land described below from the current classification of R-2 (Single-family detached residential district-small lots) to OS (Old Seabrook.) Proposed Ordinance No. 2013-10.

Applicant/Owner: OSVillage, LLC, 2510 De Four Trace, Seabrook, TX 77586

Legal Description: Lots 1-7, Block 1, and Lots 1-7, Block 2, Baybrook Section 1. This property is located along the unimproved right-of-way, Auden Drive, which is located east of North Meyer, north of First Street, and south of Brook wood Court.

Sean Landis, the Director of Community Development, explained the request to rezone 14 acres of land along Meyer Road, of which nine acres is zoned as OS: Old Seabrook. The applicant is requesting a zoning change to develop the property for a mixed-use residential and commercial development. Mr. Landis showed conceptual drawings of the proposed development which is designed to be pedestrian friendly. The developer plans to elevate the streets approximately four feet higher than the current elevation. Mr. Landis stated that all development will comply with FEMA regulations. He reported that the Planning & Zoning Commission had unanimously recommended this request.

Mark Caldwell, applicant, stated that he has requested the zoning change as commercial uses are not permitted in the current R-2 zone and to move the houses closer to the street. (R-2 zoning requires 20-foot front setbacks; OS zoning has no front setback.) The development will include a walkway along Meyer Road, increase in the height of the streets from

approximately 8 feet to 12 feet, with buildings at approximately 17-1/2 feet in height. Garages will be on the back of the properties and will be accessed by alleys that are placed behind the buildings. Improvements on the lots will be close to the street. Mr. Caldwell stated that he plans to do a Planned Unit Development (PUD) after obtaining the zoning change to allow for smaller lot sizes than is allowed in the OS zone.

Councilor Kolupski stated that he liked the concept but was concerned about the lack of a buffer requirement between OS and the adjoining R-1 zone. Councilor Davis asked Mr. Landis if Council could require a buffer if the property was developed as a PUD. Mr. Landis stated "yes" for a PUD, "no" for the zoning change. Councilor Davis asked if Council could approve a rezoning request contingent upon a PUD. Mr. Landis stated "no." Councilor Davis asked what kinds of businesses were permitted in the OS zone. Mr. Landis stated that the businesses are mainly "neighborhood friendly" with the most intensive use being a restaurant. Mr. Landis stated if a PUD is requested, the city could impose stipulations on the property. Mr. Landis confirmed that a PUD application would require the same procedures and public notices as a zoning change. He also stated that a zoning change only was requested at this time.

From the audience, Vera Bollock, Brookwood Court, asked if the developer had performed any traffic studies to determine what impact the proposed development would have. She asked if the development's walking paths would connect to the existing trails at Meador Park. Josh Derrick, Brookwood Court, asked about an increase in flooding if the development's property is higher than his adjacent property. Mr. Landis stated that the road will be 4-5 feet higher than the existing ground and that a drainage engineering study would be required at the time of platting. Rosa Ludd, Brookwood Court, had concerns about the displacement of wildlife when the property was developed. She also expressed concerns about flooding. Mark Westum, Meyer asked if Meyer Road would be elevated in addition to the internal streets.

4.0 CONSENT AGENDA

4.1 Approve an excused absence for Thom Kolupski for the May 7, 2013 Council meeting. (Glaser)

4.2 Removed from the Consent Agenda by Mr. Weathered.

4.3 Approve the April and May 2013 Community Development Reports. (Landis)

4.4 Approve the Public Safety Report for May 2013. (Holomon)

4.5 Removed from the Consent Agenda by Mr. Weathered.

4.6 Approve second and final reading of proposed Ord. No. 2013-08, "Standards for Planned Unit Developments." (P&Z/Landis)

AN ORDINANCE AMENDING THE SEABROOK CITY CODE, APPENDIX A, "COMPREHENSIVE ZONING," ARTICLE 4 "SPECIAL USE REGULATIONS", SECTION 4.10, "PLANNED UNIT DEVELOPMENTS," BY REVISING SUBSECTION, 4.10.02 "PUD LOCATIONS", PROVIDING FOR A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 PER OFFENSE FOR VIOLATION OF ANY PROVISION HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY.

Motion was made by Councilor Holbrook and seconded by Councilor Kolupski

To approve the Consent Agenda with the exception of Items 4.2 and 4.5.

MOTION CARRIED BY UNANIMOUS CONSENT.

4.2 Approve the June 4, 2013 City Council Minutes.

Mr. Weathered asked for a correction on Lines 199-20 as follows: "Mr. Weathered stated that this resolution gives the city manager complete discretion as to the membership of the committee, [~~as any committee with council appointed members must adhere to the charter~~] while conversely any committee created by council with council appointed members must adhere to the charter which requires all members to be citizens of Seabrook."

Motion was made by Councilor Holbrook and seconded by Councilor Johnson

To approve the minutes with the noted corrections.

MOTION CARRIED BY UNANIMOUS CONSENT.

4.5 Approve second and final reading of proposed Resolution No. 2013-13, "Economic Incentives Agreement for the Asparagus Group, L.L.C." State law requires two readings of this Resolution. (EDC)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEABROOK, TEXAS, MAKING FINDINGS AND APPROVING AGREEMENT BETWEEN CITY OF SEABROOK, SEABROOK ECONOMIC DEVELOPMENT CORPORATION, AND ASPARAGUS GROUP, L.L.C. PROVIDING FOR ECONOMIC INCENTIVES IN THE NEIGHBORHOOD EMPOWERMENT ZONE DESIGNATED AS "THE NEIGHBORHOOD EMPOWERMENT ZONE #1" AS ESTABLISHED BY RESOLUTION 2013-09.

Mr. Weathered stated that there is a typographical error in Paragraph 2 D as the word "percent" is written twice.

Motion was made by Councilor Giangrosso and seconded by Councilor Llorente

To approve Resolution No. 2013-13, with the noted correction, on second and final reading with the reading of the caption serving as the reading of the ordinance.

MOTION CARRIED BY UNANIMOUS CONSENT.

END OF CONSENT AGENDA

5.0 NEW BUSINESS

5.1 Consider first reading of proposed Ordinance No. 2013-09, "Amendment to the Official Zoning Map to Rezone 16.27 acres of land from a portion of Ruggle's Subdivision from C-3 to R-3." (Applicant/P&Z)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SEABROOK WHICH IS PART OF THE SEABROOK CITY CODE OF ORDINANCES, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE 2, "ADMINISTRATION", SECTION 2.05, "OFFICIAL ZONING MAP", BY REZONING 16.27 ACRES, FROM A TRACT OF LAND BEING A 22.6755 ACRE TRACT OUT OF THE RITSON MORRIS SURVEY, ABSTRACT 52, BEING PART OF LOTS NINETEEN (19), TWENTY (20), AND TWENTY-ONE (21) OF THE RUGGLE'S SUBDIVISION, HARRIS COUNTY, TEXAS FROM C-3 MEDIUM COMMERCIAL DISTRICT TO R-3 RESIDENTIAL-MEDIUM DENSITY DISTRICT AND REQUIRING THAT THE ZONING MAP BE AMENDED TO REFLECT THIS CHANGE.

THIS ORDINANCE PROVIDES FOR A PENALTY IN AN AMOUNT OF NOT MORE THAN \$2,000.00 FOR VIOLATION OF ANY PROVISIONS HEREOF BY INCLUSION INTO THE CODE; REPEALS ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDES FOR SEVERABILITY.

Motion was made by Councilor Holbrook and seconded by Councilor Giangrosso

To approve the applicant's request to withdraw this item from consideration.

Ayes: Royal, Giangrosso, Holbrook, Johnson, Kolupski, Llorente..
Nays: Davis.

MOTION CARRIES BY MAJORITY VOTE.

5.2 Consider first reading of proposed Ordinance No. 2013-10, Amendment to the Official Zoning Map to Rezone Blocks 1 and 2 of Baybrook Subdivision, Section 1 from R-2 to OS. (Applicant/ P&Z)

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SEABROOK WHICH IS PART OF THE SEABROOK CITY CODE OF ORDINANCES, APPENDIX A, "COMPREHENSIVE ZONING", ARTICLE 2, "ADMINISTRATION",

SECTION 2.05, "OFFICIAL ZONING MAP", BY REZONING 4.39 ACRES CONSISTING OF LOTS ONE (1) – SEVEN (7), INCLUSIVE, BLOCK ONE (1) AND LOTS ONE (1) – SEVEN (7), INCLUSIVE, BLOCK TWO (2) OF THE BAYBROOK SUBDIVISION, SECTION ONE (1), A SUBDIVISION IN HARRIS COUNTY, TEXAS FROM R-2 SINGLE-FAMILY DETACHED RESIDENTIAL DISTRICT-SMALL LOTS TO OS OLD SEABROOK DISTRICT AND REQUIRING THAT THE ZONING MAP BE AMENDED TO REFLECT THIS CHANGE.

THIS ORDINANCE PROVIDES FOR A PENALTY IN AN AMOUNT OF NOT MORE THAN \$2,000.00 FOR VIOLATION OF ANY PROVISIONS HEREOF BY INCLUSION INTO THE CODE; REPEALS ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDES FOR SEVERABILITY.

Motion was made by Councilor Kolupski and seconded by Councilor Giangrosso

To approve the first reading of Ordinance No. 2013-10 with the reading of the caption serving as the reading of the ordinance.

Members stated that they liked the concept of the project, but some members expressed concern that the zoning change would prevent the city from requiring a buffer between the new OS zone and the adjacent R-1 zone. Councilor Kolupski and Davis asked the applicant to consider applying for a PUD instead of a zoning change. Mr. Caldwell stated that he may apply for a PUD at a later date but he is not certain he will do so. Mr. Caldwell stated that due to the small size of his lots, it is unlikely that a restaurant will be located in the development. Councilor Giangrosso stated that he liked the concept, but was concerned about the adjacent R-1 zone. He stated that the city has some problems with restaurants abutting homes in Old Seabrook. Council members also discussed the possible effect that the increase in ground elevation could have on the adjoining R-1 zoned lots.

Mr. Caldwell stated that he has been a developer for 30 years, but that this is his first development in Seabrook. He stated that he is aware of the FEMA regulations. He stated that the development will look like a village development. He reported that the interior lots would be in the \$45,000 to \$65,000 range. A typical 2,000 square foot lot, not on the water, would cost \$250,000 to \$450,000 but that the builders will determine those prices. Mr. Caldwell stated that as the proposed lots will typically be 40 feet wide and 80-85 feet deep and thereby smaller than allowed lots in either R-2 or OS, a PUD would be required to divide the land into smaller lots.

Councilor Davis stated that the current R-2 zone currently acts as a buffer between OS zone and the R-1 zone. She stated that rezoning would remove that buffer.

Mayor Royal called for a vote on the motion to approve first reading of Ordinance No. 2013-11 to rezone the existing R-2 property to OS.

Ayes: No one.

Nays: Royal, Davis, Giangrosso, Holbrook, Johnson, Kolupski, Llorente.

MOTION FAILS.

- 5.3 Approve a request from the Seabrook Association for a special events permit for a sidewalk/street sale with live music on Friday, July 19, 2013 from 1:30 p.m. to 9:00p.m. including a request to temporarily close 2nd Street from Hall to Todville during this time, request for temporary signs, request to waive the special events permit fee, all pending receipt of required proof of insurance. (Applicant)**

Motion was made by Councilor Llorente and seconded by Councilor Giangrosso

To approve the request as submitted.

Concerns addressed by Council included the effect the street closing would have on rush hour traffic on a Friday afternoon and the various businesses, made worse by the current construction of Waterfront Drive. Also discussed was the lack of parking for the event. Mayor Royal suggested that the applicant hold the event on a Saturday, pick another location or hold the event without closing the street.

Councilor Holbrook asked Police Captain Sean Wright to give an opinion on closing the street. Captain Wright stated that the police department carries out the wishes of the council. When asked again, Captain Wright stated that Friday during rush hour was not the best day or time to close the street.

Ayes: Giangrosso, Johnson, Llorente.

Nays: Royal, Davis, Holbrook, Kolupski.

MOTION FAILS.

- 5.4 Consider first reading of proposed Ordinance No. 2013-11, "Parking Provisions for Boat Launch." (Templin/Municipal Court)**

AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, ENTITLED "TRAFFIC AND VEHICLES," ARTICLE III, "STOPPING, STANDING, AND PARKING," DIVISION 1, "GENERALLY," TO UPDATE AND FURTHER CLARIFY SECTION 90-69 CURRENTLY ENTITLED, "DESIGNATION OF NO PARKING ZONES- BOAT LAUNCHING AND/OR PARKING;" BY ADDING NEW PROVISIONS AND REVISING TITLE TO "DESIGNATION OF PROHIBITED PARKING – BOAT LAUNCHING, OBSTRUCTION AND DESIGNATED PARKING FOR VEHICLES WITH BOAT TRAILERS;" PROVIDING FOR A PENALTY IN AN AMOUNT OF NOT MORE THAN TWO HUNDRED DOLLARS (\$200.00) FOR VIOLATION OF ANY PROVISIONS HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR NOTICE.

Motion was made by Councilor Davis and seconded by Councilor Holbrook

To approve Ordinance No. 2013-11 on first reading with the reading of the caption serving as the reading of the ordinance.

Mr. Templin stated that the purpose of this ordinance was to clarify the required wording on the signs at the boat ramp.

MOTION CARRIED BY UNANIMOUS CONSENT.

6.1 Consider approval of the Action Items Checklist which is attached and made a part of this agenda. (Council)

Motion was made by Councilor Davis and seconded by Councilor Johnson

To approve the Action Items Checklist.

MOTION CARRIED BY UNANIMOUS CONSENT.

6.2 Establish future meeting dates and agenda items. (Council)

Budget workshops were tentatively scheduled on July 9 and July 23.

7.0 EXECUTIVE SESSION

At 8:32 p.m. Mayor Royal announced that the City Council would hold a closed executive meeting pursuant to the provisions of the Open Meetings Act, Charter 551, Government Code, and Vernon's Texas Codes Annotated, in accordance with the authority contained in Section 551.072, Real Property and Section 551.074, Personnel Matters.

Section 551.074

7.1 Conduct executive session under Section 551.074 Texas Government Code, allowing the Seabrook City Council to deliberate the appointment, employment, evaluation, reassignment and/or duties in relation to the Municipal Court Judge. (Webbon)

Section 551.072

7.2 Conduct a closed meeting as provide by Section 551.072 Texas Government Code to deliberate the sale, purchase or exchange of real property as deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. (Templin)

8.0 OPEN MEETING

Council reconvened in open session at 9:31 p.m. Mayor Royal stated that Council had met in Executive Session to discuss Items 7.1 and 7.2, but no action would be taken.

Upon motion, Mayor Royal adjourned the meeting at 9:32 p.m.

Approved this 2nd day of July, 2013.

Glenn R. Royal, Mayor

Michele L. Glaser, TRMC
City Secretary

ORDINANCE NO. 2013- 11
PARKING PROVISIONS FOR BOAT LAUNCH

AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, ENTITLED “TRAFFIC AND VEHICLES,” ARTICLE III, “STOPPING, STANDING, AND PARKING,” DIVISION 1, “GENERALLY,” TO UPDATE AND FURTHER CLARIFY SECTION 90-69 CURRENTLY ENTITLED, “DESIGNATION OF NO PARKING ZONES- BOAT LAUNCHING AND/OR PARKING;” BY ADDING NEW PROVISIONS AND REVISING TITLE TO “DESIGNATION OF PROHIBITED PARKING – BOAT LAUNCHING, OBSTRUCTION AND DESIGNATED PARKING FOR VEHICLES WITH BOAT TRAILERS;” PROVIDING FOR A PENALTY IN AN AMOUNT OF NOT MORE THAN TWO HUNDRED DOLLARS (\$200.00) FOR VIOLATION OF ANY PROVISIONS HEREOF BY INCLUSION INTO THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR NOTICE.

WHEREAS, the City Council of the City of Seabrook has attempted to be continually aware of the problems and issues relating to hazards, nuisances and other circumstances which negatively impact the health, safety and well-being of its residents, citizens and inhabitants; and

WHEREAS, the City Council of the City of Seabrook has investigated, reviewed and considered complaints and associated concerns addressed to the use of the City parking lot located on the north side of Clear Lake Creek underneath the overpass commonly known as the Seabrook/Kemah Bridge (Parking Lot);

WHEREAS, it has come to the attention of City Council that despite specific signage posted, “Boat Trailer Parking Only;” and the marking of enlarged/lengthened spaces specifically designated for vehicles with boat trailers attached; that nonetheless, vehicles without trailers continue to park in such designated spaces, which detrimentally restricts the capacity of the Parking Lot, causes the associated limitation on the public to launch boats and related watercraft at such site, and creates a hazard to the health, safety and welfare of the citizens of the City; and

WHEREAS, despite the adoption of Ordinance 2010-28 adding Sec. 90-69 “Designation of No Parking Zone - Boat Launching and/or Parking” there continues to be issues of enforcement that the City Council has determined to further clarify and update by this Ordinance; and

WHEREAS, by Ordinance 2013-01, the City Council adopted updated general parking regulations in Section 90-70 “Parking Prohibited; Streets, Road Shoulder, Sidewalks, Alleys and Driveways” which now require the update and revision of Sec. 90-69;

Ordinance No. 2013-11
Page 2

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

SECTION 1. FINDINGS OF FACT.

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

SECTION 2. AMENDMENT TO THE CODE.

That Chapter 90 entitled, "Traffic and Vehicles," Article III, "Stopping, Standing, and Parking," Division 1, "Generally" be amended by revising section 90-69 to amend title to, "Designation of Prohibited Parking – Boat Launching; Obstruction and Designated Parking for Vehicles with Boat Trailers" as follows:

"Sec. 90-69. Designation [of no parking zone — Boat launching and/or parking] ___ of Prohibited Parking – Boat Launching; Obstruction and Designated Parking for Vehicles with Boat Trailers.

(a) Vehicles shall not be parked in violation of posted restrictions and regulations, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or environmental feature. ~~[Vehicles so parked shall be cited with a civil parking violation ticket and are subject to removal and impoundment at the owner's expense or immobilized with a wheel locking device.]~~

(b) It shall be unlawful for any person to park or stand a vehicle in a designated marked space ~~[for vehicles with attached boat trailer]~~ posted with signage as **"Vehicles with Attached Boat Trailers Only,"** without an attached trailer, in the City parking lot located on the north side of Clear Lake Creek underneath the overpass commonly known as the Seabrook/Kemah Bridge. ~~[Any vehicle found in violation shall be cited with a civil parking violation and may be removed at the owner's expense under order of any city police officer.]~~

(c) It shall be unlawful for any person to block or obstruct any public boat-loading ramp except while loading or unloading a watercraft.

~~[(d) — In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such law or regulation, together with proof that the defendant named in the complaint was, at the time of such parking, the registered~~

Ordinance No. 2013-11
Page 3

~~owner of such vehicle shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where and for the time during which such violation occurred.]~~

(d[e]) Whenever any parking time limit is imposed, or parking is prohibited on designated streets or public property by this article or any ordinance of the City, **as required by law**, it shall be the duty of the chief of police to erect appropriate signs giving notice thereof. No such regulations shall be effective unless such signs are erected and in place at the time of any alleged offense **as required by law**.

SECTION 3. PENALTY CLAUSE; INCLUSION INTO THE CODE.

This Ordinance is hereby incorporated into and made a part of the Seabrook City Code. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not more than Two Hundred Dollars (\$200.00) per offense. Each day of violation shall constitute a separate offense.

SECTION 4. REPEAL OF CONFLICTING ORDINANCES.

All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

SECTION 5. SEVERABILITY.

In the event any clause, phrase, provision, sentence, or any 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 6. NOTICE BY PUBLICATION

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.

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PASSED AND APPROVED on first reading this 18th day of June, 2013.

PASSED AND APPROVED on second and final reading this 2nd day of July, 2013.

By: _____
Glenn Royal
Mayor

ATTEST:

By: _____
Michele L. Glaser, TRMC
City Secretary

Approved as to form:

Steven L. Weathered
City Attorney

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>>

Chapter 10 - ANIMALS ^[1]

[ARTICLE I. - IN GENERAL](#)
[ARTICLE II. - ADMINISTRATION](#)
[ARTICLE III. - DOGS AND CATS](#)
[ARTICLE IV. - CARE AND CONTROL](#)
[ARTICLE V. - RABIES CONTROL](#)
[ARTICLE VI. - IMPOUNDMENT](#)
[ARTICLE VII. - COMMERCIAL ESTABLISHMENTS](#)

FOOTNOTE(S):

--- (1) ---

State Law reference— *Animals generally, V.T.C.A., Health and Safety Code § 821.001 et seq.; cruelty to animals, V.T.C.A., Penal Code § 42.09; livestock generally, V.T.C.A., Agriculture Code § 144.001 et seq.* ([Back](#))

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> **ARTICLE I. - IN GENERAL** >>

ARTICLE I. - IN GENERAL

[Sec. 10-1. - Definitions.](#)
[Sec. 10-2. - Purpose.](#)
[Sec. 10-3. - Rules and state laws adopted by reference.](#)
[Sec. 10-4. - Penalty.](#)
[Sec. 10-5. - Bird sanctuary.](#)
[Sec. 10-6. - Enclosures.](#)
[Sec. 10-7. - Number of animals limited.](#)
[Sec. 10-8. - School project exception.](#)
[Sec. 10-9. - Keeping wild or exotic animals.](#)
[Sec. 10-10. - Zoological parks.](#)
[Secs. 10-11—10-35. - Reserved.](#)

Sec. 10-1. - Definitions.

For the purpose of this chapter, the definitions as stated in the current or latest Rabies Control and Eradication rules of the state department of health shall apply with the following exceptions and/or additions:

Animal means a warm-blooded or cold-blooded animal, other than Homo sapiens.

Animal at large shall mean:

(1)

On premises of owner. Any animal not confined to the premises of the owner by some physical means of sufficient height, strength, length and/or manner of construction to preclude the animal from leaving the premises of the owner.

- (2) Off premises of owner. Any animal which is not physically and continually restrained by some person by means of a leash or chain of proper strength and length that precludes the animal from making any unsolicited contact with any person, their clothing, their property and/or their premises.
- (3) Provided, however, that any animal confined within a cage, automobile, truck or any other vehicle of its owner shall not be deemed at large if the animal is constrained in such a manner which will not cause injury and will prevent the animal from reaching the outside of the cage or vehicle.
- (4) Provided, however, that any dog lawfully allowed in an off-leash site as defined by the City Code shall not be deemed at large.

Animal establishment means any pet shop, grooming shop, auction, riding school or stable, zoological park, performing animal exhibition, or kennel.

Animal shelter means any facility operated by the city, a humane society, municipal agency, or any other governmental entity or their authorized agents for the purpose of impounding or caring for animals held under the authority of this chapter or state law.

Confined and *confinement* includes confined within a building, house, or structure or within a fenced yard or premises, so that the animal cannot escape from the building, house, structure, or fenced yard or premises without human assistance.

Enclosure means a house, a building, or a fenced area as further described in [section 10-6](#).

Exotic animal means the same as wild animal.

Grooming shop means a commercial establishment where animals are bathed, clipped, plucked, or otherwise groomed.

Harbor and *harboring* means that an animal is fed, sheltered, or allowed or permitted to remain on a person's property or property under control of such person for three or more days without the person notifying the office of the humane officer.

High-risk animals include skunks, bats, foxes, raccoons, and all other animals declared to be so by the state department of health.

Hobby breeder means any person engaged in the part time recreational activity of raising or breeding animals to strengthen or further develop the species. This can include the occasional sale or trade of the offspring as a means to recover expenses and reduce the population of the animals housed.

Humane officer means the supervisor of the animal control department or his or her duly authorized representative.

Licensing authority means the same as city secretary.

Livestock includes horses, mules, other equine, cattle, sheep, goats, hogs, domestic rabbits and domestic fowl.

Livestock at large is the condition of an animal when it is not located on the property of its owner and not under control of a competent person. The term "at large" includes but is not limited to the condition of being staked, tied or hobbled in any manner within the city limits which allows the animal to go upon public streets or sidewalks or property other than the owner's.

Low-risk animals are all animals of the orders of Marsupialia, Insectivore, Rodentia, Lagomorpha and Xenartha.

Multiple dwelling means any structure designed and intended to accommodate more than one family and includes but is not limited to duplex buildings and apartment buildings.

Owner means any person owning, keeping or harboring one or more animals, and if the owner of an animal is a minor, the parent or guardian of that minor shall be responsible for compliance with the specifications of this chapter.

Pet shop means any building, establishment, premises, or place used for or in the business of buying, selling, trading, or boarding any species of animal, which shall include but not be limited to gerbils, hamsters, guinea pigs, mice, rabbits, birds, dogs, cats, and reptiles. The term does not include a licensed kennel or a person making individual sales of animals by owners. This definition shall not include hobby breeders or persons engaging in the raising or breeding of large domesticated animals such as cattle, horses, or sheep.

Quarantine means complete and total isolation in such a place and in such a manner and for a period of time as may be prescribed by the humane officer.

Regulatory authority means the humane officer or his or her duly authorized representative.

Riding school or *stable* means any place which has available for hire, boarding, and/or riding any horse, pony, donkey, mule, or burro.

Veterinary hospital means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

Wild animal means and includes any mammal, amphibian, reptile, or fowl which is of a species that is wild by nature, and of a species which, due to size, vicious nature, or other characteristic, is or may be dangerous to human beings. Such animals include but are not limited to lions; tigers; leopards; panthers; lynx; wolves; raccoons; ferrets; skunks, whether deodorized or not; monkeys whose average weight as an adult exceeds 20 pounds; foxes; elephants; rhinoceroses; alligators; crocodiles; and all forms of poisonous reptiles. The term "wild animal" does not include gerbils, hamsters, guinea pigs, mice, or rabbits.

(Code 1976, § 5-3; Code 1996, § 10-1; Ord. No. 2012-07, § 2, 3-20-2012)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code §§ 821.051, 822.001, 822.011, 822.041, 822.101, 823.001, 826.002, V.T.C.A., Agriculture Code § 161.001, V.T.C.A., Local Government Code § 240.001.

Sec. 10-2. - Purpose.

The primary function and intent of this chapter is protection of the health, safety, and welfare of the people within the city by controlling the animal population and establishing uniform rules for the control and eradication of rabies.

(Code 1976, § 5-2; Code 1996, § 10-2)

State law reference— Local regulation of dangerous dogs, V.T.C.A., Health and Safety Code § 822.047; municipality may adopt ordinances or rules to control rabies, V.T.C.A., Health and Safety Code § 826.015.

Sec. 10-3. - Rules and state laws adopted by reference.

Animal population and animal control shall be accomplished and regulated in accordance with this chapter; V.T.C.A., Health and Safety Code § 821.001 et seq.; V.T.C.A., Health and Safety Code § 822.001 et seq.; V.T.C.A., Health and Safety Code § 826.001 et seq.; and, the Rabies Control and Eradication rules of the state department of health, §§ 169.21—169.33; which are made part of this chapter by reference.

(Code 1976, § 5-1; Code 1996, § 10-3; Ord. No. 2000-23, § 1, 11-21-2000)

Sec. 10-4. - Penalty.

Any person who intentionally, knowingly, recklessly, or with criminal negligence commits any act prohibited or made or declared to be unlawful by this chapter or who fails to perform any act required by this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished as provided in [section 1-15](#).

(Code 1976, § 5-34; Code 1996, § 10-4)

Sec. 10-5. - Bird sanctuary.

- (a) The entire area embraced within the corporate limits of the city shall be and is designated as a bird sanctuary.
- (b) It shall be unlawful to trap, hunt, shoot or molest in any manner any bird or wildfowl or to rob bird nests or wildfowl nests of protected species within the corporate limits.
- (c) If starlings or similar birds are found to be congregating in such numbers in a particular locality within the corporate limits and by such congregating constitute a nuisance or a menace to health or property in the opinion of the proper city health authorities or the city council, the proper health authority or city council shall meet with representatives of the Audubon Society, bird club, garden club and Humane Society or as many of such clubs as are found to exist in the city and with any members of the public who may be interested, after giving three days' actual notice of time and place for such meeting. If, as a result of such meeting, no satisfactory alternative is found to abate the nuisance, the birds constituting such nuisance may be destroyed, in such numbers and in such manner as may be deemed advisable by the health authorities or city council, under supervision of the chief law enforcement officer of the city or such other person as may be appointed by the city council to supervise such destruction.
- (d) Domestic, feral and related invasive bird species, specifically including "cairina moschata" commonly known as "Muscovy ducks" are specifically removed from the protections afforded by this section. Any removal of such birds shall be done as provided by the City Code of Ordinances, and in compliance with state and federal law.

(Code 1976, §§ 5-26—5-28; Code 1996, § 10-5; Ord. No. 2010-04, § 2, 3-23-2010; Ord. No. 2012-22, § 2, 11-6-2012)

Sec. 10-6. - Enclosures.

For purposes of this chapter, to qualify as an enclosure, the fenced area or pen must have minimum dimensions of five feet by ten feet; must be of such height as to prevent entry of young

children or escape by jumping by the animal; must be locked and secured such that the animal cannot climb, dig, or otherwise escape of its own volition; shall be securely locked at all times; must have secure sides to prevent an animal from escaping from the enclosure; and must provide protection from the elements for the animal contained therein.

(Code 1976, § 5-3; Code 1996, § 10-6)

Sec. 10-7. - Number of animals limited.

- (a) *Dogs and cats in single-family dwelling.* It shall be unlawful for any person to keep, harbor, possess, maintain, or allow to be kept, harbored, possessed, or maintained more than six dogs or six cats or a combination of such animals with the total number exceeding six, over four months old, upon or within the premises of a single-family dwelling owned, occupied, or under the control of such person.
- (b) *Dogs and cats in multiple dwellings.* It shall be unlawful for any person to keep, harbor, possess, maintain, or allow to be kept, harbored, possessed, or maintained more than two dogs or two cats or a combination of such animals with the total number exceeding two, over four months old, upon any premises or within any apartment of a multiple dwelling structure.
- (c) *Litters.* Only one litter from animals permitted under subsections (a) and (b) of this section may be allowed at any given time.
- (d) *Exemptions.* The provisions of this section limiting the number of animals shall not apply to the following:
 - (1) Veterinary hospitals.
 - (2) Pet shops.
 - (3) Animal shelters.
 - (4) Hobby breeding activities for dogs and cats conducted on tracts of land of not less than five acres, provided that the total number of animals shall not exceed two per acre or 12, whichever is less. Further, all enclosures or other kennel facilities utilized by hobby breeders operating pursuant to this subsection shall be located and constructed so as to protect adjacent property owners from noise and air pollution which may result from such breeding activities.

(Code 1976, § 5-21; Code 1996, § 10-7; Ord. No. 98-32, § 1, 10-20-1998)

State law reference— *Permitting registration and restraint of dogs and cats by the governing body of a municipality, V.T.C.A., Health and Safety Code § 826.31 et seq.*

Sec. 10-8. - School project exception.

Certain small domestic animals may be kept in certain residential zones as permitted in appendix A to this Code pertaining to zoning, when and only so long as the following conditions are met:

- (1) The animals are being kept as part of a formal school project, for example and not by way of limitation, a Future Farmers of America project.
- (2) The school instructor in charge must approve the project, monitor the project, approve the pens, and make periodic inspections at least once each three months to ensure good order and cleanliness.
- (3) Such animals may not weigh more than 15 pounds each.
- (4) No more than 15 such animals may be kept on any premises at any one time.
- (5)

Spraying or other extermination for flies, insects and odor control shall be performed at least weekly, and more often if necessary.

- (6) The killing or butchering of animals for other than personal, noncommercial consumption is prohibited.
- (7) The area in which such animals are kept shall not be visible from in front of the residence. Animals shall be contained in pens a minimum of ten feet from the property line.
- (8) Unscheduled inspections may be made by the city building inspector or by the city health official to ensure all conditions of this section are complied with. Failure to meet or continue to comply with all conditions of this section may result in cancellation of the permit by the city building inspector or health official. Upon written notice of such cancellation, all animals and pens shall be removed within ten days after loss of the permit.
- (9) Each person participating in such a project shall apply in writing to the city for issuance of a permit. Such a permit shall be issued only upon presentation of the instructor's written approval, the address at which the animals will be kept, an application fee of \$1.00, and such other information and terms as the building inspector or health official may require.

(Code 1976, § 5-25; Code 1996, § 10-8)

Sec. 10-9. - Keeping wild or exotic animals.

- (a) *Possession prohibited.* It shall be unlawful for any person to buy, sell, possess, keep, permit, suffer, cause, or allow any wild or exotic animal upon or within any premises within the city, except as permitted in this section.
- (b) *Temporary permit.* The humane officer may issue a temporary permit for the keeping, care, and protection of an infant animal native to this area which has been deemed to be homeless or injured. The application for a temporary permit shall be accompanied with a letter or statement of approval from the state department of parks and wildlife.
- (c) *Exceptions.* This section shall not be construed to apply to veterinary hospitals or zoological parks or performing animal exhibitions for which application has been made and a permit received from the city as provided for and required in this chapter.

(Code 1976, § 5-22; Code 1996, § 10-9)

State law reference— Similar provision, V.T.C.A., Parks and Wildlife Code § 62.015.

Sec. 10-10. - Zoological parks.

The term "zoological park" means a tract of land set aside in a natural or manmade state which displays or exhibits more than one nondomesticated animal which is under the control and supervision of a trained experienced professional animal handler and cared for by a licensed veterinarian. The humane officer may require proof of training and experience. The park shall be constructed in such a manner as to preclude the possibility of an animal escaping from such park and/or cages or pens. Park construction, pens, cages, and equipment shall be designed and constructed in such a manner as to protect the animals and the public. Proof of acceptable design and construction may be required by the humane officer. All animals therein and their enclosures shall be approved by the humane officer. Where required, all zoological parks shall be federally inspected and licensed. A park attendant shall be on duty at all times the park is open or accessible to the public.

(Code 1976, § 5-3; Code 1996, § 10-10)

Secs. 10-11—10-35. - Reserved.

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> ARTICLE II. - ADMINISTRATION >>

ARTICLE II. - ADMINISTRATION

Sec. 10-36. - Duties of humane officer.

Sec. 10-37. - Promulgation of rules.

Sec. 10-38. - Enforcement.

Sec. 10-39. - Issuance of citations.

Sec. 10-40. - Notices.

Sec. 10-41. - Collection of fees.

Secs. 10-42—10-65. - Reserved.

Sec. 10-36. - Duties of humane officer.

Under authority of the city council, the humane officer shall enforce any and all regulations of this chapter in any and all parts of the city as is necessary to control the animal population and protect the health and safety of the citizens of the city. In furtherance thereof, the humane officer shall:

- (1) Collect all fees set by the city council necessary to recover the costs incurred in impound and quarantine fees.
- (2) Make all inspections required in this chapter.
- (3) Take up and impound or cause to be taken up or impounded, in the manner authorized by law, all animals in the city which are in violation of this chapter. The humane officer may trap, capture, shoot, tranquilize, or use any other means or methods that may be deemed necessary and prudent to perform the duties imposed in this section. Any person who has control or possession of any animal which is in violation of this chapter shall, upon demand, turn over such animal to the humane officer.
- (4) Sell impounded livestock.
- (5) As soon as possible after an animal has been delivered to or picked up by the humane officer, a record of the animal will be recorded. The record shall include a description of each animal, whether bearing a license tag or not, and the number of the tag and the name of the person registering the animal in each case where the animal bears a license tag. If the animal bears a license tag, the humane officer shall notify the person to whom such license tag was issued.

(Code 1976, § 5-29; Code 1996, § 10-36)

State law reference— *Allowing animal control officer to seize mistreated animal, V.T.C.A., Health and Safety Code § 821.022; permitting animal control authority to seize dangerous dog, V.T.C.A., Health and Safety Code § 822.041 et seq.; similar provisions, V.T.C.A., Health and Safety Code § 826.033.*

Sec. 10-37. - Promulgation of rules.

The humane officer shall have the power, with the approval of the city council, to prescribe and promulgate such rules and regulations, not inconsistent with any state law or this chapter, as may be deemed necessary to protect the health and safety of the people and to effectively perform the duties imposed in this chapter.

(Code 1976, § 5-30; Code 1996, § 10-37)

Sec. 10-38. - Enforcement.

This chapter shall be enforced by the humane officer or his or her delegated representative. It shall be a violation of this chapter to interfere with the humane officer in the performance of his or her duties. The humane officer shall have all of the powers and authority of police officers to the extent only and no further enforcing of this chapter.

(Code 1976, § 5-31; Code 1996, § 10-38)

Sec. 10-39. - Issuance of citations.

In addition to or in lieu of impounding an animal, the owner of which is in violation or has violated any section or subsection of this chapter, or in addition to or in lieu of suspension or revocation of a license or permit, the humane officer or any peace officer may issue to the owner of such animal or holder of such license or permit a notice of violation and shall file a complaint relating thereto with the municipal court. Upon conviction of a violation of this chapter, the owner shall be fined as provided in [section 10-4](#).

(Code 1976, § 5-32; Code 1996, § 10-39)

Sec. 10-40. - Notices.

Any notice provided for in this chapter is properly served when it is delivered to the holder of the permit or license or the person in charge or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit or license, regardless if the letter is or is not received by such person.

(Code 1976, § 5-33; Code 1996, § 10-40)

Sec. 10-41. - Collection of fees.

- (a) *Fees prerequisite.* All permit and license fees required by this chapter shall be paid to and collected by the city before any permit or license will be issued. Certified checks, cashier's checks, personal checks, or money orders shall be sent or delivered to the city and shall be made payable to the city.
- (b) *Accounting.* The city secretary shall keep a current and accurate accounting of all permit and license fees and other monies collected, the name of all persons upon whose account such was paid, the date, and the amount therefor.

(Code 1976, § 5-11; Code 1996, § 10-41)

Secs. 10-42—10-65. - Reserved.

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> ARTICLE III. - DOGS AND CATS >>

ARTICLE III. - DOGS AND CATS

DIVISION 1. - GENERALLY

DIVISION 2. - LICENSE

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> ARTICLE III. - DOGS AND CATS >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 10-66. - Rabies vaccination required.

Sec. 10-67. - Administration of rabies vaccine.

Secs. 10-68—10-90. - Reserved.

Sec. 10-66. - Rabies vaccination required.

- (a) *Immunization period.* Each person owning, harboring or having in his or her possession a dog or cat shall have the dog or cat vaccinated against rabies by the time the animal is four months of age, by means of an antirabies vaccine approved by the state department of health. The rabies vaccine shall be administered by a duly licensed veterinarian. The immunization shall be for a period of up to three years. No dog or cat over four months of age which has not been vaccinated for rabies shall be brought into the city.
- (b) *Certificate of vaccination.* Every veterinarian who vaccinates any dog or cat within the city shall issue a certificate of vaccination to the owner, stating the name and address of the owner, description of the dog or cat, the date of vaccination, number of the rabies vaccination tag, and in addition, other information as specified by the veterinary licensing agency. The owner shall present or give to the humane officer the certificate of vaccination upon request.

(Code 1976, § 5-4; Code 1996, § 10-66; Ord. No. 2003-12, § 1, 9-16-2003)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 822.001 et seq.; permitting municipality to establish local standards for rabies control that are more stringent than minimum standards set by the state, V.T.C.A., Health and Safety Code § 826.015.

Sec. 10-67. - Administration of rabies vaccine.

- (a) *Vaccination.* To prevent improper vaccination of animals and the accidental exposure of humans to rabies, rabies vaccine for animals shall be administered only by or under the direct supervision of a veterinarian who is licensed to practice in the state.
- (b) *Sale of vaccine.* No person shall sell or distribute rabies vaccine for animals to any person except a licensed veterinarian or to a person working in a veterinary clinic who accepts the vaccine on behalf of the veterinarian.
- (c) *Licensed pharmacy.* This chapter does not prohibit a pharmacy licensed by the state board of pharmacy from supplying rabies vaccine for animals to licensed veterinarians.

(Code 1976, § 5-5; Code 1996, § 10-67)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 826.023.

Secs. 10-68—10-90. - Reserved.

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> ARTICLE III. - DOGS AND CATS >> DIVISION 2. - LICENSE >>

DIVISION 2. - LICENSE

[Sec. 10-91. - Required.](#)

[Sec. 10-92. - Exceptions.](#)

[Sec. 10-93. - Issuance.](#)

[Sec. 10-94. - Tags.](#)

[Sec. 10-95. - Animals brought into city.](#)

[Secs. 10-96—10-120. - Reserved.](#)

Sec. 10-91. - Required.

- (a) A license is required and levied on each and every dog or cat more than four months of age, which is kept harbored or maintained by the owner thereof in the corporate limits.
- (b) Dog and cat licenses shall be issued by the city upon payment of the license fee and application made upon printed forms provided for such purpose, which application shall state the name and address of the owner and keeper of such dog or cat and the name, breed, color and sex of the dog or cat being licensed. Each license shall automatically expire on December 31 following issuance. The fee shall be as determined by resolution of the city council and shall not be prorated.

(Code 1976, § 5-6(a), (f); Code 1996, § 10-91; Ord. No. 2003-12, § 2, 9-16-2003)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 826.031.

Sec. 10-92. - Exceptions.

The provisions of this division requiring the licensing of dogs and cats shall not apply to the following:

- (1) Dogs and cats under the age of four months if kept confined.
- (2) Dogs or cats owned by or in custody or under the control of persons who are nonresidents of the city traveling through the city temporarily sojourning therein for a period not exceeding 30 days.
- (3) Dogs or cats brought to the city exclusively for the purpose of entering the dogs or cats in any show or exhibition, and which are actually entered in and kept at such show or exhibition.
- (4) Dogs duly and properly trained to aid or assist blind persons when such dogs are actually used by blind persons for the purpose of aiding or assisting such blind persons in going from place to place.
- (5) Dogs duly and properly trained to aid or assist deaf persons when such dogs are actually used by deaf persons for the purpose of aiding or assisting such deaf persons in going from place to place.

- (6) Dogs or cats kept in qualified institutions, approved by the humane officer for teaching or research purposes.
- (7) Dogs or cats kept in veterinary hospitals or animal shelters as defined in [section 10-1](#)

(Code 1976, § 5-6(g); Code 1996, § 10-92)

Sec. 10-93. - Issuance.

The city shall not issue any license for any dog or cat or license tag for any dog or cat until the owner or the person in charge of such animal shall have obtained and presented to the city a certificate from a veterinarian, licensed to practice veterinary medicine that such dog or cat has been vaccinated for rabies and that such vaccination is still valid and has not expired. The certificate shall list the expiration date of the rabies vaccination.

(Code 1976, § 5-6(b); Code 1996, § 10-93; Ord. No. 2003-12, § 3, 9-16-2003)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 826.021.

Sec. 10-94. - Tags.

- (a) Upon acceptance of the license application or rabies vaccination certificate and payment of a license fee under this division, the licensing authority shall issue a durable tag, stamped with an identifying number and the year of issuance. The tag or the receipt for payment of the license tag shall be presented to the licensing authority upon demand. Failure to present the license tag or the receipt for the tag shall constitute a violation of this chapter.
- (b) The owner of every dog or cat shall attach the license identification tag to a collar or harness, and the collar or harness with tags shall be worn by the animals at all times. Tags shall not be transferred from one animal to another.
- (c) The licensing authority shall maintain a record of the identifying numbers of all tags issued, and this record shall be available to the public. If the license tag has been lost, a duplicate may be obtained from the licensing authority.
- (d) It shall be a violation of this chapter for any person to willfully remove a tag from a dog or cat.

(Code 1976, § 5-6(d)—(f), (h); Code 1996, § 10-94; Ord. No. 2012-07, § 3, 3-20-2012)

Sec. 10-95. - Animals brought into city.

Any owner of a dog or cat brought into the city from other areas shall within ten days of arrival obtain a license for each dog or cat as required in this division. The license shall be valid for the time stated in [section 10-91](#), but under no conditions shall such license be valid for longer than one year from the date of the last rabies vaccination.

(Code 1976, § 5-6(c); Code 1996, § 10-95)

State law reference— Permitting municipality to require registration of dogs and cats brought within jurisdiction of the municipality, V.T.C.A., Health and Safety Code § 826.031.

Secs. 10-96—10-120. - Reserved.

ARTICLE IV. - CARE AND CONTROL

DIVISION 1. - GENERALLYDIVISION 2. - VICIOUS ANIMALS**Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 10 - ANIMALS
>> ARTICLE IV. - CARE AND CONTROL >> DIVISION 1. - GENERALLY >>**

DIVISION 1. - GENERALLY

- Sec. 10-121. - Animals at large prohibited.
- Sec. 10-122. - Livestock running at large.
- Sec. 10-123. - At large on private property.
- Sec. 10-124. - Notice of custody of animal found at large.
- Sec. 10-125. - Releasing or abandoning.
- Sec. 10-126. - Keeping, harboring, or feeding strays.
- Sec. 10-127. - Killing or injuring.
- Sec. 10-128. - Public nuisance.
- Sec. 10-129. - Disposal of carcasses.
- Sec. 10-130. - Animal waste disposal.
- Secs. 10-131—10-155. - Reserved.

Sec. 10-121. - Animals at large prohibited.

- (a) *Violation.* No owner or keeper of any animal shall permit or allow such animal to be at large or unrestrained within the city limits. The owner or keeper of any animal at large or unrestrained shall be in violation of this chapter.
- (b) *Animal establishments.* Any animal off the premises of an animal establishment or outside the approved confinement area within the animal establishment shall be considered at large and in violation of this chapter.

(Code 1976, § 5-12(a); Code 1996, § 10-121; Ord. No. 2012-07, § 4, 3-20-2012)

Editor's note—

Section 4 of Ord. No. 2012-07, adopted March 20, 2012, changed the title of § 10-121 from "Dogs running at large" to "Animals at large prohibited."

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 822.012.

Sec. 10-122. - Livestock running at large.

No owner or keeper of any livestock shall permit or allow such livestock to run at large within the city limits. The owner or keeper of any such animals running at large shall be in violation of this chapter.

(Code 1976, § 5-12(b); Code 1996, § 10-122)

State law reference— Similar provisions, V.T.C.A., Agriculture Code §§ 143.034, 143.102.

Sec. 10-123. - At large on private property.

Any animal found at large upon private property other than the property of its owner or keeper may be taken up by the person upon whose private property the animal is at large and delivered to the humane officer.

(Code 1976, § 5-12(c); Code 1996, § 10-123)

Sec. 10-124. - Notice of custody of animal found at large.

Any person other than the humane officer who takes up any animal under the provisions of this chapter or otherwise shall immediately thereafter give notice thereof to the humane officer. Every such person or any person in whose custody such animal may in the meantime be placed shall upon demand deliver such animal to the humane officer. The animal shall be delivered to a place designated by the humane officer without fee or charge, and the humane officer shall thereupon hold and dispose of such animal as though such animal had been found running at large and impounded by the humane officer.

(Code 1976, § 5-12(d); Code 1996, § 10-124)

Sec. 10-125. - Releasing or abandoning.

- (a) It shall be a violation of this chapter for any person to dump, release, or abandon any animal on any property, whether public or private, within the city. An animal shall be considered abandoned if the owner has not provided care, including food, water, or shelter, for three or more consecutive days.
- (b) Any person having knowledge of any animal which has been or is believed to have been dumped, released, or abandoned shall notify the humane officer and shall give all pertinent information, including description and location of the animal and the name, address, car license, or any other information or description of the person who dumped, released, or abandoned the animal, if known.

(Code 1976, § 5-23(a), (b); Code 1996, § 10-125)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 821.021, V.T.C.A., Penal Code § 42.09.

Sec. 10-126. - Keeping, harboring, or feeding strays.

Any person who keeps, harbors, feeds, shelters, or otherwise allows any stray animal or any animal which has been dumped, released, or abandoned to remain on the person's property for three or more days without notifying the city shall be deemed the owner of the animal.

(Code 1976, § 5-23(c); Code 1996, § 10-126)

Sec. 10-127. - Killing or injuring.

It shall be a violation of this chapter for any person to intentionally kill, cut, maim, or injure in any manner any dog, cat or domestic animal or any domestic or wild bird, within the city, unless such actions are conducted in defense against an attack by the animal upon some person.

(Code 1976, § 5-23(d); Code 1996, § 10-127)

State law reference— Similar provisions, V.T.C.A., Penal Code § 42.09.

Sec. 10-128. - Public nuisance.

- (a) *Failure to exercise proper care.* Every owner shall exercise proper care and control of his or her animal and the premises where the animal is kept to prevent the animal and the premises from becoming a public nuisance.
- (b) *Conditions constituting nuisance.* All of the following conditions, situations, or occurrences are declared to be a public nuisance and constitute failure of the owner to exercise proper care and control of his or her animal or the premises where the animal is or has been kept:
 - (1) Any animal turning over garbage containers or scattering garbage or otherwise damaging private or public property;
 - (2) Any animal being at large or free-roaming off of private property owned or controlled by the owner thereof;
 - (3) Any animal barking, whining, howling, or making other sounds or noises in an excessive continuous or untimely fashion; or
 - (4) Maintaining any building, room, cage, kennel, yard, run, or any other place or facility where animals are kept or harbored in an unclean and unsanitary condition so as to allow obnoxious odors; the attraction, breeding, or potential breeding of flies; the attraction, harboring, or breeding of rodents or potential breeding of rodents; or the creation of any other public health concern.

(Code 1976, § 5-24; Code 1996, § 10-128)

State law reference— Similar provisions, V.T.C.A., Health and Safety Code § 826.033.

Sec. 10-129. - Disposal of carcasses.

- (a) *Disposal method.* All animals shall be disposed of in such place and in such manner as may be designated or prescribed by the state department of health and the city.
- (b) *Person responsible.* The owner or person having control or charge of any animal before or at the time of the animal's death shall be totally responsible for the disposal of the animal carcass and shall contact the city for direction for the disposal of the carcass.
- (c) *Fees, costs or charges.* All fees, costs, or charges incurred in the disposal of the animal carcass shall be the responsibility of the animal owner or person having charge or control of the animal at the time of or prior to the animal's death.
- (d) *Time limit for disposal.* The carcasses of all animals shall be properly disposed of in accordance with the provisions of this chapter as soon as possible, but under no circumstances later than 48 hours after death.
- (e) *Responsibility for disposal.* If the owner of the dead animal cannot be identified, the property owner or the person having charge or control of the property containing the carcass shall be responsible for the carcass disposal and is subject to all provisions contained in this section. If the owner of the animal is located or identified after carcass disposal has been effected, the owner shall reimburse the property owner or person disposing of the carcass and shall be subject to all costs, conditions, and penalties contained in this chapter.

(Code 1996, § 10-129)

State law reference— Disposal of diseased livestock, V.T.C.A., Agriculture Code § 161.004.

Sec. 10-130. - Animal waste disposal.

The owner and/or custodian of every animal shall be responsible for the sanitary disposal of, and shall dispose of, any excreta deposited by an animal under his or her control on all public property, including, but not limited to, public walks, streets, recreation areas and parks, and also upon all private property not within the control, possession or supervision of said owner or custodian.

(Code 1996, § 10-130; Ord. No. 99-26, § 1, 12-7-1999)

Secs. 10-131—10-155. - Reserved.

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>> ARTICLE IV. - CARE AND CONTROL >> DIVISION 2. - VICIOUS ANIMALS >>

DIVISION 2. - VICIOUS ANIMALS ⁽²⁾

Sec. 10-156. - Vicious tendencies.

Sec. 10-157. - Exemptions.

Sec. 10-158. - Declaration of vicious animal.

Sec. 10-159. - Notification of declaration of vicious animal.

Sec. 10-160. - Hearing request.

Sec. 10-161. - Defense to declaration of vicious animal.

Sec. 10-162. - Registration required.

Sec. 10-163. - Requirements of owners.

Sec. 10-164. - Failure to comply.

Sec. 10-165. - Running at large.

Secs. 10-166—10-190. - Reserved.

Sec. 10-156. - Vicious tendencies.

For the purposes of this chapter, the following are declared to possess vicious tendencies:

- (1) Any animal that inflicts severe injury or death to a person, or bites a person on public or private property; or
- (2) Any animal that has killed a domestic animal without provocation while off its owner's property; or
- (3) Any animal which chases or approaches a person upon the streets, sidewalks, or any public or private property in a menacing fashion or apparent attitude of attack such that a person of ordinary sensibilities would reasonably believe that the animal would cause physical injury to that person; or
- (4) Any individual animal with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of persons or domestic animals; and
- (5) All animals defined as wild animals in section 10-1

(Code 1976, § 5-13(a); Code 1996, § 10-156)

Sec. 10-157. - Exemptions.

This division shall not apply to any law enforcement agency where a dog is being used for law enforcement.

(Code 1976, § 5-13(j); Code 1996, § 10-157)

Sec. 10-158. - Declaration of vicious animal.

The humane officer may find and declare an animal to be a vicious animal if the official has cause to believe that an animal is a vicious animal under [section 10-156](#).

(Code 1976, § 5-13(b); Code 1996, § 10-158)

Sec. 10-159. - Notification of declaration of vicious animal.

The humane officer shall notify the owner of an animal of its designation as vicious and of the requirements for owners of vicious animals as set out in this division.

(Code 1976, § 5-13(c); Code 1996, § 10-159)

Sec. 10-160. - Hearing request.

If an animal is declared to be vicious under this division, the notice shall inform the owner of the animal that a determination hearing may be requested to contest the declaration. The request for a hearing must be in writing and must be received by the court clerk within ten days of the date of the declaration. Failure to request a hearing on the declaration within the ten-day period shall result in the humane officer's declaration as final.

(Code 1976, § 5-13(d); Code 1996, § 10-160)

Sec. 10-161. - Defense to declaration of vicious animal.

It is a defense to the determination that an animal is vicious and to the prosecution of the owner of an animal previously declared to be vicious if:

- (1) The person killed, injured, bitten, or in fear of injury was teasing, tormenting, abusing, or assaulting the animal or has in the past teased, tormented, abused, or assaulted the animal;
- (2) The person killed, injured, bitten, or in fear of injury was committing or attempting to commit a crime;
- (3) The domestic animal killed was at the time teasing, tormenting, abusing, or assaulting the animal;
- (4) The animal was protecting or defending a person within the immediate vicinity of the animal from an unjustified attack or assault;
- (5) The animal was injured and responding to pain; or
- (6) The animal was protecting its offspring, itself, or its kennel-mates.

(Code 1976, § 5-13(e); Code 1996, § 10-161)

Sec. 10-162. - Registration required.

The owner of an animal declared vicious under this division shall, within ten days of the date that the animal was finally declared to be vicious, register the animal with the city.

(Code 1976, § 5-13(f); Code 1996, § 10-162)

Sec. 10-163. - Requirements of owners.

Upon final determination that an animal is a vicious animal, the owner thereof, shall:

- (1) As soon as is reasonably possible, but in no event less than 24 hours, cause such vicious animal to be placed and kept in an enclosure, as defined in this chapter, except as otherwise specifically permitted in this chapter;
- (2) Within 60 days present to the city a certificate of public liability insurance in the amount of \$100,000.00 to cover any damages caused or which may be caused by the vicious animal. The insurance shall be for a 12-month period, shall not be canceled unless the animal is no longer kept by the owner, and shall provide for notice to the city of any cancellation not less than 30 days prior to cancellation;
- (3) Securely muzzle such vicious animal, when taken outside the enclosure, in a manner that will not cause injury to the vicious animal or interfere with its vision or respiration but that shall prevent it from biting any person or animal, and restrain the animal by a substantial chain or cable leash not to exceed six feet in length and having a minimum tensile strength of 1,000 pounds;
- (4) Within ten days post a sign on his or her premises warning that there is a vicious animal on the property. This sign shall be visible and capable of being read from any public street or highway adjacent to the property where the vicious animal is located, and from any adjacent private property;
- (5) Within 30 days cause the vicious animal to be spayed or neutered;
- (6) Within 30 days cause the animal to wear at all times a fluorescent yellow collar or harness which is of such size and color intensity as to be visible at a distance of not less than 50 feet by a person of ordinary vision;
- (7) Notify the humane officer as soon as possible after discovery that a vicious animal is loose, stolen, not confined in an approved enclosure, has attacked another animal or a person, or has died; and
- (8) Not offer the animal for adoption or sale or move the animal from the approved enclosure or the city without prior written notification thereof to the city.

(Code 1976, § 5-13(g); Code 1996, § 10-163)

Sec. 10-164. - Failure to comply.

- (a) If the owner of an animal declared to be vicious under this division fails to comply with the ownership requirements listed in [section 10-163](#) within the stated periods, after notice to the owner and opportunity for hearing, the animal shall be euthanized by an animal shelter, animal control agency, licensed veterinarian, or the humane officer.
- (b) The notice shall inform the owner of the animal of the provisions of this chapter that have been violated and that a hearing may be requested on the matter. The request for a hearing must be in writing and must be received by the court clerk within ten days of the notice. If a request for hearing has not been made within the ten-day period, the animal shall be euthanized any time after the tenth day.

(Code 1976, § 5-13(h); Code 1996, § 10-164)

Sec. 10-165. - Running at large.

Any vicious animal found out of its enclosure and not muzzled and restrained as required by [section 10-163](#), after the owner thereof has been issued notice that such animal is vicious, may be killed by any law officer stated in [section 10-193](#) without the officer having to catch or impound such animal or notifying the owner of the animal.

(Code 1976, § 5-13(i); Code 1996, § 10-165)

Secs. 10-166—10-190. - Reserved.

FOOTNOTE(S):

--- (2) ---

State Law reference— Dangerous dogs, V.T.C.A., Health and Safety Code § 822.001 et seq. [\(Back\)](#)

**Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 10 - ANIMALS
>> ARTICLE V. - RABIES CONTROL >>**

ARTICLE V. - RABIES CONTROL [\[3\]](#)

[Sec. 10-191. - Report of animal attacks.](#)[Sec. 10-192. - Quarantine.](#)[Sec. 10-193. - Authority to exterminate animals.](#)[Secs. 10-194—10-220. - Reserved.](#)**Sec. 10-191. - Report of animal attacks.**

Any person having knowledge of an animal bite or scratch or other attack on an individual or of any animal that the person suspects is rabid shall report the incident or animal to the humane officer. The report shall include the name and address of any victim and of the owner of the animal, if known, and any other data which may aid in locating the victim or the animal. The person shall make the report as soon as possible, but not later than 24 hours from the time of the incident.

(Code 1976, § 5-14; Code 1996, § 10-191)

Sec. 10-192. - Quarantine.

- (a) *Time limits; removal of animal from city.* Any animal that has rabies or symptoms thereof or that bites, scratches, or otherwise attacks any person within the city shall be quarantined by the owner of the animal. The owner shall quarantine the animal as soon as possible, but not later than 24 hours from the time of the incident. The quarantine period shall be ten days or longer in a public or other place of confinement designated or approved by the state department of health or under such conditions and in such a manner as may be prescribed by the state department of health. It shall be a violation of this chapter for the owner or any other person to remove any animal that is required to be quarantined or euthanized or that is otherwise in violation of this chapter from the jurisdiction of the city without written consent from the humane officer.
- (b) *Release of animal humane officer.* The owner, keeper, or person in charge of any animal that has rabies or that has been exposed to rabies or that has symptoms thereof or that has bitten, scratched, or otherwise attacked any person or other animal or that is quarantined as a rabies suspect shall on demand turn over the animal to the humane officer.
- (c) *Home quarantine.* Whenever and wherever in this chapter an animal is required to be impounded or confined in quarantine, the time, place, and method of impoundment or confinement shall be in accordance with the rules and regulations of the state department of

health and the city; however, the owner of the animal may request permission from the humane officer for home quarantine if the following criteria can be met:

- (1) Secure quarantine facilities are available at the home of the animal's owner, and are certified by the humane officer as such;
 - (2) The animal is currently vaccinated against rabies;
 - (3) The humane officer or a licensed veterinarian observes the animal at least on the first and last day of the quarantine period. If the animal becomes ill during the observation period, the humane officer shall be notified by the person having possession of the animal. At the end of the observation period, the release from quarantine must be accomplished in writing;
 - (4) The animal was not in violation of any law, ordinance, or rule at the time of the bite or at the time of ordered confinement; and
 - (5) The owner of the animal was not in violation of any law, ordinance or rule at the time of the bite or at the time of the ordered confinement.
- (d) *Release or move from quarantine prohibited.* No animal shall be released or moved from the place of approved confinement, except by the humane officer, until after the ten-day quarantine period and then only after inspection of the animal has been made and its release approved by the humane officer.
- (e) *Vaccination of animals.* No animal confined or quarantined as a rabies suspect as required in this section shall be given a rabies vaccination until after the ten-day quarantine period. All unvaccinated animals shall then be vaccinated.
- (f) *Fees and costs.* Transportation, capture, laboratory costs, veterinarian fees, impoundment or quarantine costs, euthanasia, body disposal, and any and all other fees, costs, charges and duties shall be the direct responsibility of the animal owner or keeper. Failure of the owner to pay such costs and fees shall constitute a violation of this chapter.

(Code 1976, § 5-15; Code 1996, § 10-192)

Sec. 10-193. - Authority to exterminate animals.

- (a) *Animals at large.* It is made the duty of the chief of police and his or her certified officers or the humane officer to exterminate any and all animals at large when the animals are or reasonably appear to be affected with rabies or any other infectious, contagious, or dangerous disease or when an animal is attacking or when such animal is sick, injured, or in such other condition as it may not be expected to live; provided, that any animal suspected of rabies shall be killed insofar as possible in such a manner as not to damage the brain.
- (b) *Biting animals.* Any animal inflicting a severe bite (puncture of the skin) to a human shall be humanely killed and the brain tested for rabies. An exception to this requirement may be granted by the humane officer; provided, the following criteria are met:
- (1) The biting animal is a domestic dog or cat;
 - (2) It is currently vaccinated against rabies; and
 - (3) Its owner was not in violation of any section of this chapter at the time of the bite.

If an exception is granted, the dog or cat shall be quarantined in accordance with this chapter.

- (c) *Unowned or unidentified animals.* At the discretion of the humane officer, an unowned animal or an animal without identification which has bitten a human may be humanely killed in such a manner that the brain is not mutilated.
- (d)

Brain test; quarantine. If any animal has been killed under authority of this chapter, the brain shall be tested for rabies unless it is a low-risk animal. The humane officer may require the animal to be quarantined for 30 days as an alternative to killing and testing.

- (e) *Destruction of nonsecured or vicious animal.* Any animal ordered confined in quarantine that cannot be maintained or placed in secure quarantine shall be humanely destroyed and the brain submitted to a state department of health certified laboratory for rabies diagnosis. The owner of an animal, which has been declared vicious, that bites a person shall upon demand turn over the animal to the humane officer. The humane officer shall humanely kill the animal and the brain shall be submitted for rabies examination.
- (f) *Wild animals.* All wild animals involved in biting incidents will be humanely killed in such a manner that the brain is not mutilated.
- (g) *Quarantined animals with rabies.* If a quarantined animal is found to be rabid or if, in the opinion of the humane officer or veterinarian, it is suspected of being rabid, the humane officer shall humanely destroy the animal or cause the animal to be humanely destroyed.

(Code 1976, § 5-16; Code 1996, § 10-193)

Secs. 10-194—10-220. - Reserved.

FOOTNOTE(S):

--- (3) ---

State Law reference— Rabies Control Act of 1981, V.T.C.A., Health and Safety Code § 826.041 et seq. [\(Back\)](#)

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> ARTICLE VI. - IMPOUNDMENT >>

ARTICLE VI. - IMPOUNDMENT

[Sec. 10-221. - Release of quarantined and impounded animals.](#)

[Sec. 10-222. - Disposal of quarantined and impounded animals.](#)

[Sec. 10-223. - Sale of impounded livestock.](#)

[Secs. 10-224—10-250. - Reserved.](#)

Sec. 10-221. - Release of quarantined and impounded animals.

If a quarantined or impounded animal is found to be free from rabies or other infectious or contagious diseases, the humane officer shall release it to the owner following the quarantine or impoundment period as specified in this chapter if:

- (1) The owner redeems his or her animal within five days, if such animal is licensed and is wearing a license tag, or within 72 hours if such animal is not licensed or is not wearing a license tag, following notice thereof of capture or impoundment;
- (2) The owner of a dog or cat has an unexpired rabies vaccination certificate and license for the animal, or the dog or cat is vaccinated against rabies by a licensed veterinarian at the owner's expense and a license for the animal is obtained;
- (3) The owner presents proper identification and proof of ownership;
- (4)

The owner complies with all provisions of this chapter relating to the animal being released; and

- (5) All fees, costs, fines, and charges incurred, including advertising and veterinary charges, have been paid.

(Code 1976, § 5-17; Code 1996, § 10-221)

Sec. 10-222. - Disposal of quarantined and impounded animals.

- (a) *Owner's failure to claim.* The humane officer may sell or donate for experimental or research purposes and retain the proceeds, keep, or humanely destroy or destroy in such a manner as the humane officer may deem necessary, under the circumstances, any animal that the owner or custodian does not take possession of as provided in [section 10-221](#) on or before the third day following the final day of quarantine or on or before the third day following notice of impoundment.
- (b) *Sick or injured animals.* For diseased, sick, injured, or otherwise unhealthy animals impounded under this chapter, other than those affected or thought to be affected by rabies, it shall be unnecessary to await the expiration of the impoundment or redemption period before disposing of such animals if, under the circumstances, the humane officer determines that it would be inhumane to fail to dispose of any such animal.
- (c) *Swine and goats running at large.* The humane officer may cause the speedy destruction or disposal of all hogs, sows, pigs or goats found running at large within the city limits if, in the judgment of the humane officer, such animals will not sell at public sale for a sufficient sum to cover the expense incident to impounding, keeping and sale as provided in this chapter.

(Code 1976, § 5-18; Code 1996, § 10-222)

State law reference— *Local animal control authority may sell unclaimed impounded animal and retain proceeds, V.T.C.A., Health and Safety Code § 826.043.*

Sec. 10-223. - Sale of impounded livestock.

- (a) *Authorized.* Any impounded livestock which has not been claimed by the fifth day of impoundment may be sold at public or private sale for an amount sufficient to cover all costs incident to the impounding and sale.
- (b) *Redemption by owner.* The owner of any livestock impounded under this chapter may redeem the livestock after it has been sold to a third party by paying to the purchaser double the amount paid by him or her for each animal and his or her reasonable expenses for keeping the livestock; provided, that the owner redeems such livestock within 30 days after the date of sale, otherwise the livestock becomes the absolute property of the purchaser.

(Code 1976, § 5-19; Code 1996, § 10-223)

State law reference— *Similar provisions for sale of impounded strays, V.T.C.A., Agriculture Code § 142.013; similar provisions for dipped livestock, V.T.C.A., Agriculture Code § 167.107.*

Secs. 10-224—10-250. - Reserved.

ARTICLE VII. - COMMERCIAL ESTABLISHMENTS

DIVISION 1. - GENERALLY**DIVISION 2. - LICENSE**

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> ARTICLE VII. - COMMERCIAL ESTABLISHMENTS >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 10-251. - Equipment requirements.

Sec. 10-252. - Construction plans.

Sec. 10-253. - Separation from residence.

Secs. 10-254—10-280. - Reserved.

Sec. 10-251. - Equipment requirements.

All animal establishments must comply with any equipment and facility requirements as may be adopted by the city.

(Code 1976, § 5-7(g); Code 1996, § 10-251)

Sec. 10-252. - Construction plans.

All plans for construction of animal establishments shall be submitted to and approved by the city before any building permit is issued or any construction is begun. Submission of plans and compliance with the provisions of this chapter and the city's construction standards for animal establishments shall be the responsibility of the owner.

(Code 1976, § 5-7(d); Code 1996, § 10-252)

Sec. 10-253. - Separation from residence.

No animal establishment shall be operated within the confines of a residential structure, unless that portion used for the animal establishment can be operated separately from the dwelling with ingress and egress to the establishment completely independent from any portion of the building which is used for residential purposes.

(Code 1976, § 5-7(e); Code 1996, § 10-253)

Secs. 10-254—10-280. - Reserved.

Seabrook, Texas, Code of Ordinances >> PART II - CODE OF ORDINANCES >> **Chapter 10 - ANIMALS**
>> ARTICLE VII. - COMMERCIAL ESTABLISHMENTS >> DIVISION 2. - LICENSE >>

DIVISION 2. - LICENSE

Sec. 10-281. - Required; fee.

Sec. 10-282. - Separate facilities.

Sec. 10-283. - Animal cruelty.

Sec. 10-284. - Inspections.

Sec. 10-285. - Issuance; term.

Sec. 10-286. - Suspension or revocation.

Sec. 10-287. - Disposition of animals after revocation.

Sec. 10-288. - Application after revocation.

Sec. 10-281. - Required; fee.

- (a) Any person conducting, managing, owning, or maintaining an animal establishment must have a valid license for the establishment. Application for the license shall be written on a form provided by the city.
- (b) License fees shall be as determined by resolution of the city council.
- (c) A license fee shall not be required of any veterinary hospital, animal shelter, government-operated zoological park or institution approved by the humane officer for teaching or research purposes.

(Code 1976, § 5-7(a), (b), (f); Code 1996, § 10-281)

Sec. 10-282. - Separate facilities.

Each and every facility regulated by this article shall be considered a separate enterprise and shall require an individual license.

(Code 1976, § 5-7(c); Code 1996, § 10-282)

Sec. 10-283. - Animal cruelty.

No person who is or has been convicted of cruelty to an animal shall be issued or allowed to hold a license to operate an animal establishment.

(Code 1976, § 5-7(j); Code 1996, § 10-283)

Sec. 10-284. - Inspections.

It shall be a condition of the issuance of any license required under this division that the humane officer shall be permitted to inspect all animals and the premises where the animals are kept at any reasonable time and shall, if permission for such inspection is refused, suspend or revoke the license of the refusing owner. It shall be unlawful for any owner to deny access to the humane officer in violation of this section.

(Code 1976, § 5-7(i); Code 1996, § 10-284)

Sec. 10-285. - Issuance; term.

The city shall issue a license to the applicant if the city's final inspection reveals that the animal establishment complies with the requirements of this chapter and the city's construction standards for animal establishments. Each license issued under this division shall be valid for a period beginning January 1 and, regardless of date issued, will expire December 31.

(Code 1976, § 5-7(h); Code 1996, § 10-285)

Sec. 10-286. - Suspension or revocation.

- (a) *Grounds.* The humane officer may suspend any animal establishment license at any time for failure of the license holder to keep the establishment and premises in a sanitary condition. A license may also be suspended or revoked for serious, willful or repeated violations of any of the requirements of this chapter or of any federal, state or local law, other article, or rule governing the protection and keeping of animals.
- (b) *Appeal.* Any person aggrieved by a decision of the humane officer may appeal the decision to the city manager, giving notice thereof, served upon the city secretary, within 72 hours following the date the decision was so rendered. The city manager shall hold a hearing on the appeal within 30 days following notice of appeal. Any notice of appeal shall be served in writing, stating the interest of the person appealing, the reason for the appeal, and a general description of the factual grounds upon which the appellant contends the decision of the humane officer was incorrect.

(Code 1976, § 5-8; Code 1996, § 10-286)

Sec. 10-287. - Disposition of animals after revocation.

Under this division, any person whose license is revoked shall, within ten days after revocation:

- (1) Humanely dispose of all animals owned, kept, or harbored by such person;
- (2) Relocate the animals to areas or places outside the corporate boundaries of the city;
or
- (3) Release the animals to the humane officer and pay all costs incurred in the handling of such animals such as transporting, housing, feeding, and disposal.

(Code 1976, § 5-9; Code 1996, § 10-287)

Sec. 10-288. - Application after revocation.

Whenever a revocation has become final under this division, the person whose license has been revoked may not apply for or receive a new license for a period of one year from the date of the revocation. One year after the date of revocation a person may reapply for a license and shall include with the application verification that all reasons and conditions which led to the revocation have been corrected. Any person reapplying for a license under this section shall be subject to all requirements as stated in this chapter. Any person having a license revoked for a second time shall not be eligible for a new license.

(Code 1976, § 5-10; Code 1996, § 10-288)

Proposal for an Amendment to the Seabrook, Texas Code of Ordinances

Chapter 10 – Animals
Section 10-7 Number of Animals Limited
(d) Exemptions

Proposed Amendment:

(d) (5) Extra Pet Exemption Permit for harboring or maintaining more than the allowed number of cats and dogs in a single-family dwelling.

Home owners will be allowed to harbor and maintain up to 5 animals per 500 square feet of living space provided that they meet special monitored conditions:

1.) Owners must apply for a permit to the City of Seabrook to keep an extra number of pets and approval of such will be made on a case-by-case basis.

2.) At the time of application, owners must agree to an initial home inspection by the animal control officer to verify that the premises meet basic safe and sanitary conditions.

3.) At the time of the application, owners must show proof of the yearly required rabies vaccination on all animals.

4.) The owners must agree to two scheduled inspections per year by the Seabrook animal control officer to verify ongoing safe and sanitary conditions.

5.) In the case of cats, there shall be no less than one litter box per 2 cats.

6.) The application fee will be \$100 and there will be a yearly renewal fee of \$100 to the City of Seabrook for the inspections.

Advantages of our proposal:

- 1.) Seabrook citizens will be allowed to openly keep more than the six pets currently allowed with appropriate permit and oversight to insure responsible and humane care of their animals.*
- 2.) The number of pets allowed takes into account the amount of living space available.*
- 3.) Yearly re-application and external monitoring will protect the welfare of the animals and protect the Seabrook community.*
- 4.) The City will be earn revenue in the form of application and renewal fees.*

Other Considerations:

- a.) With regard to potential zoning issues, there is already a precedent in the Seabrook ordinances (Section 10-8 – School Project Exemption) which allows persons to keep up to 15 animals in a residential area if the animals are part of an FFA project and that appropriate conditions are met.*
- b.) The essence of our proposal is that being a good pet owner is not about the number of animals owned, but about the responsibility of the individual owner. A person with only one pet may be an irresponsible owner while another person caring for 10 pets may be highly responsible. There are safeguards built-in to our proposal which include regular monitoring, over-sight, and fees to insure that pet owners act in a responsible, humane, and sanitary manner.*

Who We Are: Dr. John Largen and Wendy Largen – 2617 Hollybrook Drive, Seabrook, TX 77586.

We are homeowners in Seabrook and we have a long-time passion for the humane care and treatment of all animals. We have supported animal charities for many years and Wendy actively volunteers at a local wildlife care facility.

Wendy Largen has resided in Seabrook since 1968 and John Largen has resided here since 1989. Our 17 year-old daughter desires to be a veterinarian. She recently won first place in her division for her science project on cats at the CCISD district level and she won 4th place at the all-city competition.

Since our marriage 23 years ago, we have cared for stray animals in a responsible manner. Most of these animals have wandered onto our property, though we have found some injured by the side of the road. Had we not picked them up, they would have suffered and likely been euthanized at the City's expense. Several of our animals were so sick that we spent in excess of \$5,000 to nurse them back to health again. We have a blind cat without eyes, some deaf animals, and at least 2/3 of our cats are geriatric. Where possible, we try to find homes for stray animals. However, most of our animals are unadoptable.

For many years we have spayed/neutered stray animals that have come onto our property. We have assisted some neighbors by spaying/neutering or paying for medical care of their pets when they could not afford to do so. Our total out of pocket expenses for vet bills, supplies, and food for animals usually comes to an embarrassing amount per year. We are on a first name basis with our veterinarians.

To keep our home sanitary, we vacuum daily and empty all litter boxes daily. Most people visiting our home never realize that we have many animals unless we inform them. Even then they are surprised.

Responsible care of animals is a personal value to us and we feel that we are contributing some good to an important cause as well as a benefit to the Seabrook community.

Why Are We Making This Proposal to the City Council?

We own and care for more than the six animals allowed per household in Seabrook. Recently, our extra pet situation was reported to the Seabrook animal control officer by persons unknown and for unknown reasons (anonymous caller). We have been issued a warning and we fully understand our violation of the City ordinance regarding the number of animals.

In dealing with our own situation, we realized that we are not alone and that there are probably many residents in Seabrook who also care for more than six pets in a responsible manner. Our friends and neighbors have been supportive and suggested that we address the City Council with a positive and progressive proposal to amend the ordinances regarding number of pets allowed.

We hope that our proposal (or a modified one) will be considered positively by the Council.

Thank you for considering this request.

John & Wendy Largen
281-474-9129
johnwlargen@aol.com
wclargen@aol.com

Revised 01/12

**CITY OF SEABROOK
PARADE, CARNIVAL, SHOW, FESTIVAL,
SPECIAL OR COMMUNITY EVENT
APPLICATION**

Date of Application: 6/12/13 Name of Applicant: Gibbian Roe

Full Address of Applicant: 1605 2nd St Seabrook

Day Time Phone: [REDACTED] light time phone: [REDACTED]

e-mail address: [REDACTED]

Name of Organization, Firm or Corporation on whose behalf this application is made:
Midnite Slice

Address of Organization (if different from above): _____

City _____ State _____ Zip Code _____

Phone Number of Organization (if different from above): () _____

Is the organization recognized as a non-profit organization for tax purposes? _____

Requested Date(s) and Times of the Event: 8/17 8/18 12-10, 12-6

Location of the Event: Meadler Park

Will any portion of this event be held on city property? If so, where?

Note: If you will hold the event in a city park or facility, you must also complete an additional application to use city facilities. Midnite Slice

Give a brief description of the event: Presents Seabrook Music Festival
20 Bands, 40 vendors; food, crafts, art ect
2 Stages

Estimated No. of Workers 30+ Estimated No. of Attendees 300

Will the event be held in a parking area? NO. If so, how many parking spaces will be temporarily lost? _____

How many parking spaces are you providing for the event? _____

Will alcohol be served? yes If so, you are required to pay an additional deposit if you wish to serve alcohol on city property. You must also contact the Texas Alcoholic Beverage Commission.

Will admission be charged for this event? yes

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Do you want to display temporary signs or banners to advertise this event? _____

Number of signs for this event _____ Complete the sign permit application attached to the packet. **Please note that signs may only be displayed on private property, with the property owners' permission and with a city permit. Signs are not permitted in any street rights-of-way.**

If this event is a parade, please answer the following additional questions.

Proposed Route (Attach Map): _____

Estimated number and kind of animals to be used: _____

Estimated number of parade participants including, animals and riders, bicycle riders, animal-drawn vehicles, floats motor vehicles, motorized displays and marching units or organizations, such as bands, color-guards, and drill teams:

THIS SECTION NEEDS TO BE COMPLETED IN ORDER TO PROCESS YOUR APPLICATION.

This application has been reviewed by the Seabrook Police Chief or designee and the signature below verifies that adequate provisions for security have been made by the applicant.

Print name
Police Department Representative

Date Appr

*This approval is
pending a meeting
w/ the applicant.*

Signature
Police Department Representative

Comments: _____

I have enclosed the following items as part of my application and have initialed each relevant item:

1. _____ completed applications form including approval by the Seabrook Police Department.
2. *b* If the event is to be held on city property, an additional application for the use of city facilities.
3. *b* Permit fee in the amount of \$ 50.00. (Non-profit organizations may substitute a letter of request to the City Council requesting a waiver of the permit fee.

- The following conditions are placed upon this event: _____

ATTACHMENT 2

ALCOHOL / SECURITY AGREEMENT

Applicant Name: Midnite Slice
Reservation Date: 8/17 / 8/18 Type Event: music festival
Actual Hours for Security 12 to: 10

1. I acknowledge that alcoholic beverages will be served during the time of this event. I further understand that it is a violation to serve alcohol to minors, and I agree to take the steps necessary to comply with this law.
2. I acknowledge that a licensed peace officer or officers will be assigned by the Seabrook Police Department to provide security for my scheduled event and must be present at all times alcohol is being served.
3. I acknowledge that the officer or officers assigned will be paid at a rate of \$ 30.00 per hour with a four (4) hour minimum. \$ 1440.00
4. I acknowledge that the security compensation for each peace officer required shall be paid by me prior to or at the conclusion of my scheduled event and that I have paid a deposit to the City to assure that security shall be present and paid. The deposit is paid to and held by the City pursuant to the terms in item 8 on Attachment 1 and the peace officer(s) may direct the City to pay those funds to the peace officer(s) or to refund them to me if I have paid the peace officers directly. If the City receives nothing in writing to the contrary by the close of business on Monday after the event, City is authorized to release my funds on deposit for security to the peace officer(s) who worked the party.
5. I acknowledge that the number of officer assigned to my event is based on the following number of attendees:

Number of Attendees		Officer(s) Required
1	to 100	1 Officer
101	to 200	2 Officers
201	to 300	3 Officers
301	to 400	4 Officers
401	to 500	5 Officers
501	and above	Determined by Chief of Police

[Signature]
APPLICANT SIGNATURE

6/12/13
DATE

CITY MANAGER SIGNATURE

DATE

ATTACHMENT 1

APPLICATION FOR:

1. Community House
2. Meador Pavilion
3. Other Pavilions/Gazebos (not Meador or Pool Pavilion)
4. Pool Parties
 - A. Pool Pavilion
 - B. Game Room
5. Baseball Fields
6. Pine Gully Park
7. Other City Park

Fee Category: _____
Rental Fee: _____
Deposit: _____
Security Deposit: _____
Special Events Fee: _____

Total Amount Due: _____

I UNDERSTAND I MUST BE AT LEAST 21 YEARS OF AGE b (initials)

GROUP OR COMPANY Midnite Slice

NAME: Sibbian Roe

ADDRESS: 1605 2nd St

CITY: Scabrook ZIP CODE: 77586

HOME/MOBILE PHONE: _____

E-MAIL ADDRESS: _____

TYPE OF EVENT: Music festival

DATE OF EVENT: 8/17-8/18 TIME FROM: 12 TO: 10

NUMBER OF PEOPLE ATTENDING 300 WILL ALCOHOL BE SERVED? yes

IS THIS A PRIVATE EVENT no OR CAN THE PUBLIC ATTEND yes

(If an outside event is open to the public, you must complete a special events permit application also.)

TERMS

Applicant represents and certifies that:

1. All information provided in this application is true and correct.
2. Applicant and user will bear all cost of clean-up and damage; and for this purpose the City may retain part or all of the deposit, and excess will be immediately paid to applicant and user, or either of them, upon request.
* Applicants are required to clean up the Community House the same day/evening of reservation Failure to clean the building will result in loss of deposit.
b (initials)
3. Deposits will not be refunded until keys have been returned. b (initial)
4. Misrepresentation or erroneous information in this application constitutes grounds for denial of future applications and use.
5. WAIVER OF LIABILITY:
a. I understand the City of Seabrook is not responsible for the loss or damage to any equipment or supplies of the renter. b (initials)

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b. To the fullest extent permitted by law, RENTER, shall indemnify and hold harmless the City of Seabrook from and against claims, damages, losses, and expenses, including but not limited to, attorney's fees, which arise out of or in any way relate to any and all personal injury, death and/or property damage in connection with rental by the City to the rental of the Facility (as defined above), and arising out of any act and/or omission by the City and/or of any and all of the City's agents, representatives, servants, and employees, including, but not limited to, negligence, gross negligence, strict liability, breach of express or implied warranty, breach of fiduciary duty, breach of the duty of good faith and fair dealing, fraud, conspiracy, conspiracy to defraud, deceptive trade practice allegations, misrepresentations, or contribution, or any other claim, whether based on a tort, contract, or under any theory of recovery, under any state or federal law, or whether for compensatory or punitive damages (or any types of damages whatsoever). In no event will the City of Seabrook be liable for special indirect or consequential damages arising out of, or in connection with, the rental of the Facility rendered under this Agreement.

6. I have read the rules and regulations and understand the fee structure to which time I have chosen.

7. I understand I must be at least 21 years of age for this application to be considered.

8. I have received a copy of the resolution which applies. _____ (initials)

9. The City requires that the applicant provide adequate security protection at any function attended by varying numbers of persons and has guidelines for the number of peace officers needed per volume of attendants and the nature of the function (see attachment 2). In addition to other prepaid deposits required, the applicant shall prepay a deposit of 100% of the cost per officer per hour to be required for the event at the time of the application. **Those moneys shall be held by the City and deposited in a City holding account to assure that adequate security is present** for all events, but the contract for security services is between applicant and the individual peace officer(s), even when off duty Seabrook police officers are engaged. If a City peace officer is working a party on City premises, off duty under private party contract, he or she is not acting in his or her official capacity as a City employee and is an independent contractor in providing these services. **The holding of the deposit by the City is to assure that security shall be on hand to protect City property, but payment for said services shall be from applicant to the officer, even if the applicant releases the deposit to the peace officer instead of paying him or her direct.** Said fees are not salary. City shall not ever be anything more than the holder of the deposit and shall release same as directed by the parties since it shall never become City funds.

DATE(S) AND TIME(S): 8/17/ 8/18

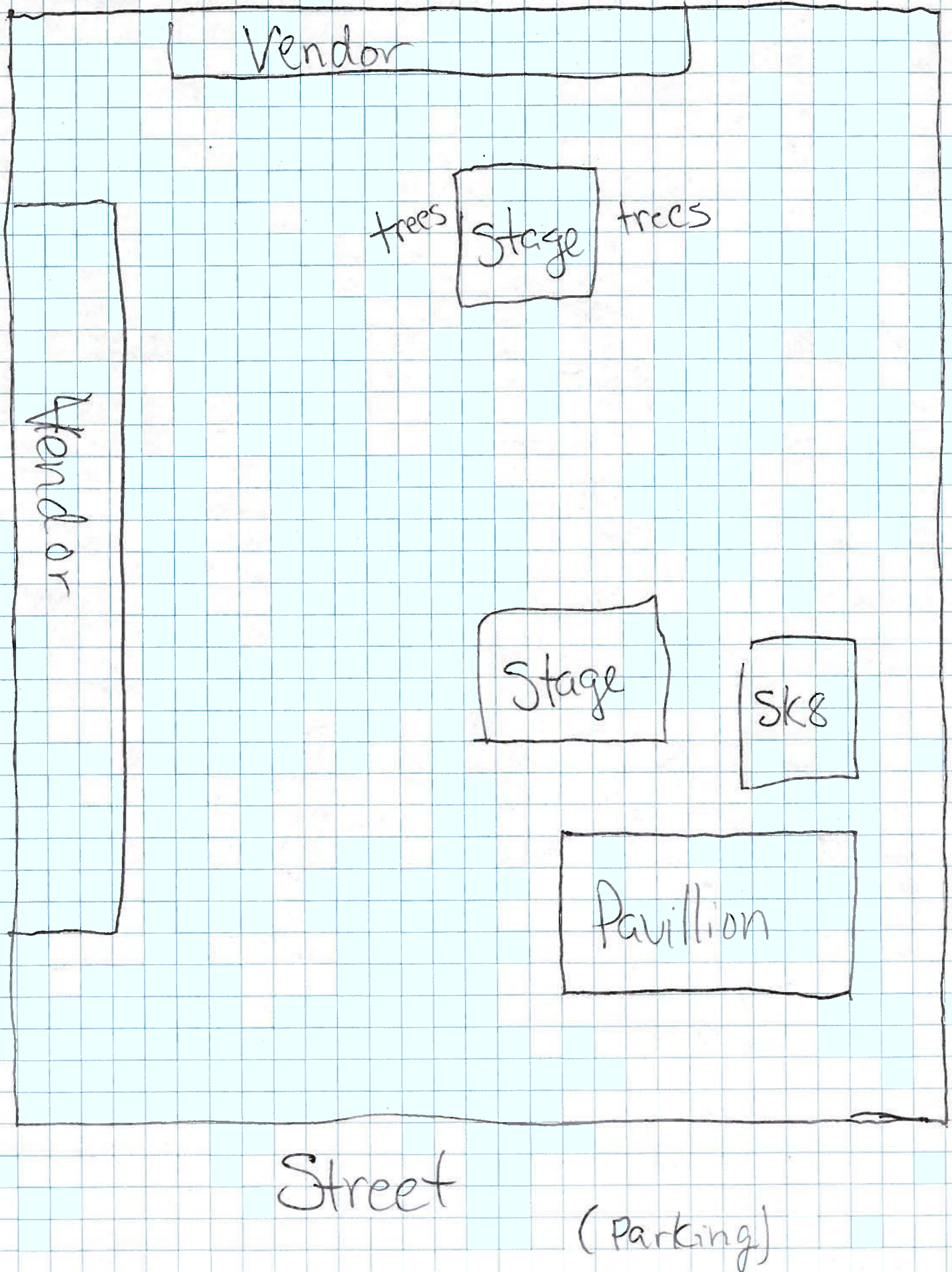
CONDITIONS, IF ANY: _____

APPLICANT SIGNATURE

6/12/13
DATE

CITY MANAGER SIGNATURE

DATE





CERTIFICATE OF LIABILITY INSURANCE

Attachment 5, Item # 5.2

Page 8 of 12

DATE (MM/DD/YYYY)

06/13/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Jack Ross II Farmers Insurance 1509 2nd St Seabrook TX 77586	CONTACT NAME: Jennifer PHONE (A/C, No, Ext): 281-474-5444 FAX (A/C, No): E-MAIL ADDRESS:																					
INSURED Midnite Slice 1605 2nd St Seabrook TX 77586	<table border="1"><thead><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A:</td><td>Mount Vernon Fire Insurance Company</td><td></td></tr><tr><td>INSURER B:</td><td></td><td></td></tr><tr><td>INSURER C:</td><td></td><td></td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Mount Vernon Fire Insurance Company		INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																				
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INSURER B:																						
INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC			CP 2583076	06/03/13	06/03/14	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Property \$ 25,250
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$ ☐ OCCUR ☐ CLAIMS-MADE						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☐ N/A						WC STATU-TORY LIMITS ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of Seabrook 1700 1st St Seabrook TX 77586	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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TO: EVENTS REVIEW COMMITTEE

FROM: Michele L. Glaser, City Secretary

SUBJECT: Application by Midnite Slice for a Special Events

DATE: June 17, 2013

The following are comments on the above application.

1. Special Events Permit Fee of \$50.00, Parks Deposit of \$100.00 and Parks Rental Fee of \$200.00 for a total of \$350.00 have not been paid.
2. Alcohol security deposit has not been paid. Estimated amount is ????
3. Midnite Slice also has a delinquent trash pick up bill of \$111.43 to be paid. *PAID*
4. None of the applications have been signed – special Events, alcohol usage or parks rental fee.
5. Parking arrangements for extra parking are not listed on the site plan.
6. Arrangements for porta cans are not indicated on site plan.



TO: Sibbian Roe, Midnite Slice

FROM: Michele L. Glaser, City Secretary

SUBJECT: Application by Midnite Slice for a Special Events on August 17 & 18.

DATE: June 17, 2013

The Events Review Committee met today to review your permit request and have made the following comments:

1. A special events permit fee of \$50.00, parks deposit of \$200.00 and parks rental fee of \$400.00 for a total of \$650.00 must be paid this week in order for the permit request to go to Council on July 2. The deposit will be returned after the event if there is no damage to the park and if the site is cleaned up. The committee has recommended that Council require an additional deposit of \$300.00 for use of the entire park for two days. You may pay this additional amount after Council approval.
2. The minimum alcohol security deposit in the amount of \$1,440.00 must also be paid this week. (3 officers x 16 hours x \$30.00 per hour.) The police department may require additional off duty personnel at an additional cost. You may submit one check for the amounts in #1 and #2. You will be asked to pay cash to the police officers at the time of the event so that your security deposit may be returned after the event.
3. None of the applications have been signed – special events, alcohol usage or parks rental fee. Please sign when you pay the fees.
4. Parking arrangements for extra parking are not listed on the site plan. The committee recommends that you furnish a minimum of 100 parking spaces. Parking at Meador Park is not available on Saturday as the swimming pool will be open. You may not park on the grass in the park. You may want to contact CCISD to see if parking at Seabrook Intermediate School is available or Harris County to see if parking at the Little League field on Meyer is available. Please submit your plans to provide parking for the event.
5. Arrangements for porta cans are not indicated on the site plan. In addition to the restrooms on site, you will need to provide at least 6 porta cans, including 1 handicapped accessible unit and 1 handwashing sink. You may contact Waste Management at 877-394-1902 about the porta cans and sinks or another supplier of your choice. Please indicate location of the porta cans on your site plan.

6. Arrangements for trash disposal must be made with Waste Management. Please call 800-553-1902. **You must use Waste Management for all trash services. You will be responsible for trash collection and removal.**
7. Please contact Texas Alcoholic Beverage Commission about obtaining a temporary permit to sell alcoholic beverages. I have attached information from the Commission's web site about temporary permits.
8. Please contact the Harris County Health Department about obtaining a temporary permit to sell food. I have also included information about the Health Department.
9. If you have any questions, please contact me by email at mglaser@seabrooktx.gov or by phone at 281-291-5663.

CITY OF SEABROOK

***** REPRINT RECEIPT*****

REC#: 00540372 6/21/2013 2:19 PM
OPER: 017 TERM: 001
REF#: 1425

TRAN: 3.0000 LICENSES & PERMITS
MIDNITE SLICE P/SEABROOK MUSIC
FESTIVAL FOR 8/17 8/18/ 2013
LICENSES & PERMITS/ 650.00CR

TENDERED: 650.00 CHECK
APPLIED: 650.00-

CHANGE: 0.00

CITY OF SEABROOK

REC#: 00540373 6/21/2013 2:21 PM
OPER: 017 TERM: 001
REF#: 1426

TRAN: 3.0000 LICENSES & PERMITS
MIDNITE SLICE P/SEABROOK MUSI
FESTIVAL POLICE / ACH FEES
LICENSES & PERMITS/ 1,440.00CR

TENDERED: 1,440.00 CHECK
APPLIED: 1,440.00-

CHANGE: 0.00

ACTION ITEM CHECK LIST STATUS

#	STATUS	DATE ASSIGNED	NEXT REVIEW DATE	PROPOSED CLOSURE DATE	RESPONSIBLE ORGANIZATION	City Council RESPONSIBILITY	PLANNING OBJECTIVE #	AGENDA ITEM NUMBER	DESCRIPTION OF ACTION ITEM	STATUS AND DATE
2	OPEN/IN WORK	10/2/2012			Staff/Council			5.5	Form a committee to review uses of Carothers property and bring back recommendations to Council.	Council accepted two recommendations on 11/6/12. Carothers Group to meet to reassess and report to Council.
4	OPEN/IN WORK	12/4/2012			Staff/Council			6.1	Consider transportation alternatives from hotels to new cruise terminal.	Update provided at 2/19 meeting. Ongoing discussions.
5	OPEN/IN WORK	12/4/2012			Staff/P&Z			5.4	Ord. No. 2012-24, "Deleting Existing Point Overlay Sign Regulations" was tabled for staff & P&Z review.	P&Z met on 2/21. Will send to Council at a future date after discussion with business(es).
9	OPEN/IN WORK	1/22/2013			Ad hoc members/city manager			5.2	Ad hoc committee to deal with fire department issues.	Ongoing.
10	OPEN/IN WORK	2/5/2013			City Secretary			3.4	Advertise for new applicants whenever board members terms are expiring.	Ongoing.
11	OPEN/IN WORK	4/2/2013			P&Z/Landis			6.3	Council asked P&Z to allow special advertising for businesses during special events and for new businesses.	On 6/21 P&Z recommended that temporary signs, including spinners be allowed for up to 50 days for grand openings. Will come to Council in ordinance form at a later date.
14	OPEN/IN WORK	4/2/2013			City Manager			6.2	Meet with city engineers for recommendations concerning safety of left turns from SH 146.	Postponed from consideration on 6/4 as TxDOT is still in the process of formulating various options.

July 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2 Council (Budget distributed)	3	4 Kids' Parade City Hall Closed	5	6
7	8	9 Tentative Budget Workshop	10	11 Open Space EDC	12	13
14	15	16 Council	17	18 P&Z No HCMCA	19	20
21	22	23 Tentative Budget Workshop	24	25 Ethics	26	27
28	29	30 Tentative Budget Workshop	31			

August 2013

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1 Open Space	2	3
4	5	6 Council	7	8 EDC	9	10
11	12	13 Budget Work- session— Tentaive	14	15 P&Z HCMCA	16	17
18	19	20 Council	21	22	23	24
25	26	27	28	29	30	31