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**Bexar County Water Control and Improvements District No.10**

**Project:** WELLS 2 AND 4 ELECTRICAL IMPROVEMENTS

**Date:** November 28, 2018

**Addendum No. 001**

This addendum shall be included in and be considered part of the specifications for the above named project. The Contractor shall be required to sign an acknowledgment of the receipt of this addendum at the time he receives it and to return with his/her bid proposal.

**1. Addition: Please find attached a document containing**

- a. General Conditions
- b. Supplementary Conditions
- c. Sample Contract

**2. Reminder:** All potential bidders should check the District's website at [www.bexarcountywcid10.com](http://www.bexarcountywcid10.com) for future addendums that maybe issued.

**ISSUED BY:**

**Leonard D. Young P.E.  
Young Professional Resources  
City Engineer City of Converse**

Attachments: General Conditions  
Supplementary Conditions  
Sample Contract

Acknowledge By: \_\_\_\_\_ Date: \_\_\_\_\_

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**BEXAR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #10  
WELLS NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

**GENERAL CONDITIONS**

**ARTICLE 1 - DEFINITIONS**

Whenever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Addenda: Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the bidding documents or the Contract Documents.

Agreement: The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

Application for Payment: The form accepted by PROJECT MANAGER which is to be used by CONTRACTOR in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

AASHTO: American Association of State Highway and Transportation Officials.

ASTM: American Society of Testing Materials.

AWS: American Welding Society.

Bid: The offer or proposal of the Bidder submitted in duplicate on the prescribed form setting forth the prices for the Work to be performed.

Bidder: Any individual, partnership, corporation, etc., submitting a proposal.

Board: The duly elected members of the Board of Directors of the Bexar County Water Control and Improvement District #10.

Bonds: Bid, performance, payment and maintenance bonds and other instruments of security.

Contract: The agreement between the Owner and the Contractor covering the furnishing of material and performance of the work. The Contract will include the Plans, Specifications, Contract Bonds, and Change Orders.

Change Order: A written order to CONTRACTOR signed by OWNER authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the effective date of the Agreement.

Contract Documents: The Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, Definition of Terms, Notice of Award, Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Wage Determination Decision, the Specifications, and the

Drawings/Plans as the same are more specifically identified in the Agreement, together with all Modifications issued after the execution of the Agreement.

Contract Price: The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement.

Contract Time: The number of days (computed as provided in paragraph 17.2) or the date stated in the Agreement for the completion of the Work.

CONTRACTOR: The person, firm, or corporation with whom OWNER has entered into the Agreement.

Day (Calendar): A calendar day of twenty-four hours measured from midnight to the next midnight.

Day (Working): A working day of eleven hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

Defective: An adjective which when modifying the word Work refers to Work that is faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to PROJECT MANAGER'S certification of Substantial Completion.

District. Bexar County Water Control and Improvement District #10

Drawings: The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by PROJECT MANAGER and are referred to in the Contract Documents.

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.

ENGINEER: The person, firm, or corporation named as such in the Agreement.

Field Order: A written order issued by PROJECT MANAGER which orders minor changes in the Work in accordance with paragraph 10.2 but which does not involve a change in the Contract Price or the Contract Time.

Field Representative: any person designated by general manager or chief Project Manager to oversee construction of project.

General Conditions: Detailed instructions to the Contractor setting forth his responsibility and the Owner's responsibility for proper prosecution of the work.

General Requirements: Sections of Division 1 of the Specifications.

Instructions to Bidders: Instruction of a general nature outlining the duties and responsibilities of a bona fide bidder.

Laboratory: Any testing laboratory that may be designated or approved by the Project Manager.

Local Authorities: Local municipalities, including but not necessarily limited to, Bexar County and the City of Windcrest, Texas. Also including local fire, police, water departments, and other utilities.

Modification: (a) A written amendment of the Contract Documents signed by both parties, (b) A Change Order, or (c) A Field Order. A modification may only be issued after the effective date of the Agreement.

Notice of Award: The written notice by OWNER to the apparent successful Bidder stating that upon compliance by the apparent successful Bidder with the conditions precedent enumerated therein, within the time specified and allowing ample time for OWNER review of Post Bid Information provided by the bidders, the OWNER will sign and deliver the Agreement.

Notice to Proceed: A written notice given by OWNER to CONTRACTOR (with a copy to PROJECT MANAGER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform his obligation under the Contract Documents.

OWNER: The public body or District, corporation, association, partnership, or individual with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

OSHA: The Occupational Safety and Health Administration

Project: The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

PROJECT MANAGER: The person, firm, or corporation named as such in the Agreement.

Proposal: The offer of the bidder, made out in duplicate on the prescribed forms, giving prices for performing the work described in the plans and specifications.

Proposal Guaranty: A cashiers or certified check in the amount of five (5%) percent of the total bid, payable to the Bexar County Water Control and Improvement District #10, or an acceptable bid bond for the same, as a guarantee that the bidder will enter into a contract and furnish all required bonds within a specific time.

Resident Project Representative/Inspector: The authorized representative of PROJECT MANAGER who is assigned to the site or any part thereof.

Separated Contract: A contract in which the agreed contract price is divided into the cost of materials and tangible equipment and skill and labor.

Sequence of Construction: The logical and proper order in which the work shall be accomplished, by stages and phases, by the Contractor, as outlined in the Supplementary Conditions and/or shown on the plans, unless ordered to do otherwise by a properly executed change order

Shop Drawings: All drawings, diagrams, illustrations, schedules, reports and other data which are specifically prepared by CONTRACTOR, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

Special Provisions: Detailed instructions to the Contractor of a special nature that take precedence over Standard Construction Specifications.

Specifications: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor: An individual, firm, or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

Substantial Completion: The Work (or a specified part thereof) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it was intended. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Superintendent: The representative of the Contractor authorized to receive and fulfill instructions from the Inspector and who shall supervise and direct the construction.

Supplementary Conditions: Detailed instructions to the Contractor setting forth his additional responsibilities of a special nature particular to an individual project not covered elsewhere.

Test Method Tex. No. 113E: Texas Department of Transportation standard test number as outlined in the TxDOT Manual.

TWC: Texas Water Commission, or its successor agency

TCEQ: Texas Commission for Environmental Quality formerly the TNRCC - Texas Natural Resource Conservation Commission.

Wage Rates: The general prevailing wage rate, as established by the General Wage Decision TX 95-43 (latest revision), a copy of which is included as the Wage Determination Decision section of these specifications.

Work: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

## **ARTICLE 2 - PRELIMINARY MATTERS**

Delivery of Bonds:

- 2.1 When CONTRACTOR delivers the executed Agreement to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

- 2.2 OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions and/or the General Requirements) of the Contract

Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Time; Notice to Proceed:

- 2.3 The Contract Time will commence to run on the thirtieth (30th) day after the effective date of the Agreement, or, if a Notice to Proceed is given, on the Commencement Date indicated in the Notice to Proceed; but in no event shall the Contract Time commence to run later than the one hundred twentieth (120th) day after the day of Bid opening. A Notice to Proceed will normally be given at any time within thirty-days (30) after the effective date of the Agreement.

Starting the Project:

- 2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

Before Starting Construction:

- 2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to PROJECT MANAGER any conflict, error or discrepancy which CONTRACTOR may discover; however, CONTRACTOR shall not be liable to OWNER or PROJECT MANAGER for failure to report any conflict, error or discrepancy in the Drawings or Specifications, unless CONTRACTOR had actual knowledge thereof or should have known thereof in the exercise of the standard of care of a reasonably prudent contractor. The CONTRACTOR'S obligations under this paragraph are for the purposes of facilitating construction by the CONTRACTOR and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents.
- 2.6 If requested, within fourteen (14) days after the effective date of the Agreement (unless otherwise specified in the General Requirements/General Provisions), CONTRACTOR shall submit to PROJECT MANAGER for review and acceptance an estimated progress schedule indicating the starting and completion dates of the various stages of the Work, a preliminary schedule of Shop Drawing submissions, and a preliminary schedule of values of the Work.
- 2.7 Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to PROJECT MANAGER, certificates (and other evidence of insurance requested by OWNER), which CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.3, 5.4 and 5.5.

Preconstruction Conference:

- 2.8 Within twenty one days after the effective date of the Agreement, but before commencement of the Contract Time commences and CONTRACTOR starts the Work at the site, a conference will be held for review and acceptance of the schedules referred to in paragraph 2.6, to establish procedures for handling Shop Drawings and other submittals

and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

- 2.9 The CONTRACTOR is responsible for the manner and method of completing the work. The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and District to select the means, method and manner of performing such work, so long as such methods cause the Work, when completed, to comply with the Contract Documents, the OWNER being interested in the result obtained and conformity of such completed improvements to the plans, specifications, and contract.

### **ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND REUSE**

Intent:

- 3.1 The Contract Documents comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work. They may be altered only by a Modification.
- 3.2 The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall report it to PROJECT MANAGER in writing at once and before proceeding with the Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or PROJECT MANAGER for failure to report any conflict, error or discrepancy in the Specifications or Drawings unless CONTRACTOR had actual knowledge thereof or should have known thereof in the exercise of the standard of care of a reasonably prudent contractor.
- 3.3 It is the intent of the Specifications and Drawings to describe a complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Specifications or Drawings, as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words, which have a well-known technical or trade meaning, are used to describe Work, materials or equipment such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code 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.

However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of OWNER, CONTRACTOR, or PROJECT MANAGER, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by PROJECT MANAGER as provided for in paragraph 9.3.

- 3.4 In case of conflict, error or discrepancy in the Contract Documents, priority of interpretation shall be in the following order: Addenda, other than as modified in the Agreed Documents, Signed Agreement, Performance and Payment Bonds, Special Bonds (if any), Proposal, Supplementary Conditions, Notice to Contractors, Measurement and Payment (if included in the Contract Documents), Technical Specifications, Plans and General Conditions.



- 3.5 The Contract Documents will be governed by the law of the state of Texas.
- 3.6 As between OWNER and CONTRACTOR, and subject to the provisions of Article 2.5 above, CONTRACTOR has no responsibility for the timely delivery, accuracy and/or sufficiency of the plans, specifications and drawings, and is not responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe.

Reuse of Documents:

- 3.7 Neither CONTRACTOR nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall 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 PROJECT MANAGER; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and PROJECT MANAGER and specific written verification or adaptation by PROJECT MANAGER. Subject to the provisions of this article, CONTRACTOR may retain one complete set of the Contract Documents for its records after completion of the Work.

**ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

Availability of Lands:

- 4.1 OWNER shall secure, as indicated in the Contract Documents, rights of way, easements, and/or lands to be occupied by the finished construction, free and clear of any other parties in possession, with only such additional construction easements as shown for use of the CONTRACTOR in carrying out his work. The CONTRACTOR shall take proper measures to protect all property within all construction easements which might be injured by any process of construction; and in case of any injury or damage, he shall restore at his own expense the damaged property to a condition similar or equal to that existing before such injury or damage was done, or he shall make good such injury or damage in a reasonably acceptable manner. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands or easements entitles him to an extension of the Contract Time or an increase in the Contract Price, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12, and if CONTRACTOR is delayed in the performance of the Work or CONTRACTOR'S cost of performing the Work is increased, OWNER shall issue a change order to CONTRACTOR in accordance with such Articles. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

Physical Conditions - Investigations and Reports:

- 4.2 Reference is made to the Supplementary Conditions for identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work that have been relied upon by PROJECT MANAGER in preparation of the Drawings and Specifications. Although these reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents, this fact shall not limit CONTRACTOR'S right to a Change Order under Article 4.5. If reports were not required by the PROJECT MANAGER for preparation

of the Drawings and Specifications, no reference is made in the Supplementary Conditions.

- 4.3 Unless a remedy is otherwise specified in other provisions of these Contract Documents and subject to the provisions of Articles 11.2 and 12.2, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the CONTRACTOR at his own cost and expense.

Reference Points:

- 4.4 OWNER shall provide Engineering surveys for construction to establish only reference points that are reasonably necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall provide the services of a Registered Professional Engineer (Texas Licensed) or a Registered Professional Land Surveyor (Texas Licensed). Said professional will direct Contract surveying with all associated costs bore by the CONTRACTOR at no additional cost to the OWNER. CONTRACTOR shall report to PROJECT MANAGER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by professionally qualified personnel such as a Registered Professional Engineer (Texas licensed) or Registered Professional Land Surveyor (Texas licensed). The OWNER will from time to time verify the layout of the Work and if found in error, the CONTRACTOR will bear all costs to the OWNER for the re-verification and correction of errors in layout of the Work.
- 4.5 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or the reports of investigations and tests of subsurface and latent physical conditions referred to in Article 4.2 above or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given in writing to the other party promptly before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The OWNER will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the OWNER determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the OWNER shall so notify the Contractor in writing, stating the reasons. Claims by the CONTRACTOR in opposition to such determination shall be made in conformance with Section 9.9 below. If the conditions encountered are materially different, the Contract Price and Contract Time shall be equitably adjusted, but if the OWNER and Contractor cannot agree on an adjustment in the Contract Price or Contract Time, the adjustment shall be referred to the Project Manager for initial determination, subject to further proceedings pursuant to Sections 16.

- 4.6 CONTRACTOR is not responsible for any hazardous substances or materials encountered in performing the Work except for those brought on to the Project site by CONTRACTOR or its subcontractors (“**Contractor Hazardous Substances**”). Upon encountering any hazardous substances or materials other than Contractor Hazardous Substances, CONTRACTOR will stop Work at the Site immediately in the affected area and duly notify OWNER and, if required by applicable law, the appropriate authorities. In the event CONTRACTOR encounters or discovers hazardous substances or materials other than Contractor Hazardous Substances, and its schedule or costs are adversely affected thereby, CONTRACTOR shall be entitled to Change Order adjusting the Contract Price and/or the Contract Time as provided in Articles 11 and 12. OWNER shall arrange for the removal or remediation of such substances and verify to CONTRACTOR that the materials have been rendered harmless before CONTRACTOR commences performing work in the affected area.

## **ARTICLE 5 - BONDS AND INSURANCE**

### Performance and Other Bonds:

- 5.1 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 CONTRACTOR'S obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date of final payment, except as otherwise provided by law. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions.

All Bonds shall be in the forms prescribed by the contract documents or Supplementary Conditions shall comply with Chapter 2253 of the Texas Government Code, shall be executed by corporate Sureties that are authorized and admitted to write surety bonds in the State and licensed by the State to execute the bond as surety, subject to Chapter 2252 Texas Government Code, and shall satisfy the conditions of Paragraphs 5.2 and 5.3. If the amount of the bond exceeds \$100,000, the surety must also hold a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

- 5.2 If the Surety on any Bond furnished by CONTRACTOR is declared as bankrupt or becomes insolvent or its right to do business is terminated in Texas or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within five working days thereafter substitute another Bond and Surety, both of which shall be reasonably acceptable to OWNER.
- 5.3 If the amount of any Bond furnished by the CONTRACTOR, underwritten by a Surety is in an amount in excess of ten percent (10%) of the Surety Company's capital and surplus the following conditions must be met:
1. The Surety Company shall furnish the District with written certification that the Surety Company has reinsured the portion of the risk that exceeds ten percent (10%) of the Surety Company's capital and surplus with one or more re-insurers who are duly authorized, licensed, admitted, accredited, or trusted to conduct business in the State of Texas.

2. The amount reinsured by any re-insurer may not exceed ten percent (10%) of the re-insurer's capital and surplus.

Contractor's Liability Insurance:

5.4 CONTRACTOR shall maintain, at its own cost and expense, such insurance as will protect CONTRACTOR from all claims for damages to persons and to property that may arise from any operations under this Contract, or any of its subcontracts. The following are the types of insurance policies and the minimum limits of insurance coverage, which shall be maintained by CONTRACTOR during the entire term of the Contract:

5.4.1 Worker's Compensation and Employer's Liability Insurance: In accordance with all applicable State and Federal laws and endorsed specifically to include the following:

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the District.

Persons providing services on the project ("subcontractor" in '406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

C. The contractor must provide a certificate of coverage to the District prior to being awarded (executing) the contract.

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

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

In accordance with all applicable State and Federal laws and endorsed specifically to include the following:

- 1. Employer's liability, including occupational disease, subject to a limit of liability of not less than \$500,000.00.
- 2. Waiver of subrogation against the Owner.

5.4.2 Comprehensive or Commercial General Liability Insurance: With limits of liability for bodily injury of not less than \$500,000.00 any one occurrence, and for property damage of not less than \$250,000.00 for any one occurrence, and \$1,000,000.00 aggregate. Such insurance shall include the following:

- 1. Contractor's protective liability, covering liability for work sublet.
- 2. Contractual liability, insuring the indemnity agreements contained in this Contract, to the extent such insurance is reasonably attainable.
- 3. Coverage for damage due to collapse of or structural injury to any building or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes,

mains, sewers, tanks, tunnels or any other property below the surface of the ground.

4. Waiver of subrogation against the Owner.
5. Owner shown as additional insured.

All insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and PROJECT MANAGER. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.12. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two (2) years after final payment and furnish OWNER with evidence of continuation of such insurance at final payment and one (1) year thereafter.

- 5.4.3 Comprehensive Automobile Liability Insurance: With limits of liability for bodily injury of not less than \$250,000.00 any one person, and \$500,000.00 any one occurrence, and for property damage of not less than \$250,000.00 any one occurrence. Such coverage shall include owned, hired and non-owned vehicles. Policy shall be endorsed as follows:
1. Waiver of subrogation against Owner
  2. Owner shown as additional insured.

- 5.5 Builder's Risk Insurance, CONTRACTOR shall procure at his expense an "All Risk" Builder's Risk policy for the full value of this Contract to protect the work, and shall include the materials and supplies stored on and off the job site or in transit, and shall remain in force until final completion of the work and acceptance by the OWNER. Policy to be endorsed as follows:

1. Owner shown as additional insured and claims, if any, to be paid to Owner and Contractor as their interests may appear.
2. Waiver of subrogation against Owner.

- 5.5.1 Prior to commencing any work, CONTRACTOR shall furnish to OWNER at the address shown below Certificates of Insurance under all such policies, certifying compliance with the minimum coverage outlined above. All policies shall also be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, 30 days' advance written notice of such cancellation or reduction will be mailed to the Bexar County Water Control and Improvement District #10, 8601 Midcrown Drive, Windcrest, Texas, 78239

Acceptance of Insurance:

- 5.6 Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A (-) VI or better, if OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the Contract Documents, OWNER will notify CONTRACTOR in writing thereof. CONTRACTOR will provide to OWNER such additional information in respect of insurance provided by him as OWNER may reasonably request.

Partial Utilization - Property Insurance:

- 5.7 If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing consented to and effected the changes in coverage necessitated thereby. The OWNER and the CONTRACTOR shall take reasonable steps to obtain the endorsement of the insurance company or companies and, without mutual written consent, will take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

## **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

### Supervision and Superintendence:

- 6.1 CONTRACTOR shall supervise 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 be responsible to see that the finished Work complies accurately with the Contract Documents.
- 6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and PROJECT MANAGER except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR, provided, however, that the superintendent does not have the authority to amend or modify the Contract Documents on behalf of the CONTRACTOR. CONTRACTOR shall designate in writing the employee authorized to amend or modify the Contract Documents. All communications given to the superintendent shall be as binding as if given to CONTRACTOR (other than notice to CONTRACTOR under Section 15.2 of the General Conditions, which shall be given to the same employee authorized to amend or modify the Contract Documents.).

### Labor, Materials, and Equipment:

- 6.3 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.

Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all Work at the site shall be performed during a regular working day as defined, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S written consent given after prior written notice to PROJECT MANAGER.

- 6.4 CONTRACTOR shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and



sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.

- 6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by PROJECT MANAGER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment.
- 6.6 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.

Equivalent Materials and Equipment:

- 6.7 Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier, or distributor, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted or equipment is identified on the "Major Equipment Schedule" of the Proposal, materials or equipment of other manufacturers, fabricators, suppliers or distributors may be accepted by PROJECT MANAGER if sufficient information is submitted by CONTRACTOR to allow PROJECT MANAGER to determine that the material or equipment proposed is equivalent to that named. For equipment identified in the "Major Equipment Schedule" the procedure for presenting and evaluating substitute equipment is established in Section 7 of the Instructions to Bidders. The procedure for review by PROJECT MANAGER of other equivalent materials and equipment will be as set forth in paragraphs 6.7.1 and 6.7.2 below as supplemented in the General Requirements.
  - 6.7.1 Requests for review of substitute items of material and equipment will not be accepted by PROJECT MANAGER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment CONTRACTOR shall make written application to PROJECT MANAGER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will, to the extent known by CONTRACTOR, result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by PROJECT MANAGER in evaluating the proposed substitute. PROJECT MANAGER may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

PROJECT MANAGER will be the sole judge of acceptability, and no substitute will be ordered or installed without PROJECT MANAGER'S prior written acceptance. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guaranty or other surety with respect to any substitute.

- 6.7.2 PROJECT MANAGER will record time required by PROJECT MANAGER and PROJECT MANAGER'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Drawings or Specifications occasioned thereby. Whether or not PROJECT MANAGER accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of PROJECT MANAGER and PROJECT MANAGER'S consultants for evaluating any proposed substitute.

Concerning Subcontractors:

- 6.8 CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom OWNER or PROJECT MANAGER may have reasonable objection. A Subcontractor or other person or organization identified in writing to OWNER and PROJECT MANAGER by CONTRACTOR prior to the Notice of Award and not objected to in writing by OWNER or PROJECT MANAGER prior to the Notice of Award will be deemed acceptable to OWNER and PROJECT MANAGER. Acceptance of any Subcontractor, other person, or organization by OWNER or PROJECT MANAGER shall not constitute a waiver of any right of OWNER or PROJECT MANAGER to reject defective Work. If OWNER or PROJECT MANAGER after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by CONTRACTOR after the Notice of Award, the CONTRACTOR will be required to submit an acceptable substitute. If the proposed Subcontractor rejected by OWNER or PROJECT MANAGER was reasonably capable of performing the Work, the Contract Price shall be increased by the difference, if any, occasioned by such rejection, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. CONTRACTOR shall not be required to employ any Subcontractor, other person, or organization against whom CONTRACTOR has reasonable objection.
- 6.9 CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between OWNER or PROJECT MANAGER and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of OWNER or PROJECT MANAGER to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. OWNER or PROJECT MANAGER may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done.

- 6.10 The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- 6.11 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and, conditions of the Contract Documents for the benefit of OWNER and PROJECT MANAGER. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR because of losses under policies issued pursuant to paragraph 5.5.

Patent Fees and Royalties:

- 6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use of 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 PROJECT MANAGER 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. CONTRACTOR shall indemnify and hold harmless OWNER and PROJECT MANAGER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of 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, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits:

- 6.13 Unless otherwise provided in the Supplementary Conditions or General Requirements, 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 execution of the Work, which are applicable at the time of opening of Bids. CONTRACTOR shall pay all charges of utility service companies for connections to the Work, and OWNER shall pay all charges of such companies for capital costs related thereto.

Laws and Regulations:

- 6.14 CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If CONTRACTOR observes that the Specifications or Drawings are at variance therewith, CONTRACTOR shall give PROJECT MANAGER prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any Work knowing or, in the exercise of the standard of care of a reasonably prudent contractor, having reason to know that it is contrary to such laws, ordinances, rules and regulations, and without such notice to PROJECT MANAGER, CONTRACTOR shall bear all costs arising there from; however,

it shall not be CONTRACTOR'S responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

Taxes:

6.15 CONTRACTOR shall pay all taxes and insurance required by State and Federal Laws and must comply with applicable regulations of the State Comptroller regarding temporary exemption certificates.

6.15.1 The OWNER of this project is exempt from the State Sales Tax (including local sales tax, if any) and will furnish the CONTRACTOR with a valid tax exemption certificate within 14 days after execution of this Agreement. The CONTRACTOR shall take all necessary action to establish tax exemption so that he and his subcontractors may obtain this exemption on the Construction contract for the OWNER'S benefit.

6.15.2 The Contract separates the cost of materials and tangible equipment from skill, labor and other associated costs of construction. This is in accordance with the Texas Tax Code to allow tax exemption on the Contract price for materials. Certain construction equipment that is owned or rented by the CONTRACTOR may be subject to State and Local Sales Tax.

Use of Premises:

6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

6.17 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

6.18 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.

Record Documents:

6.19 CONTRACTOR shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, Shop Drawings, and samples at the site, in good order and annotated to show all changes made during the construction process. These shall be available to PROJECT MANAGER for examination and shall be delivered to PROJECT MANAGER for OWNER upon completion of the Work.

Safety and Protection:

6.20 CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

6.20.1 all employees on the Work and other persons who may be affected thereby;

6.20.2 all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all reasonable safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR. CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until all the Work is substantially complete, and PROJECT MANAGER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.8 that the Work is acceptable.

6.21 CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to OWNER.

Emergencies:

6.22 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from PROJECT MANAGER or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give PROJECT MANAGER prompt written notice of any significant changes in the Work or deviations from the Contract Documents caused thereby.

Shop Drawings and Samples:

6.23 After checking and verifying all field measurements, CONTRACTOR shall submit to PROJECT MANAGER for review and approval, in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8), five copies (5) (unless otherwise specified in the General Requirements) of all Shop Drawings, which shall have been checked by and stamped with the approval of CONTRACTOR and identified as PROJECT MANAGER may require. The data shown on the Shop Drawings will be complete with

respect to dimensions, design criteria, materials of construction and like information to enable PROJECT MANAGER to review the information as required.

- 6.24 CONTRACTOR shall also submit to PROJECT MANAGER for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.
- 6.25 At the time of each submission, CONTRACTOR shall in writing call PROJECT MANAGER'S attention to any deviations that the Shop Drawings or samples may have from the requirements of the Contract Documents.
- 6.26 PROJECT MANAGER will review and approve with reasonable promptness Shop Drawings and samples, but PROJECT MANAGER'S review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, sequences, techniques or procedures of construction 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. CONTRACTOR shall make any corrections required by PROJECT MANAGER and shall return the required number of corrected copies of Shop Drawings and resubmit new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by PROJECT MANAGER on previous submittals. CONTRACTOR'S stamp of approval on any Shop Drawing or sample shall constitute a representation to OWNER and PROJECT MANAGER that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Documents.
- 6.27 Where a shop drawing or sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved by PROJECT MANAGER.
- 6.28 PROJECT MANAGER'S review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any deviations from the Contract Documents unless CONTRACTOR has in writing called PROJECT MANAGER'S attention to such deviation at the time of submission and PROJECT MANAGER has given written concurrence and approval to the specific deviation, nor shall any concurrence or approval by PROJECT MANAGER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings.

Continuing the Work:

- 6.29 CONTRACTOR shall carry on the Work and maintain 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 CONTRACTOR and OWNER may otherwise agree in writing.

Indemnification:

6.30 DURING THE PERFORMANCE OF THE WORK WITHIN THE CONTEMPLATION OF THIS CONTRACT AND UNTIL SUBSTANTIAL COMPLETION AND ACCEPTANCE THEREOF, CONTRACTOR SHALL EXERCISE ALL REASONABLE CARE TO AVOID ACCIDENT OR INJURY TO PERSONS OR PROPERTY. HE SHALL PLACE AND MAINTAIN ALL REASONABLY NECESSARY BARRIERS AND SAFEGUARDS, INCLUDING WATCHMEN, ABOUT THE WORK SITE FOR THE PREVENTION OF ACCIDENTS, AND AT NIGHT HE SHALL MAINTAIN ADEQUATE LIGHTS AND OTHER WARNING DEVICES, AND GENERALLY SHALL TAKE ALL REASONABLE PRECAUTIONS REQUISITE TO THE PROTECTION OF THE PUBLIC AND PROPERTIES ADJACENT TO THE WORK SITE. DURING THE PERFORMANCE OF THE WORK WITHIN THE CONTEMPLATION OF THIS CONTRACT AND UNTIL SUBSTANTIAL COMPLETION AND ACCEPTANCE THEREOF, CONTRACTOR SHALL AND WILL INDEMNIFY AND SAVE HARMLESS OWNER FROM AND AGAINST ANY AND ALL ACTIONS AND CLAIMS, AND AGAINST ALL COSTS (INCLUDING REASONABLE ATTORNEY'S FEES), DAMAGES AND EXPENSES TO WHICH OWNER MAY BE PUT BY REASON OF ANY INJURY OR ALLEGED INJURY TO PERSON OR PROPERTY OF THIRD PARTIES, **UNLESS SUCH CLAIMS OR ACTIONS ARE FOUNDED IN WHOLE UPON THE ALLEGED NEGLIGENCE OF THE BEXAR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #10, ITS OFFICERS, AGENTS, EMPLOYEES OR REPRESENTATIVES,** RESULTING OR ALLEGED TO RESULT FROM OR TO BE OCCASIONED BY THE NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE CONTRACTOR IN THE PERFORMANCE, CONDUCT OR MAINTENANCE OF THE WORK, OR IN GUARDING SAME, OR FROM ANY IMPROPER METHODS, TOOLS, IMPLEMENTS OR MATERIALS EMPLOYED THEREIN, OR ON ACCOUNT OF ANY SUCH NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR'S AGENTS, SERVANTS, EMPLOYEES, ASSIGNEES OR SUBCONTRACTORS (INCLUDING THE AGENTS, SERVANTS AND EMPLOYEES OF SUCH SUBCONTRACTORS); AND CONTRACTOR OR HIS INSURER SHALL WELL AND TRULY MAKE PAYMENT OF ANY AND ALL SUMS RECOVERED AGAINST OWNER IN ANY SUIT OR SUITS ON ACCOUNT OF SUCH ALLEGED INJURY OR DAMAGE TO WHICH OWNER MAY BE MADE A PARTY, TOGETHER WITH ALL COSTS, DAMAGES AND EXPENSES BORNE BY OWNER IN CONNECTION WITH SUCH SUITS ALL IN A MANNER AS TO SAVE OWNER HARMLESS FROM ANY EXPENSE CONNECTED WITH SUCH ACTIONS AND CLAIMS.

THE RECORD OWNER OF FEE SIMPLE TITLE TO THE LAND UPON WHICH THE WORK IS TO BE PERFORMED IS HEREINAFTER CALLED LANDOWNER. DURING THE PERFORMANCE OF THE WORK WITHIN THE CONTEMPLATION OF THIS CONTRACT AND UNTIL SUBSTANTIAL COMPLETION AND ACCEPTANCE THEREOF, CONTRACTOR SHALL AND WILL INDEMNIFY AND SAVE HARMLESS LANDOWNER FROM AND AGAINST ANY AND ALL ACTIONS AND CLAIMS, AND AGAINST ALL COSTS (INCLUDING REASONABLE ATTORNEY'S FEES), DAMAGES AND EXPENSES TO WHICH LANDOWNER MAY BE PUT BY REASON OF ANY INJURY OR ALLEGED INJURY TO PERSON OR PROPERTY OF THIRD PARTIES, **UNLESS SUCH CLAIMS OR ACTIONS ARE FOUNDED IN WHOLE UPON THE ALLEGED NEGLIGENCE THE LANDOWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR REPRESENTATIVES,** RESULTING OR ALLEGED TO RESULT FROM OR TO BE OCCASIONED BY THE NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE CONTRACTOR IN THE PERFORMANCE, CONDUCT

OR MAINTENANCE OF THE WORK, OR IN GUARDING SAME, OR FROM ANY IMPROPER METHODS, TOOLS, IMPLEMENTS OR MATERIALS EMPLOYED THEREIN, OR ON ACCOUNT OF ANY SUCH NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR'S AGENTS, SERVANTS, EMPLOYEES, ASSIGNEES OR SUBCONTRACTORS (INCLUDING THE AGENTS, SERVANTS AND EMPLOYEES OF SUCH SUBCONTRACTORS); AND CONTRACTOR OR HIS INSURER SHALL WELL AND TRULY MAKE PAYMENT OF ANY AND ALL SUMS RECOVERED AGAINST LANDOWNER IN ANY SUIT OR SUITS ON ACCOUNT OF SUCH ALLEGED INJURY OR DAMAGE TO WHICH LANDOWNER MAY BE MADE A PARTY, TOGETHER WITH ALL COSTS, DAMAGES AND EXPENSES BORNE BY LANDOWNER IN CONNECTION WITH SUCH SUITS ALL IN A MANNER AS TO SAVE LANDOWNER HARMLESS FROM ANY EXPENSE CONNECTED WITH SUCH ACTIONS AND CLAIMS.

Following substantial completion, and until final completion and acceptance by OWNER, to the fullest extent permitted by law, CONTRACTOR shall and will indemnify, defend and save harmless OWNER from and against any and all liability, suits, actions and claims, and against all costs (including reasonable attorney's fees), interest, fines, damages, judgments, penalties, assessments, causes of action and expenses to which OWNER may be put by reason of any injury or alleged injury to person or property, resulting or alleged to result from or to be occasioned by the negligent acts or omissions or willful misconduct of the CONTRACTOR in the performance, conduct or maintenance of the Work, or in guarding same, or from any improper methods, tools, implements or materials employed therein, or on account of any such negligent acts or omissions or willful misconduct of CONTRACTOR'S agents, servants, employees, assignees or subcontractors (including the agents, servants and employees of such subcontractors); and CONTRACTOR or his insurer shall well and truly make payment of any and all sums recovered against OWNER in any suit or suits on account of such alleged injury or damage to which OWNER may be made a party, together with all costs, damages and expenses borne by OWNER in connection with such suits all in a manner as to save OWNER harmless from any expense connected with such actions and claims

Patents, Etc.:

CONTRACTOR agrees that he will at all times pay all fees, royalties or license charges on all patented, registered or copyrighted machines, materials, methods or processes used in the construction of said work and supplied as a part of the finished work, or appurtenant thereof; and that he will ever hold OWNER free and harmless from any and all claims on account of the use of any machines, materials, methods or processes.

- 6.31 In any and all claims against OWNER or PROJECT MANAGER or any of their agents or employees by any employee of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 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 Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 6.32 The obligations of CONTRACTOR under paragraph 6.30 shall not extend to the liability of PROJECT MANAGER, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications.



## **ARTICLE 7 - WORK BY OTHERS**

- 7.1 OWNER may perform additional work related to the Project by himself, or have additional work performed by utility service companies, or let other direct contracts therefore which shall contain General Conditions similar to these. CONTRACTOR shall afford the utility service companies and the other Contractors who are parties to such direct contracts (or OWNER, if OWNER is performing the additional work with OWNER'S employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his Work with theirs. The OWNER shall provide for coordination of the activities of the OWNER'S own forces and of each of its other contractors and require them to cooperate with Contractor so as to not unreasonably interfere or delay CONTRACTOR'S performance of the Work.
- 7.2 If any part of CONTRACTOR'S Work depends on proper execution or results upon the work of any such other contractor or utility service company (or OWNER), CONTRACTOR shall inspect and promptly report to PROJECT MANAGER in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. CONTRACTOR'S failure to so report shall constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work except for latent or non-apparent defects and deficiencies in other work.
- 7.3 CONTRACTOR shall do all cutting, fitting and patching of his Work that may be required to make its several parts come together properly and integrate with such other work.

CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of PROJECT MANAGER and the others whose work will be affected.

- 7.4 If the performance of additional work by other contractors or utility service companies or OWNER was not noted in the Contract Documents, written notice thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that the performance of such additional work by OWNER or others involves additional expense to CONTRACTOR or requires an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

- 8.1 In case of termination of the employment of PROJECT MANAGER, OWNER shall appoint a Project Manager whose status under the Contract Documents shall be that of the former PROJECT MANAGER.
- 8.2 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.
- 8.3 OWNER'S duties in respect of providing lands and easements and providing Engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of investigations and tests of subsurface and latent physical conditions at the site,

if they exist, that could affect the performance of the Work and which have been relied upon by PROJECT MANAGER in preparing the Drawings and Specifications.

- 8.4 In connection with OWNER'S rights to request changes in the Work in accordance with Article 10, OWNER (especially in certain instances as provided in paragraph 10.4) is obligated to execute Change Orders.
- 8.5 OWNER'S responsibility with respect to certain inspections, tests, and approvals is set forth in paragraphs 13.4 through 13.8, inclusive.
- 8.6 In connection with OWNER'S right to stop work or suspend work, see paragraphs 13.11 and 15.1. Paragraph 15.2 deals with OWNER'S right to terminate services of CONTRACTOR under certain circumstances.

## **ARTICLE 9 - PROJECT MANAGER'S STATUS DURING CONSTRUCTION**

### **OWNER'S Representative:**

- 9.1 PROJECT MANAGER will be OWNER'S representative during the construction period. The duties and responsibilities and the limitations of authority of PROJECT MANAGER during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and PROJECT MANAGER.

### **Visits to Site:**

- 9.2 PROJECT MANAGER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. PROJECT MANAGER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The PROJECT MANAGER'S efforts will be directed toward providing the OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. Based on such visits and on-site observations as an experienced and qualified design professional, PROJECT MANAGER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

### **Clarifications and Interpretations:**

- 9.3 PROJECT MANAGER will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as reasonably necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefore as provided in Article 11 or Article 12.

### **Rejecting Defective Work:**

- 9.4 PROJECT MANAGER will have authority to disapprove or reject Work, which is defective, and will have authority to require special inspection or testing of the Work as provided in paragraph 13.10, whether or not the Work is fabricated, installed, or completed.

Shop Drawings, Change Orders, and Payments:

- 9.5 In connection with PROJECT MANAGER'S responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.28 inclusive.
- 9.6 In connection with PROJECT MANAGER'S responsibilities as to Change Orders, see Articles 10, 11 and 12.
- 9.7 In connection with PROJECT MANAGER'S responsibilities with respect to Applications for Payment, etc., see Article 14.

Project Representation:

- 9.8 If OWNER and PROJECT MANAGER agree, PROJECT MANAGER will furnish a Resident Project Representative to assist PROJECT MANAGER in observing the performance of the Work. The duties, responsibilities, and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If OWNER designates another agent to represent him at the site who is not PROJECT MANAGER'S agent or employee, the duties, responsibilities, and limitations of authority of such other person will be as provided in the Supplementary Conditions.

Decisions on Disagreements:

- 9.9 PROJECT MANAGER will be the initial interpreter of the requirements of the Contract Documents and initial judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work, the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work, changes in the Work and changes of Contract Time and Contract Price, shall be referred initially to PROJECT MANAGER in writing with a request for a formal decision in accordance with this paragraph, which decision PROJECT MANAGER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter shall be delivered by the claimant to PROJECT MANAGER and the other party to the Agreement within fifteen (15) days of the occurrence of the event giving rise thereto, and written supporting data will be submitted to PROJECT MANAGER and the other party within forty-five (45) days of such occurrence unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data, which will not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed. In his capacity as interpreter and judge PROJECT MANAGER 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.
- 9.10 The rendering of a decision by PROJECT MANAGER pursuant to paragraph 9.9 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such claim, dispute or other matter.

Limitations on PROJECT MANAGER'S Responsibilities:

- 9.11 Neither PROJECT MANAGER'S authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by PROJECT MANAGER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of PROJECT MANAGER to CONTRACTOR, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.
- 9.12 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirements, direction, review or judgment of PROJECT MANAGER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is specific statement indicating otherwise). The use of any such term or adjective never indicates that PROJECT MANAGER shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of paragraphs 9.13 or 9.14.
- 9.13 PROJECT MANAGER will not be responsible for CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, and PROJECT MANAGER will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.
- 9.14 PROJECT MANAGER will not be responsible for the negligent acts or omissions of CONTRACTOR or of any Subcontractors, or of the agents or employees of any CONTRACTOR or Subcontractor, or of any other persons at the site or otherwise performing any of the Work.

**ARTICLE 10 - CHANGES IN THE WORK**

- 10.1 Without invalidating the Agreement and accompanying bonds, OWNER may, at any time or from time to time, order additions, deletions or revisions in the work; these will be authorized by Change Orders. Upon receipt of a Change Order, CONTRACTOR shall proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time an equitable adjustment will be made as provided in Article 11 or Article 12 based on a claim made by either party.
- 10.2 PROJECT MANAGER may authorize minor changes in the Work not involving an adjustment in the Contract Price or the Contract Time, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and shall be binding on OWNER, and on CONTRACTOR who shall perform the change promptly. If the CONTRACTOR believes that a Field Order affects the Contract Time or Contract Price, the CONTRACTOR may submit a claim for an adjustment to the Contract Time and/or the Contract Price, as applicable.

- 10.3 Additional Work performed without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in paragraph 6.22 and except as provided in paragraphs 10.2 and 13.9.
- 10.4 OWNER shall execute appropriate Change Orders in accordance with Articles 11 and 12 of the General Conditions as prepared by PROJECT MANAGER covering changes in the Work, which are required by OWNER.
- 10.5 If notice of any change affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the Surety, it will be CONTRACTOR'S responsibility to notify the Surety, and the amount of each applicable Bond shall be adjusted accordingly. CONTRACTOR shall furnish proof of such adjustment to OWNER.
- 10.6 If such changes or alterations diminish the quantity of work to be done, such changes or alterations shall not constitute the basis for damages or anticipated profits on the work that may be deleted from the contract. It is the intent of these Contract Documents that payment for all work performed and all materials furnished shall be for the actual work performed and the actual quantity of materials furnished.

#### **ARTICLE 11 - CHANGE OF CONTRACT PRICE**

- 11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 11.2 The Contract Price may only be changed by a Change Order executed by a duly authorized representative of the CONTRACTOR and OWNER. Any claim for an increase in the Contract Price shall be based on written notice delivered to OWNER and PROJECT MANAGER within fifteen days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days of such occurrence unless PROJECT MANAGER allows an additional period to ascertain accurate cost data, which will not be unreasonably withheld, unreasonably conditions, or unreasonably delayed. All claims for adjustment in the Contract Price shall be initially determined by PROJECT MANAGER if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.
- The Contract Price will be increased due to any increase in CONTRACTOR'S cost for performing the Work arising out of (i) Changed Conditions under paragraph 4.5, (ii) the presence of hazardous substances or materials (other than Contractor Hazardous Substances), (iii) the presence of historical, archeological, or cultural resources on the project site or (iv) acts or omissions of the OWNER or others performing additional Work as contemplated by Article 7, or (v) failure or delay of the OWNER or PROJECT MANAGER in performing its obligations under the Contract Documents.
- 11.3 The value of any Work covered by a Change Order or of any claim or an increase or decrease in the Contract Price shall be determined in one of the following ways:

- 11.3.1. By mutual acceptance of a lump sum. A lump sum amount must include sufficient documentation to enable the PROJECT MANAGER to verify the cost of the Work involved. Projected costs for the work should be in accordance with paragraphs 11.4 and 11.5. Overhead and profit must be separately identified and be in accordance with paragraph 11.6.
- 11.3.2 .In the event a lump sum cannot be negotiated, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in paragraph 11.6), or
- 11.3.3 By application of unit prices to the quantities of the items involved, provided both parties agree (subject to the provisions of paragraph 11.9).

Cost of the Work:

- 11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. 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 include only the following items and shall not include any of the costs itemized in paragraph 11.5:
  - 11.4.1 Payroll costs for employees in the direct employment of the CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned based on 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, worker's or workmen's compensation, health, and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Sunday, or legal holidays shall be included in the above to the extent authorized by OWNER.
  - 11.4.2 Cost of all materials and equipment furnished and incorporated in the Work or any required mock-ups, including costs of transportation and storage thereof, and manufacturers' 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 all returns from sale of surplus materials and equipment shall accrue to OWNER and CONTRACTOR shall exercise reasonable efforts so that they may be obtained.
  - 11.4.3 Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors, and CONTRACTOR shall, subject to the provisions of paragraph 6.8 above, select a Subcontractor based on the purchase price, the reputation of the bidder and the bidder's goods or services, the quality of the bidder's goods or services, the extent to which the bidder's goods or services meet CONTRACTOR'S needs (including, without limitation, schedule of performance), CONTRACTOR'S past relationship with the bidder, and such other factors as CONTRACTOR may reasonably take into account, after consultation with OWNER

and PROJECT MANAGER. If a subcontract provides that the Subcontractor is to be paid based on Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR'S Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4 Costs of special consultants (including, but not limited to, project managers, architects, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.

11.4.5 Supplemental costs including the following:

11.4.5.1 The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

11.4.5.2 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 workmen, 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.

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof and hand tools not owned by the workmen whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of PROJECT MANAGER, and the costs of transportation, minor maintenance, loading, unloading, installation, dismantling and removal thereof - all in accordance with 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.

11.4.5.4 Sales, use or similar taxes, if any, related to the Work, and for which CONTRACTOR is liable, imposed by any governmental authority.

11.4.5.5 The cost of utilities, fuel, and sanitary facilities at the site.

11.4.5.6 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Work.

11.4.5.7 Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.4.5.8 Intellectual property royalties and licenses for items required because of a change in the Work and which are, or will be, incorporated into the Work.

11.5 The term Cost of the Work shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, project managers, architects, estimators, lawyers, auditors, accountants, purchasing and

contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in his principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in subparagraph 11.4.1 - all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

- 11.5.2 Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.
- 11.5.3 Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 11.5.4 Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).
- 11.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 11.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

Contractor's Fee:

- 11.6 The Contractor's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:
  - 11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,
  - 11.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:
    - 11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the Contractor's Fee shall be ten percent,
    - 11.6.2.2 for costs incurred under paragraph 11.4.3, the Contractor's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall be ten percent, and
    - 11.6.2.3 no fee shall be payable based on costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5.
- 11.7 The amount of credit to be allowed by CONTRACTOR to OWNER for any such change, which results in a net decrease in cost, will be the amount of the actual net decrease.

When both additions and credits are involved in any one change, the combined overhead and profit shall be figured based on the net increase, if any.



Adjustment of Unit Prices:

- 11.8 Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will submit in form acceptable to PROJECT MANAGER an itemized cost breakdown together with supporting data.
- 11.9 Where the quantity of Work with respect to any item that is covered by a unit price differs as described below from the quantity of such Work indicated in the Contract Documents, an appropriate Change Order shall be issued on recommendation of PROJECT MANAGER to adjust the unit price.
- 11.9.1 ESTIMATED QUANTITIES: The agreement, including all items of the Contract Documents, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of acceptable work done and the materials furnished, which are not in excess of the calculated quantities from the correct dimensions shown on the Plans or as ordered in writing by the PROJECT MANAGER.
- 11.9.2 UNIT PRICE METHOD: Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as twenty percent (20%) above or below the estimated or contemplated quantity for such items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration for said work that differs from the estimated quantity.
- 11.9.3 MAJOR ITEM: "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total contract cost, computed based on the proposal quantities and the contract unit price.
- 11.9.4 REVISED CONSIDERATION: Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Agreement, as provided under Article 10 - CHANGES IN WORK and Article 11 - CHANGE OF CONTRACT PRICE.

Cash Allowances:

- 11.10 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 done by such Subcontractors, manufacturers, fabricators, suppliers or distributors and for such

sums within the limit of the allowances. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued to reflect the difference, if any, between the allowance amounts contained in the Contract Price and the actual cost of the performance of the Work subject to the allowance. CONTRACTOR agrees that the original Contract Price includes such sums, as CONTRACTOR deems proper for costs and profit because of cash allowances. No demand for additional cost or profit in connection therewith will be valid.

**ARTICLE 12 - CHANGE OF CONTRACT TIME**

- 12.1 The Contract Time may only be changed by a Change Order. Any claim for an extension in the Contract Time shall be based on written notice delivered to OWNER and PROJECT MANAGER within fifteen (15) days of the occurrence of the event-giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within forty-five (45) days of such occurrence unless PROJECT MANAGER allows an additional period to ascertain additional accurate data, which will not be unreasonably withheld, unreasonably conditions, or unreasonably delayed. PROJECT MANAGER shall initially determine all claims for adjustment in the Contract Time if OWNER and CONTRACTOR cannot otherwise agree. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.
  
- 12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in paragraph 12.1. Such delays shall include, but not be limited to, Changed Conditions under paragraph 4.5, the presence of hazardous substances or materials (other than Contractor Hazardous Substances) on the project site and acts or neglect by OWNER or others performing additional Work as contemplated by Article 7, the delay or failure of Owner to perform its obligations under the Contract Documents, or the existence of a Force Majeure event. As used in these Contract Documents, the term “Force Majeure” means any event that (a) prevents or hinders CONTRACTOR from performing its obligations under the Contract Documents or complying with any conditions required by OWNER or PROJECT MANAGER under the Contract Documents; and (b) is beyond the reasonable control of and not the result of the negligence of CONTRACTOR (including its Subcontractors); and (c) could not have been prevented by CONTRACTOR or its Subcontractors through the exercise of reasonable diligence and due care. For purposes of this contract, “Force Majeure” includes war, rebellion or civil strife, unusually severe climatic conditions, acts or threats of terrorism and the results thereof, labor disputes and strikes of those providing transportation services to the Project Site for which there are no alternatives. In the event of a Force Majeure event that impacts the project within the terms of this provision, CONTRACTOR will be entitled to an increase in the Contract Time but no adjustment to the Contract Price.

The CONTRACTOR shall be granted time extensions to the Contract for a period longer than the number of days indicated by month in the table below if rainfall on a given day (measured at a rain gauge site as determined by the Project Manager) is in excess of 1.0 inch and/or site conditions will not permit work on day(s) following a rain in excess of 1.0 inch. Inclement weather and flooding shall not be counted for delays unless Work is scheduled in advance as verified by the PROJECT MANAGER and a legitimate effort is made by the CONTRACTOR to perform that Work.

<b>MONTH</b>	<b>DAYS</b>	<b>MONTH</b>	<b>DAYS</b>
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January	2	July	3
February	2	August	4
March	2	September	4
April	4	October	4
May	5	November	4
June	4	December	2

The CONTRACTOR shall furnish all data and analysis to the PROJECT MANAGER to substantiate a claim for Contract time extension under the preceding paragraph on a month-to-month basis with the CONTRACTOR'S monthly progress payment request.

The CONTRACTOR shall not be entitled to any additional monetary consideration for granted time extensions or reimbursement for damages or hindrances because of heavy rainfall or flooding.

12.3 All time limits stated in the Contract Documents are of the essence of the Agreement.

**ARTICLE 13 - MEASUREMENT AND PAYMENT; WARRANTY AND GUARANTY; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

Measurement and Payment:

13.1 Quantities and Measurements: No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number, and weight only shall be considered, unless otherwise specifically provided. Quantities of work done in excess of calculated quantities from correct Plan or Change Order dimensions shall not be measured for payment.

Warranty and Guaranty:

13.2 CONTRACTOR warrants and guaranties to OWNER that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13.

Access to Work:

13.3 PROJECT MANAGER and PROJECT MANAGER'S representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interest will have access to the Work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access; provided, however, that while on the PROJECT site, all such persons shall comply with the health, safety and environmental protection procedures and regulations established by CONTRACTOR.

Tests and Inspections:

13.4 CONTRACTOR shall give PROJECT MANAGER timely notice of readiness of the Work for all required inspections, tests, or approvals.

- 13.5 If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work (or part thereof) to specifically be inspected, tested, or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith, and furnish PROJECT MANAGER the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER'S or PROJECT MANAGER'S acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work. The cost of all other inspections, tests, and approvals required by the Contract Documents shall be paid by OWNER (unless otherwise specified).
- 13.6 All inspections, tests, or approvals other than those required by law, ordinance, rule, regulation, code, or order of any public body having jurisdiction shall be performed by organizations acceptable to the PROJECT MANAGER.
- 13.7 If any Work that is to be inspected, tested, or approved is covered without written concurrence of PROJECT MANAGER, it must, if requested by PROJECT MANAGER, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given PROJECT MANAGER timely notice of CONTRACTOR'S intention to cover such Work and PROJECT MANAGER has not acted with reasonable promptness in response to such notice.
- 13.8 Neither observations by PROJECT MANAGER nor inspections, tests or approvals by others shall relieve CONTRACTOR from his obligations to perform the Work in accordance with the Contract Documents.

Uncovering Work:

- 13.9 If any Work is covered contrary to the written request of PROJECT MANAGER, it must, if requested by PROJECT MANAGER, be uncovered for PROJECT MANAGER'S observation and replaced at CONTRACTOR'S expense.
- 13.10 If PROJECT MANAGER considers it necessary or advisable that covered Work be observed by PROJECT MANAGER or inspected or tested by others, CONTRACTOR, at PROJECT MANAGER'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as PROJECT MANAGER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction if he makes a claim therefore as provided in Articles 11 and 12.

OWNER May Stop the Work:

- 13.11 If the Work is defective and CONTRACTOR is not diligently performing its obligations under paragraph 13.12 below, or CONTRACTOR fails to supply sufficient skilled workmen

or materials or equipment meeting the requirements of the Contract Documents, OWNER may within 7 days after written notice from OWNER 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 or any other party. If OWNER orders CONTRACTOR to stop Work pursuant to this paragraph, and OWNER'S actions are not authorized by this paragraph, then the cessation of Work will be deemed a suspension by OWNER under General Condition paragraph 15.1.

Correction or Removal of Defective Work:

13.12 If required by PROJECT MANAGER, prior to substantial completion of the Work, CONTRACTOR shall promptly, without cost to OWNER, either correct or repair any defective Work, whether or not fabricated, installed or completed, or, if defective Work cannot be reasonably corrected or repaired and if the PROJECT MANAGER has reasonably rejected the Work, remove it from the site and replace it with non-defective Work.

One-Year Correction Period:

13.13 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 guaranty required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and upon OWNER'S written notice, either correct or repair the defective Work or, if the defective Work cannot be reasonably corrected or repaired and if the OWNER has reasonably rejected the Work, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not commence such correction within 10 days and diligently prosecute the cure to completion, or in an emergency where delay would cause serious, imminent risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and all reasonable costs of replacement, including compensation for additional professional services, shall be paid by CONTRACTOR.

Acceptance of Defective Work:

13.14 If the OWNER and PROJECT MANAGER, instead of requiring correction or removal and replacement of defective Work (prior to PROJECT MANAGER'S recommendation of final payment) prefer to accept it, the OWNER may do so. In such case, if acceptance occurs prior to PROJECT MANAGER'S recommendation of final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.15 If CONTRACTOR fails within a reasonable time after written notice of PROJECT MANAGER to proceed and correct defective Work or to remove and replace rejected Work as required by PROJECT MANAGER in accordance with paragraph 13.12, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising

his rights under this paragraph, OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise his rights under this paragraph. All direct costs of OWNER in exercising such rights shall be charged against CONTRACTOR in an amount verified by PROJECT MANAGER, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct costs shall include, in particular but without limitation, reasonable compensation for additional professional services required and all costs or repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR'S defective Work.

CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER or OWNER'S rights hereunder.

#### **ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

Schedules:

- 14.1 At least ten days prior to submitting the first Application for a progress payment, CONTRACTOR shall (except as otherwise specified in the General Requirements) submit to PROJECT MANAGER a progress schedule, a final schedule of Shop Drawing submission and a Schedule of Values of the Work. These schedules shall be satisfactory in form and substance to PROJECT MANAGER. The Schedule of Values shall include quantities and unit prices aggregating the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of the Schedule of Values by PROJECT MANAGER, it shall be incorporated into a form of Application for Payment acceptable to PROJECT MANAGER.

Application for Progress Payment:

- 14.2 On or before the seventh (7th) day of each month (but not more often than once a month), CONTRACTOR shall submit to PROJECT MANAGER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed for the previous month and accompanied by such supporting documentation as is required by the Contract Documents and also as PROJECT MANAGER may reasonably require. 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, as agreed to in writing by the PROJECT MANAGER, the Application for Payment shall also be accompanied by such data, satisfactory to OWNER, as will establish OWNER'S title to the material and equipment and protect OWNER'S interest therein, including applicable insurance. All costs associated with the PROJECT MANAGER'S verification that materials and equipment are suitably stored must be borne by the CONTRACTOR. Materials such as base, aggregate, bedding material, reinforcing steel, etc. that may be readily incorporated into construction will not be considered for payment as materials on

hand. Each subsequent Application for Payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior Applications for Payment. Where the CONTRACTOR is withholding from the payment due to an assigned subcontractor for labor, materials or equipment, which is either complete or partially complete, the CONTRACTOR must specifically indicate in his affidavit the name of the subcontractor and the reasons why said amount is being withheld. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR'S Warranty of Title:

- 14.3 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 at the earlier of the time of payment or delivery to the site, free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"). The CONTRACTOR must continue to provide appropriate bonds and insurance as indicated in Article 5 for the Work, materials, and equipment where title has passed to the OWNER, until the project is substantially complete in accordance with Paragraph 14.13 of the General Conditions. Subject to Section 14.10, the CONTRACTOR is also responsible for security, operation, safety, maintenance, and utilities for completed portions of work until the project is substantially complete. This will in no way waive the CONTRACTOR'S responsibilities as outlined in Paragraph 13.13 concerning the one (1) year correction period.

Review of Applications for Progress Payment:

- 14.4 PROJECT MANAGER will, within ten 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 PROJECT MANAGER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. OWNER shall pay PROJECT MANAGER approved Applications for Payment received by the PROJECT MANAGER on or before the seventh day of each month, to CONTRACTOR, the amount recommended by PROJECT MANAGER within thirty (30) days of receiving recommendation from PROJECT MANAGER, less retainages, if any, as so set forth in the Contract Document denominated Agreement.
- 14.5 PROJECT MANAGER'S recommendation of any payment requested in an Application for Payment will constitute a representation by PROJECT MANAGER to OWNER, based on PROJECT MANAGER'S on-site observations of the Work in progress as an experienced and qualified design professional and on PROJECT MANAGER'S review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of PROJECT MANAGER'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation) and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment PROJECT MANAGER will not thereby be deemed to have represented that any examination has been made to ascertain how or for what purpose CONTRACTOR has

used the moneys paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work materials or equipment has passed to OWNER free and clear of any Liens.

14.6 PROJECT MANAGER'S recommendation of final payment will constitute an additional representation by PROJECT MANAGER to OWNER that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7 PROJECT MANAGER may refuse to recommend the whole or any part of any payment to the extent reasonably necessary to protect the OWNER if, in his opinion, it would be incorrect to make such representation to OWNER. He may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify and such payment previously recommended to such extent as may be necessary in PROJECT MANAGER'S opinion to protect OWNER from loss because:

14.7.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,

14.7.2 written claims have been made against OWNER for which CONTRACTOR is potentially liable under the Contract Documents if such claims are unrelated to OWNER'S failure to pay CONTRACTOR amounts due in accordance with the requirements of the Contract Documents.

14.7.3 the Contract Price has been reduced because of Modifications,

14.7.4 OWNER has been required to correct defective Work or complete the Work in accordance with paragraph 13.14,

14.7.5 of CONTRACTOR'S failure to prosecute the Work in accordance with the Contract Documents, or

14.7.6 CONTRACTOR'S failure to make payment to Subcontractors, or for labor, materials, or equipment in accordance with CONTRACTOR'S contractual obligations and if such failure is unrelated to OWNER'S failure to pay CONTRACTOR amounts due in accordance with the requirements of the Contract Documents.

Substantial Completion:

14.8 When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall certify, in writing to OWNER and PROJECT MANAGER, that the entire Work is substantially complete and request that PROJECT MANAGER issue a certificate of Substantial Completion. Within seven working days, OWNER, CONTRACTOR, and PROJECT MANAGER shall inspect the Work to determine the status of completion. If PROJECT MANAGER considers the Work substantially complete, PROJECT MANAGER will prepare and deliver to OWNER and CONTRACTOR, within 3 working days after such inspection, 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 he may make written objection to PROJECT MANAGER as to any provisions of the certificate or attached list. If, after considering such objections, PROJECT MANAGER concludes that the Work is not substantially complete, PROJECT MANAGER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating his reasons therefore. If, after consideration of OWNER'S objections, PROJECT MANAGER considers the Work substantially complete, PROJECT MANAGER will within said fourteen 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 certificates as he believes justified after consideration of any objections from OWNER. Unless otherwise agreed in writing, from and after the delivery by the PROJECT MANAGER to the OWNER and CONTRACTOR of the Certificate of Substantial Completion with respect to all or part of the Work, OWNER will bear all obligations with respect to operation, safety, maintenance, heat, utilities, insurance, security and risk of loss for that portion of the WORK declared to be substantially complete and occupied by the OWNER.

- 14.9 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

- 14.10 Use by OWNER of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1 OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any part of the Work, which OWNER believes to be substantially complete, and which may be so used without significant interference with construction of the other parts of the Work. If CONTRACTOR agrees, and OWNER and CONTRACTOR shall have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents, CONTRACTOR will certify to OWNER and PROJECT MANAGER that said part of the Work is substantially complete and request PROJECT MANAGER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter OWNER, CONTRACTOR, and PROJECT MANAGER shall inspect that part of the Work to determine its status of completion. If PROJECT MANAGER does not consider that part of the Work to be substantially complete, PROJECT MANAGER will notify OWNER and CONTRACTOR in writing giving his reasons therefore. If PROJECT MANAGER considers that part of the Work to be substantially complete, PROJECT MANAGER will execute and deliver to OWNER and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a tentative list of items to be completed or corrected before final payment. Prior to issuing a certificate of Substantial Completion as to part of the Work, PROJECT MANAGER will deliver to OWNER and CONTRACTOR a written recommendation as to the division of responsibilities pending issuance of a certificate of substantial completion between OWNER and CONTRACTOR with respect to, maintenance, utilities and insurance for that part of the Work, which

shall be subject to the approval of OWNER and CONTRACTOR. OWNER shall have the right to exclude CONTRACTOR from any part of the Work that PROJECT MANAGER has so certified to be substantially complete and shall have the responsibility for the security, operation and safety of that part of the Work, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list,

14.10.2 In lieu of the issuance of a certificate of Substantial Completion as to part of the Work, OWNER may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that prior to any such takeover, OWNER and CONTRACTOR have agreed as to the division of responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

14.10.3 No occupancy of part of the Work or taking over of operations of a facility will be accomplished prior to compliance with the requirements of paragraph 5.6 in respect of property insurance.

Final Inspection:

14.11 Upon written notice from CONTRACTOR that the Work is complete, PROJECT MANAGER will 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 remedy such deficiencies.

Final Application for Payment:

14.12 After CONTRACTOR has completed all such corrections to the satisfaction of PROJECT MANAGER and delivered all maintenance and operating instructions, schedules, guaranties, Bonds, certificates of inspection, marked-up record documents and other documents - all as required by the Contract Documents, and after PROJECT MANAGER has indicated that the Work is acceptable, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as PROJECT MANAGER may reasonably require, together with complete and legally effective releases or waivers (reasonably satisfactory to OWNER) of all Liens or claims (other than those previously made to OWNER in writing) arising out of or filed in connection with the Work executed by Contractor and First Tier Subcontractors and Suppliers and an Affidavit of All Bills Paid executed by Contractor. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full, or conditional releases in a form approved in advance, in writing, by OWNER; an affidavit from CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier, or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment:

- 14.13 If, on the basis of PROJECT MANAGER'S observation of the Work during construction and final inspection, and PROJECT MANAGER'S review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, PROJECT MANAGER is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract Documents, PROJECT MANAGER will, within ten days after receipt of the final Application for Payment, indicate in writing his recommendation of payment and present the Application to OWNER for payment. Thereupon PROJECT MANAGER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, PROJECT MANAGER will return the Application 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. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall, within thirty days after receipt thereof pay CONTRACTOR all remaining amounts of the Contract Price which have not been previously paid to CONTRACTOR.
- 14.14 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed thereof and if PROJECT MANAGER so confirms, OWNER shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of PROJECT MANAGER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted.

CONTRACTOR'S Continuing Obligation:

- 14.15 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by PROJECT MANAGER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor the issuance of a notice of acceptability by PROJECT MANAGER pursuant to paragraph 14.13, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

Waiver of Claims:

- 14.16 The making and acceptance of final payment shall constitute a release to the OWNER and every officer and agent thereof from all claims and liability hereunder for anything done or furnished for or relating to the Work or for any act or neglect of the OWNER or of any person relating to or affecting the Work, except for those claims previously made in writing and delivered to the OWNER.

Final Completion:

- 14.17 After issuing the Certificate of Substantial Completion the OWNER, upon the PROJECT MANAGER'S recommendation, will issue a Certificate of Final Completion. The CONTRACTOR must have completed all outstanding construction and corrective

maintenance construction as provided by Paragraph 14.3, "CONTRACTOR'S Warranty of Title." Subject to the provisions of Article 14.8, the date of Final Completion of a Project or specified part of a Project is the date when, construction having been complete and maintained in accordance with the Contract Documents, the CONTRACTOR is released from all responsibility and obligation for further maintenance of the Project and complete ownership of the Project passes to the District.

## **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

### **OWNER May Suspend Work:**

- 15.1 OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and PROJECT MANAGER that shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR will be allowed to apply for an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if he makes a claim therefore as provided in Articles 11 and 12. However, if the OWNER stops the Work for just cause because the CONTRACTOR is not complying with the plans and specifications or the intent thereof, or any provision of this Contract, then CONTRACTOR shall have no claim for damages, hindrances, or delays.

### **OWNER May Terminate:**

- 15.2 Upon the occurrence of any one or more of the following events:
- 15.2.1 if CONTRACTOR is adjudged as bankrupt or insolvent,
  - 15.2.2 if CONTRACTOR makes a general assignment for the benefit of creditors,
  - 15.2.3 if a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property,
  - 15.2.4 if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws,
  - 15.2.5 if CONTRACTOR repeatedly fails to supply sufficient skilled workmen or materials or equipment meeting the requirements of the Contract Documents,
  - 15.2.6 if CONTRACTOR repeatedly fails to supply a sufficient skilled work force capable of completing the Work within the Time allotted for construction,
  - 15.2.7 if CONTRACTOR disregards the consequences of failure to complete the Work within the Time allotted for construction and fails to supply a sufficient skilled work force to expeditiously complete the Work where Contract Time has expired,
  - 15.2.8 if CONTRACTOR repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment,
  - 15.2.9 if CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction,

15.2.10 if CONTRACTOR disregards the authority of PROJECT MANAGER, or

15.2.11 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

OWNER may for the reasons listed in 15.2.1 through 15.2.11 inclusive, after giving CONTRACTOR and his Surety seven (7) days' written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work, incorporate in the Work all materials and equipment stored at the OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER shall be verified by PROJECT MANAGER and incorporated in a Change Order, but in finishing, the Work OWNER shall not be required to obtain the lowest figure for the Work performed.

15.3 Where CONTRACTOR'S services have been so terminated by OWNER, the termination shall not affect any rights 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 for liability.

15.4 Upon seven (7) days' written notice to CONTRACTOR and PROJECT MANAGER, OWNER, may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses.

**CONTRACTOR May Stop Work or Terminate:**

15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or PROJECT MANAGER fails to act on any Application for Payment within forty-five days after it is submitted, or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days' written notice to OWNER and PROJECT MANAGER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if PROJECT MANAGER has failed to act on an Application for Payment after fifteen (15) following submission or OWNER has failed to make any payment after seven (7) days following the expiration of the time period for OWNER to make payment as set forth in paragraph 14.4 above, CONTRACTOR may upon seven (7) days' notice to OWNER and PROJECT MANAGER stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of his obligations under paragraph 6.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER. In the event of a suspension of the Work by CONTRACTOR pursuant to this paragraph 15.5, CONTRACTOR shall be entitled to a Change Order

adjusting the Contract Time by the length of the suspension and adjusting the Contract Price to compensate CONTRACTOR for any increased costs incurred by CONTRACTOR as a result of the suspension.

#### **ARTICLE 16 - MEDIATION**

OWNER and CONTRACTOR will negotiate in good faith in an effort to resolve any dispute that may arise between them. All disputes will be submitted to mediation before proceeding with a demand for arbitration as set forth in Article 17. In the event mediation is necessary, OWNER and CONTRACTOR shall choose a mutually agreeable mediator and share the cost of mediation equally. In the event the mediation is not successful, OWNER or CONTRACTOR may proceed with the remedies available at law. Venue for any legal action between OWNER and CONTRACTOR lies in Bexar County, Texas.

#### **ARTICLE 17 – INTENTIONALLY DELETED**

#### **ARTICLE 18 - MISCELLANEOUS**

##### Giving Notice:

18.1 Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if 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 if sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

##### Computation of Time:

18.2 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on Saturday or Sunday or on a day made a legal holiday by the law of the State of Texas, such day shall be omitted from the computation.

##### Date Certain Contract:

18.3 After beginning Work as outlined in Paragraph 2.3, the CONTRACTOR shall substantially complete the Work within the time provided for in Paragraph 3.1 of the Agreement, during which period of time CONTRACTOR binds and obligates itself to employ a sufficient work force to diligently pursue completion of said structures, Work, and improvements. The CONTRACTOR shall deliver same over to the OWNER in a completed, undamaged, and clean condition within the time allotted for construction as indicated in Paragraph 3.1 of the Agreement. No additional time for substantial completion will be allowed unless granted in writing by the OWNER.

##### Liquidated Damages:

18.4 If CONTRACTOR shall fail to substantially complete any part, portion or phase of the Work within the time herein specified or otherwise allowed therefore, he shall be liable for the amount set forth in Paragraph 4 of the Supplementary Conditions for the period of such delay. Said amount to be directly paid by CONTRACTOR to OWNER or to be deducted by the OWNER on the monthly pay estimate with required adjustments made on the final

estimate and settlement, not as a penalty, but as liquidated damages due to OWNER for expense, loss and inconvenience resulting from failure to substantially complete said part, portion or phase of the Work within the time allowed, such time of substantially completion being an essential element and consideration, as a result of such delay.

The amount of all such damage shall be initially fixed and determined by the written certificate of the PROJECT MANAGER subject to Contractor's right to dispute such determination.

General:

18.5 Should OWNER or CONTRACTOR suffer injury or damage to his person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage, pursuant to the provisions of Article 9.9.

18.6 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guaranties and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.2, 13.13, 13.14, 14.3, and 15.2 and all of the rights and remedies available to OWNER and PROJECT MANAGER there under, shall be in addition to, and shall not 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 law or contract, by special warranty or guaranty or by other provisions of the Contract Documents, and the provisions of this paragraph shall 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. All representations, warranties, and guaranties made in the Contract Documents shall survive final payment and termination or completion of this Agreement.

18.7 SBEDA Requirements

18.7.1 Program Requirements

- a. Contractor is required to make efforts to ensure that small, minority and women-owned businesses are provided opportunity in any subcontracting, vendor, supplier opportunities that may exist in the performance of this contract.
- b. Contractor is required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on this contract on the basis of their race, ethnicity, or gender and must afford all firms opportunities to participate in the performance of this contract to the extent that opportunities are available.
- c. Owner's will review information submitted by the Contractor pertaining to efforts by the Contractor to promote opportunities for diverse businesses, including small, minority and women-owned businesses to compete for business as subcontractors, vendors and/or suppliers.
- d. Owner have set a goal for this business opportunity program. Goal achievement will be measured in terms of percentage of the total dollar value of contracts awarded by the Contractor to small, minority and women-owned businesses. Failure of Contractor to achieve this goal will not be considered by Owner to be a breach of this Agreement.

- e. Contractor shall continuously maintain, compile, and provide to the Owner, **Bexar County Water Control and Improvement District #10** quarterly information relating to its use of small, minority and women-owned businesses on the project. This information should include the following information for each of the small, minority and women-owned businesses subcontractors and vendor/suppliers utilized by the Contractor on the project: a description of the categories of contracts awarded to small, minority and women-owned businesses; the dollar value of contracts awarded; and contact information of the small, minority and women-owned businesses. Additionally, the Contractor shall provide information regarding its progress toward attaining the 24% goal.

18.8 The CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract and that it has not for the purpose of soliciting or securing this Contract, paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Contract. For breach of this warranty, the OWNER shall have the right to terminate this Contract in accordance with Article 15 herein.

#### **ARTICLE 19 - SURETY ASSIGNMENT, RESPONSIBILITIES, LIQUIDATED DAMAGES AND TERMINATION UPON CONTRACTOR DEFAULT/TERMINATION**

Surety Assignment to Complete Work:

19.1 When directed in writing by the OWNER where the CONTRACTOR has defaulted and its services have otherwise been terminated for cause, the CONTRACTOR'S Surety will be given written notice and opportunity to perform the CONTRACTOR'S contractual obligations pursuant to its Bonds.

Surety Responsibilities:

19.2 Pursuant to the provisions of Paragraph 19.1 and of the Performance Bond the CONTRACTOR'S Surety will be given written notice and opportunity to perform the CONTRACTOR'S contractual obligations pursuant to its Bonds. If Surety determines to complete the CONTRACTOR'S contractual obligations, the CONTRACTOR'S Surety shall assume all responsibilities of the CONTRACTOR as set forth in the Contract Documents and shall faithfully construct and complete said Work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said Contract and all included Contract Documents according to their intent and purpose.

#### **ARTICLE 20 – EQUAL EMPLOYEE OPPORTUNITY**

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employees and that employees are treated during employment, without regard to their race color, religion, sex, or national origin.



In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further contracts with the District.

## **ARTICLE 21 - WAGE RATES**

- 21.1 All employees directly employed on the work shall be not paid less than the established prevailing wage scale for work of similar character in this locality. A scale of prevailing wages is included in the contract forms section of these Contract Documents, attached hereto and incorporated by reference, for all purposes as if set forth in its entirety in this provision. The Contractor shall pay not less than the general prevailing wages shown on said scale and shall keep accurate wage records accessible in accordance with Chapter 62 of the Texas Labor Code. The Contractor will submit a copy of all weekly payrolls to the Project Manager. These payrolls will contain the name, address, and social security number of each laborer or mechanic at the site of the work, his correct classification, rates of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The payroll shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, and that the wage rates contained therein are not less than the applicable wage determination contained in these specifications, and that the classifications conform with the work each laborer or mechanic forms. The Contractor shall be responsible for the submission of copies of all subcontractors.
- 21.2 Before monthly payments shall be made to the Contractor by the Owner, all payroll transcripts for that payment period, along with other such detailed information requested by the Project Manager, must be received by the Project Manager. No progress payments shall be made until the job payroll copies and requested information have been received.
- 21.3 The payrolls shall be reviewed by the Project Manager and the Contractor shall be notified of any discrepancies noted. Any discrepancy in the payroll shall be cause for withholding further payments to the Contractor until such discrepancies are properly corrected.
- 21.4 Wage Determination Decision: Included and considered as part of the Contract is a Schedule of Occupation Classifications and minimum hourly wage rate as required. This section is copied onto green colored pages and begins on Page W-1.
- 21.5 Overtime Pay: For the purposes of this Contract, a normal workweek is considered forty (40) hours per week. Any time a laborer or mechanic works in excess of forty (40) hours per week, that employee shall be paid no less than the rate of one and one half (1-1/2) times the employee's regular hourly rate. Overtime pay shall be paid also for work on recognized legal holidays.

## **ARTICLE 22 - PROTECTION AGAINST ACCIDENT TO DISTRICT, ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES AND THE PUBLIC**

The Contractor shall save and hold harmless the District, its officers, agents, employees and representatives, from any and all claims, suits and damages of every kind, for injury to, or death of, any person, or persons and for damage to, or loss of property, arising out of, or attributed,

directly or indirectly, to the operations of this project and the performance of this contract. For this purpose, any subcontractor or subcontractors shall be considered agents of the Contractor.

#### **ARTICLE 23 – GUARANTY AGAINST DEFECTIVE WORK**

If the Contractor fails to repair or replace defective work pursuant to the provisions of this Agreement, the Contractor shall indemnify the Owner against any repairs that may become necessary to any part of the work performed under the Contract arising from defective workmanship or materials used therein for a period of one (1) year from the date of substantial completion of the project. The guarantee period for workmanship, materials and equipment for the project shall begin from the date indicated on the "Substantial Completion Certificate" issued by the Project Manager.

#### **ARTICLE 24 - ACCIDENTS**

ACCIDENTS: The Contractor shall provide, at the site, such equipment and medical facilities as are necessary to supply first aid service to anyone who may be injured in connection with the work. The Contractor must promptly report in writing to the Project Manager all accidents whatsoever arising out of, or in connection with, the performance of the work whether on or adjacent to the site which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death, serious injury, or serious damage is caused, the accident then shall be reported immediately by telephone or messenger.

SUPPLEMENTARY CONDITIONS

1. GENERAL: The provisions of this section of the specifications shall govern in the event of any conflict between them and the "General Conditions."
2. SCOPE OF WORK: The work to be performed under this contract consists of furnishing all material, labor, supervision, tools, and equipment necessary to complete the work as indicated in the plans and specifications complete and in place.
3. TIME ALLOTTED FOR CONSTRUCTION: Subject to the acceptance of one or more Alternatives, the time allotted for completion of all items of work shall be 180 calendar days, as such time may be adjusted pursuant to the Contract Documents, to substantially complete the Bexar County Water Control and Improvement District #10, Wells No. 2 and 4 – Electrical Improvements. The Contract time shall begin on the thirtieth (30th) day after the effective date of Agreement, or, if a Notice to Proceed is given, on the commencement date indicated in the Notice to Proceed provided that such date is on or before the thirtieth (30th) day after the effective date of Agreement. The Notice to Proceed shall consist of a written instruction from the Project Manager for the Contractor to proceed with the construction of the project.
4. LIQUIDATED DAMAGES FOR DELAY: The Contractor agrees that the time limits stated in the Contract Documents are of the essence for this Contract and that for each day of delay beyond the number of calendar days or Substantial Completion date herein agreed upon for the Substantial Completion of any part, portion or phase of this work herein specified and contracted for (after due allowance for such extension of time as is provided for in the General Conditions) the Owner may withhold, permanently, from the Contractor's total compensation, the sum of Two Hundred and Fifty Dollars (\$250.00), for each calendar day that expires after the time specified in paragraph 3.1 of the Agreement, as such time may be adjusted pursuant to the Contract Documents, until said part, portion or phase of work is Substantially Complete in accordance with Paragraph 14.8 of the General Conditions. This liquidated damage amount may be deducted from the monthly pay estimate with required adjustments made on the final estimate and settlement. Said deduction assessed not as a penalty, but as liquidated damages due to Owner for expense, loss, and inconvenience resulting from failure to Substantially Complete the work within the time allowed. The payment by CONTRACTOR to OWNER of liquidated damages due hereunder constitutes payment of full and complete monetary damages for CONTRACTOR'S failure to cause Substantial Completion to occur within the Contract Time and, without limiting OWNER'S right to terminate under Section 15.2 below, is OWNER'S sole remedy for any such delay, including, without limitation, claims based on loss of profit, revenue, or use of the Work.
5. INTENTIONALLY DELETED
6. LOCATION AND PROTECTION OF UTILITIES:
  - 6.01 General: Notwithstanding any other provision of this contract, and subject to the provisions of Article 4.5 of the General Conditions, the Contractor shall be solely responsible for the location and protection of any and all public and private utility lines and utility customer service lines in the work area. The Contractor shall exercise due care to locate and to mark, uncover or otherwise protect all such lines in the construction zone and any of the Contractor's work or storage areas. The

existence and location of underground utilities indicated on the plans are taken from the best records available and are not guaranteed, but shall be investigated and verified by the Contractor before starting work. Any such lines damaged by the Contractor's operations shall be immediately repaired by the Contractor or he shall cause such damage to be repaired at his expense.

- 6.02 Contractor's Responsibility: The Contractor shall be held responsible for any damage to, and for maintenance and protection of the existing utilities even though they are not shown on the plans. The Contractor shall also be responsible for giving the utility companies sufficient notice to relocate their utilities. The cost of temporarily relocating utilities for the convenience of the Contractor shall be paid by the Contractor.
- 6.03 Project Utilities: In the case of sewer, water, telephone, cable, telecommunications cables, electrical and gas mains and services, where no specific provisions are made on the plans, it shall be the responsibility of the Contractor to determine the exact location of each such line and to excavate over, under and around such line and provide all needful temporary bridging during construction and backfill so as to maintain continuous service and finally to complete his construction and backfill operations in such manner as to leave the line firmly and securely bedded in its original position, all to the satisfaction of the Field Representative. This shall apply to all lines, whether or not shown on the plans.
- 6.04 Shoring, Bracing, and Supporting: In areas where utilities near the construction area would be damaged by soil movement, slips, or cave-ins, the Contractor shall take all precautions to protect such utilities from damage, and the Contractor shall be fully responsible for and shall pay for the repair of any such damage without additional cost to the District.
7. USE OF PRIMARY ARTERIES: The Contractor shall confine his haul routes to primary arteries. Damage to streets caused by the Contractor's equipment shall be repaired upon direction and in the manner prescribed by the Inspector or the Project Manager at the Contractor's expense.
- The Contractor shall submit to the Project Manager for review his proposed haul routes. The Contractor should make himself aware of local events that may impact proposed haul routes. No additional payment shall be made for any changes to proposed haul routes necessary to avoid local events.
8. DUST CONTROL: The Contractor will sprinkle water on base of streets under construction, haul routes and on detours as required to maintain sufficient moisture content in surface layers for dust control.
9. USE OF EXPLOSIVES: The use of explosives will not be permitted on this project.
10. UTILITY CONNECTIONS:
- 10.01 Water: The responsibility shall be upon the Contractor to provide and maintain, at his own expense, an adequate supply of water for his use for construction and domestic consumption. Any connections and piping that the Contractor deems necessary shall be installed at his expense and at locations approved by local

authorities and the District. Before final acceptance, all temporary connections and piping installed by the Contractor shall be removed in a manner satisfactory to the Inspector. All resident inspection or water replacement, adjustment, and attendant work will be performed by an authorized representative of the controlling utility who will, in turn, be responsible directly to the Resident Project Representative/Inspector as designated in Article 1-Definitions of the General Conditions of Agreement.

10.02 Electricity: All electric current required by the Contractor shall be furnished at his own expense. All necessary meters, switches, connections, and wiring shall be installed at his expense and at locations approved by the Inspector. Before final acceptance, all meters, switches, connections, and wiring installed by the Contractor shall be removed in a manner satisfactory to the Inspector.

11. MATERIALS:

11.01 Quality: Unless otherwise specified, all materials incorporated in the permanent work shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. A District representative shall be entitled to be present when all materials are off loaded or unloaded upon delivery to the project site(s) or storage place, provided, however, that the Contractor has no obligation to suspend or to delay unloading of materials if the representative is not present and Contractor gave Project Manager at least one hour advance notice of the unloading.

11.02 Faulty Materials: During the one year warranty period set forth in Section 13.13, the Contractor shall promptly remove from the premises all materials condemned by the Inspector as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the District and shall bear the expense of making good the work of other Contractors destroyed or damaged by such removal or replacement.

11.03 Use of Materials within the Right-of-Way: The Contractor, with the approval of the Inspector, may use in the work any suitable stone, gravel, or sand found in the excavation. The Contractor shall not excavate or remove any material from within the right-of-way, which is not within the excavation as indicated by the lines and grades, without written authorization from the Project Manager.

11.04 Salvageable Material: All salvageable material shall become the property of the District and shall be stored as directed by the Inspector at the Contractors expense at locations that will not interfere with Contractor's prosecution of the work.

11.05 Disposal of Waste Material: The Contractor shall be responsible for disposing of all waste materials including excavation, old concrete, old asphalt or any other material, which is required to be removed from the project. No waste material shall be deposited in any natural drain, creek, river, or other watercourse. Reclamation of low areas may be performed with the approval of the Project Manager. The Contractor shall, as directed by the Inspector, immediately remove at his own expense any fill that is blocking drainage that has resulted from the Contractor's

operations.

12. COORDINATION WITH OTHERS: Other Contractors may be doing work in the same area simultaneously with this project. The Contractor shall coordinate his proposed construction with that of the other contractors and Owner will require its other Contractors to coordinate their activities with Contractor.
13. COPIES OF PLANS AND SPECIFICATIONS FURNISHED: Ten (10) sets of plans and specifications shall be furnished to the Contractor, at no charge, for construction purposes. Additional copies may be obtained at cost of reproduction upon request.
14. TESTING AND CONTROL: Testing and control of all materials used in the work, unless otherwise noted in the construction specifications, shall be done by the Contractor by an approved commercial laboratory, employed and paid directly by the Owner. The Contractor shall furnish, at his own expense, all necessary specimens for testing of the materials, as required by the Project Manager. The Contractor shall pay for all tests that fail.
15. CLEANING: As a condition to Substantial Completion of the Work, or acceptance by Owner of a separate part of the Work, the Contractor shall thoroughly clean all equipment and materials installed by him and shall deliver over such materials and equipment undamaged in a bright, clean, polished, and new appearing condition.
16. DURING CONSTRUCTION: During construction of the work, the Contractor shall, at all times, keep the site of the work and adjacent premises as free from material, debris, and rubbish, as is practicable and shall remove same from any portion of the site, if, in the opinion of the Project Manager, such material, debris, or rubbish constitutes a nuisance or is objectionable.
17. MEASUREMENT AND PAYMENT:
  - 17.01 Subsidiary Items: All items not specifically called for in the specifications or shown on the plans, but which can be reasonably inferred therefrom or which are necessary to reasonably complete the Project in conformance therewith, shall be considered subsidiary to other items of this contract and shall not be paid for separately.
  - 17.02 Payment for Materials on Hand: No payment for materials on hand shall be made for steel reinforcement, cement, aggregates, base material, select backfill or the materials readily incorporated into the project.
18. ACCESS TO SITE: The Contractor shall secure permission for access to the work site in all areas including District easements. This access must be approved by the District and where the Contractor cannot legally obtain access to a work site, he must submit a written request to be released from the responsibility for the performance of work at said site.
19. STORAGE SITE: The Contractor must secure a storage area of a size adequate to accommodate equipment, vehicles, and materials for the period of performance of the agreement. The storage site must be approved by the District.

20. LOCATION OF MANHOLES AND LINES: The Contractor shall be responsible for the location and exposure of all manholes and lines and in the event location cannot be determined must notify the Inspector.
21. BARRICADES, WARNING SIGNS, LIGHTS AND TRAFFIC CONTROL: At street crossings and at other points of hazard, or as directed by the Project Manager, the Contractor shall provide and maintain suitable signs, barricades and warning lights as are necessary to direct traffic around work in progress and insure the safety of the public. It shall be the Contractor's responsibility to obtain all traffic permits and detour traffic plans, as needed.

The Contractor shall provide adequate flagmen, barricades and detour and warning signs and lights for the project, or portion of the project within which operations are being prosecuted. All excavations and/or stockpiles of materials shall be adequately barricaded and lighted.

All barricades, detour and warning signs and lights for this project shall be constructed and placed in accordance with the "Texas Manual on Uniform Traffic Control Devices for Streets and Highways (latest version)," as published by TxDOT, and approved by the Project Manager.

22. DETOUR ROUTES: The Contractor shall not begin construction of the project or close or partially close any streets until adequate barricades and detour signs in accordance with the detour route have been provided.
23. PROTECTION OF ENVIRONMENTAL RESOURCES: Contractor shall use good industry practices to protect the environmental resources within the project boundaries and those affected outside the limits of permanent work under this contract during the entire period of this contract. The Contractor shall confine his activities to areas defined by the plans and specifications. Environmental protection shall be as stated in the following subparagraphs.

23.01 Submittals: The Contractor shall submit an environmental protection plan in accordance with provisions as herein specified.

23.01.1 Environmental protection plan shall include but not be limited to the following:

23.01.1.1 Methods for protection of features to be preserved within authorized work areas. The Contractor shall prepare a listing of methods to protect resources needing protection, i.e., trees, shrubs, vines, grasses and groundcover, landscape features, air and water quality, fish and wildlife, soil, historical, archeological and cultural resources.

23.01.1.2 Protection of Land Resources: Prior to the beginning of any construction, the Contractor shall identify all land resources to be preserved within the Contractor's work area. The Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and landforms without special permission from the Project Manager. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless

specifically authorized. Where such special emergency use is permitted, the Contractor shall provide effective protection for land and vegetation resources at all times.

23.02 Protection of Adjacent Lands: Trees, shrubs, vines, grasses, croplands, land forms and other adjacent land features indicated and defined on the plans to be preserved shall be clearly identified by marking, fencing, or wrapping with boards, or any other approved techniques. Areas in which the Contractors' activities will be permitted shall be delineated on the ground by marking devices, all subject to approval by the Project Manager, prior to commencement of the Contractors operations. No construction activities will be commenced until such marking and/or protection has been completed and approved by the Project Manager. The Contractor shall take positive measures to make sure that his personnel understand the purpose of the markings and do not operate outside the designated areas.

23.02.1 Protection of Affected Trees: Exposed roots should be cut and treated with good tree wound paint. Peat moss, pine bark, or other organic material should be incorporated into the exposed soil surface to increase its moisture retention. Corrective pruning of the top of tree to compensate for the loss of roots will usually be necessary. Rather than being topped, much of the top growth should be thinned out by trimming out the lateral growth and cutting some of the main branches back to good side branches. When the grade level around landscape trees is lowered, the top growth should be thinned out to compensate for any roots lost as the soil is removed from the root zone. Follow proper pruning practices to retain overall shape and beauty of the tree.

Contractor shall maintain the finished grade around the base of protected trees at the original grade prior to construction. Under no circumstances shall Contractor store excess excavation material at the base of a tree designated to remain.

23.03 Work Area Limits: Prior to any construction, the Contractor shall mark the areas that are not required to accomplish all work to be performed under this Contract. Isolated areas within the general work area, which are to be saved and protected, shall also be marked or fenced. Monuments and markers shall be protected before construction operations commence.

23.04 Preservation and Recovery of Historical, Archeological and Cultural Resources: Existing historical, archeological, and cultural resources within the Contractor's work area will be so designated by the Project Manager and precautions taken to preserve all such resources, as they existed at the time they were pointed out to the Contractor. The Contractor shall install all protective devices such as off limits markings, fencing, barricades, or other devices deemed necessary by the Project Manager for these resources so designated on the plans and shall be responsible for their preservation during this contract. If during construction activities the Contractor observes unusual items that might have historical or archeological value, such observations shall be reported as soon as possible to the Project



Manager. If the Contractor is delayed or if additional work is required by a discovery, the Contract will be subject to equitable adjustment under one of the appropriate clauses of the General Provisions.

24. FENCING:

24.01 Fencing: Any and all fencing, including electric fence, whether or not identified on the Plans, must be maintained at all times. Where the nature of the work requires fence to be removed the Contractor, at his expense, shall replace said fencing as detailed in the Plans and/or as approved by the Project Manager. The Contractor must maintain fencing required to confine livestock at all times.

24.02 Access through Fencing: Appropriate gaps for project access must be maintained by the Contractor to assure livestock control at the Contractor's expense.

24.03 Bore Pit Fencing: Use of tubular portable gate panels 4' minimum height shall be the minimum requirement for perimeter of bore pit at all times.

24.04 Pedestrian Control Fencing: Temporary Fencing shall be placed in all areas of open trench during school hours to prevent pedestrian traffic from crossing open trench.

25. TRENCH EXCAVATION PROTECTION: The Texas Health and Safety Code §756.023 requires safety standards for construction projects and consideration of safety records when awarding bids on construction projects that involve trench excavation that exceeds depths of five (5) feet. The bills require that bid documents require adequate safety systems that meet Occupational Safety and Health Administration standards and that the Contract Documents include a pay item for these safety systems.

In light of these requirements, Section 700/027100 of the technical specifications, entitled "Trench Excavation Protection" includes trench safety technical requirements. The Contractor is reminded that requirements of Section 700/02700 of the Contract Documents will be enforced.

As indicated in the Instruction to Bidders, Item 13, "Required Additional Bid Proposal Information," paragraph "C," where excavation exceeds a depth of five (5) feet, or when otherwise required, Bidders shall submit a "Safety Record" which will be considered by the District during bid evaluation prior to Contract award. As outlined in Instruction to Bidders, Item 15, "Submission of Post Bid Information," and Section 700/02700 of the technical specifications, the apparent low bidder must also submit a "Trench Safety Plan" and "Trench Safety Documentation" within fourteen (14) days of notification. This information will also be considered by the District during bid evaluation prior to Notice to Proceed.

The District may have obtained geotechnical information, which may include subsurface data, logs of soil borings, and recommendations from geotechnical consultants. Any information obtained is for use by the District and/or its design Engineers in the design of the project and are not part of the Contract. If soil borings have been prepared, they will be included in the technical specifications or on the plans. The District and its design

Engineers do not guarantee the accuracy or validity of the data, nor do they assume any responsibility for any interpretations or conclusions the Contractor may draw from the data., provided nothing in this paragraph will limit the right of the Contractor to a Change Order under Article 4.5 of the Contract General Conditions.

The Contractor shall provide to the "Contractor's Qualified Project Manager" all information needed to design the "Trench Safety System" required by Section 700/027010. The Contractor may, at his option, perform additional subsurface investigations at his own expense.

26. PERMITS:

26.01 The Contractor is required to obtain and shall comply with all provisions and requirements of any permit, giving any notices called for, coordinating and scheduling the work to minimize hazards, inconvenience and delays.

26.02 Refer to the Civil General Notes sheet for other permits applicable to this project.

[Type here]

# SAMPLE CONTRACT AGREEMENT

**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

AGREEMENT

STATE OF TEXAS §  
COUNTY OF BEXAR §

THIS AGREEMENT is dated as of the \_\_\_\_ day of January in the year 2018 by and between the Bexar County Water Control and Improvement District #10, acting through its Manager, thereunto duly authorized so to do, Party of the First Part, hereinafter called "BCWCID #10/DISTRICT/OWNER," and \_\_\_\_\_, Party of the Second Part, 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: Bexar County Water Control and Improvement District #10 – Wells No. 2 And 4– Electrical Improvements – Improvement of electrical components located in Windcrest Texas.

**ARTICLE 2. PROJECT MANAGER.**

The Project has been designed under the direction of the BCWCID # 10. For the purpose of this Contract, the Manager, \_\_\_\_\_, or his designee, is hereinafter called PROJECT MANAGER and will assume all duties and responsibilities and will have the rights and authority assigned to PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. The DISTRICT/OWNER shall have the right to delegate the duties, responsibilities, and authority to others, as he deems necessary.

**ARTICLE 3. CONTRACT TIME.**

3.1 The construction of the BCWCID # 10, Electrical improvements at Wells No. 2 And 4 at 8601 Midcrown Drive shall be substantially completed within 120 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that the time limits stated in the Contract Documents are of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time 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 following the actual loss suffered by OWNER if the Work is not substantially complete on Time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that CONTRACTOR shall pay OWNER liquidated damages for delay (but not as a penalty) in the applicable amounts set forth in Paragraph 4 of the Supplementary Conditions for each day that expires after the time specified in paragraph 3.1 herein above, until the Work is substantially complete in accordance with Paragraph 14.8 of the General Conditions. The parties agree that liquidated damages constitute the OWNER'S sole monetary remedy for project delay.

## WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS

### ARTICLE 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with Exhibit "A" and the Contract Documents in current funds. The bid prices based on estimated quantities and the CONTRACTOR'S unit prices are:

MATERIALS:           \$

SERVICES:            \$

As shown in Exhibit "A" Proposal.

### 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 PROJECT MANAGER as provided in Article 14 of the General Conditions.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price based on CONTRACTOR's Applications for Payment as recommended by PROJECT MANAGER and in accordance with Article 14 of the General Conditions. All progress of the Work shall be measured by the schedule of values provided for in paragraph 14.1 of the General Conditions.

- 5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

NINETY percent (90%) of the Work completed, and

NINETY percent (90%) of the approved materials and equipment on hand not incorporated in the Work but delivered and suitably stored in accordance with paragraph 14.2 of the General Conditions, less in each case the aggregate of payments previously made.

- 5.1.2 Upon the PROJECT MANAGER'S determination that the Project has reached Substantial Completion, CONTRACTOR will receive the entire contract sum, less 150% of the reasonable value of punch list items as calculated by the PROJECT MANAGER.

- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by PROJECT MANAGER as provided in said paragraph 14.13.

### ARTICLE 6. INTEREST.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

## WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS

### ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

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

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules, and regulations that in any manner may affect cost, progress, or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the sites or otherwise affecting cost, progress, or performance of the Work if any which were relied upon by PROJECT MANAGER in the preparation of the Plans and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 Intentionally Deleted
- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given PROJECT MANAGER written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by PROJECT MANAGER is acceptable to CONTRACTOR.

### ARTICLE 8. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR, are attached to this Agreement, made a part hereof and consists of the following:

- 8.1 This Agreement (pages 1 to 5, inclusive).
- 8.2 Exhibits to this Agreement consisting of eleven (11) pages.  
Performance and Payment Bonds, and Certificate of Insurance, identified as Exhibits "B," "C," "D," and "E".)
- 8.3 CONTRACTOR's Bid (pages 1 to 9, inclusive, as amended by Term Sheet) marked Exhibit "A."
- 8.4 Definition of Terms, 1 to 4.
- 8.5 Notice of Award.
- 8.6 Notice to Proceed.
- 8.7 General Conditions (pages 1 to 47, inclusive).
- 8.8 Supplementary Conditions (1 to 7, inclusive).

## WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS

8.9 Notused

8.10 Addendas

8.11 Technical Specifications bearing the title “Bexar County Water Control and Improvement District #10 – Wells No. 2 And 4 Electrical Improvements”

8.12 Plans, consisting of the attached plan sheets:

Bexar County Water Control and Improvement District #10 – Wells No. 2 And 4 Electrical Improvements

8.13 Any Modification, including Change Orders, duly authorized and delivered after execution of Agreement.

There are no Contract Documents other than those listed above in Article 8. The Contract Documents may only be altered, amended, or repealed by a Modification (as defined in Section 1 of the General Conditions).

### ARTICLE 9. MISCELLANEOUS.

9.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions, shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds himself, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

### ARTICLE 10. OTHER PROVISIONS.

IN WITNESS WHEREOF, duly authorized representatives of the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR, and PROJECT MANAGER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by PROJECT MANAGER on their behalf.

**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

This Agreement will be effective on January \_\_\_\_\_, 2018.

BEXAR COUNTY WATER CONTROL:  
AND IMPROVEMENT DISTRICT #10

By \_\_\_\_\_ Attest \_\_\_\_\_  
GENERAL MANAGER SECRETARY

CONTRACTOR:

By \_\_\_\_\_ Attest \_\_\_\_\_  
(Title) SECRETARY

\_\_\_\_\_  
(if Contractor is a Corporation)

BEXAR COUNTY WATER CONTROL  
AND IMPROVEMENT DISTRICT #10  
ADDRESS FOR GIVING NOTICES:

Lyn Cruz – Office Manager  
8601 Midcrown Drive  
Windcrest, Texas 78239

CONTRACTOR'S ADDRESS FOR  
GIVING NOTICES:

\_\_\_\_\_, (Title)  
Contractor's Address  
City, State, Zip Code



**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

**EXHIBIT "B"**

**PERFORMANCE BOND**

STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF \_\_\_\_\_

Know all men by these presents:

1. **THAT** \_\_\_\_\_, **A** \_\_\_\_\_, as Principal, hereinafter called Principal and \_\_\_\_\_ as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the BEXAR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #10, a political subdivision of the State of Texas domiciled in Bexar County, Texas, and in the sum of \$ \_\_\_\_\_ for payment of which sum well and truly to be made in and unto said BEXAR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #10, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. **THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS**, the said \_\_\_\_\_ hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said Bexar County Water Control and Improvement District # 10 (“BCWCID # 10”), for the construction and completion for said BCWCID # 10 of certain electrical work and improvements generally described as the Wells No. 2 AND 4 Electrical Improvements and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. **NOW THEREFORE**, if Contractor, the principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said wellsite, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the BCWCID # 10, nor by the exercise or failure to exercise by or on behalf of the BCWCID # 10 any right or remedy provided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of WCID 10.

5. **IN TESTIMONY WHEREOF**, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2018.

**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

BY: \_\_\_\_\_

\_\_\_\_\_  
Surety

BY: \_\_\_\_\_

\_\_\_\_\_  
Contractor

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address of Surety for Service Purposes

**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

**EXHIBIT "C"  
PAYMENT BOND**

STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF \_\_\_\_\_

Know all men by these presents:

1. That we, \_\_\_\_\_, A \_\_\_\_\_, as Principal, and as Surety, do hereby acknowledge ourselves to be held and firmly bound unto the BEXAR COUNTY WATER CONTROL AND IMPROVEMENT # 10, a political subdivision of the State of Texas domiciled in Bexar County, Texas, in the sum of \$\_\_\_\_\_ for payment of which sum well and truly to be made in and unto said BEXAR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #10, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said \_\_\_\_\_ hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said Bexar County Water Control and Improvement District #10 ("BCWCID # 10"), for the construction and completion for said BCWCID # 10 of certain electrical work and improvements generally described as Wells No. 2 AND 4 Electrical Improvements and for the performance and observance of diverse other matters and things in connection with said work, and inter alia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the BCWCID # 10, nor by the exercise or failure to exercise by or on behalf of the BCWCID # 10 any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and protection of the BCWCID # 10 and all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2018

BY: \_\_\_\_\_

\_\_\_\_\_  
Surety

BY: \_\_\_\_\_

**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

\_\_\_\_\_  
Contractor

Address of Surety for Service Purposes:

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

**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

EXHIBIT "D"

BEXAR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #10  
BID BOND

**WELL NO. 2 AND 4 – ELECTRICAL IMPROVEMENTS**

**EXHIBIT "E"**

**BEXAR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #10  
OUTLINE OF INSURANCE REQUIRED**

(Actual certificate to be issued by Contractor's Insurance Company)

CONTRACTOR shall maintain, at its own cost and expense, such insurance as will protect CONTRACTOR from all claims for damages to persons and to property that may arise from any operations under this Contract, or any of its subcontracts. The following are the types of insurance policies and the minimum limits of insurance coverage that shall be maintained by CONTRACTOR during the entire term of the Contract:

TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
Worker's Compensation and Employer's Liability Insurance				

**A. Definitions:**

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the District.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B.** The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C.** The contractor must provide a certificate of coverage to the District prior to being awarded the contract.
- D.** If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the District showing that coverage has been extended.
- E.** The contractor shall obtain from each subcontractor providing services on the project, and provide

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

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in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

(In accordance with all applicable State and Federal laws and endorsed specifically to include the following:

1. Employer's liability, including occupational disease, subject to a limit of liability of not less than \$500,000.00
2. Waiver of subrogation against the District.)

TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
Comprehensive or Commercial General Liability Insurance				

(With limits of liability for bodily injury of not less than \$500,000.00 any one occurrence, and for property damage of not less than \$250,000.00 any one occurrence, and \$1,000,000.00 aggregate. Such insurance shall include the following:

1. Contractor's protective liability, covering liability for work sublet.
2. Contractual liability, insuring the indemnity agreements contained in this Contract.
3. Coverage for damage due to collapse of or structural injury to any building or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels or any other property below the surface of the ground.
4. Waiver of subrogation against the Owner (BCWCID # 10).)

TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
Comprehensive Automobile Liability Insurance				

(With limits of liability for bodily injury of not less than \$250,000.00 any one person, and \$500,000.00 any one occurrence, and for property damage of not less than \$250,000.00 any one occurrence. Such coverage shall include owned, hired, and non-owned vehicles. Policy shall be endorsed as follows:

1. Waiver of subrogation against the Owner (BCWCID # 10)
2. Owner (BCWCID # 10) shall be shown as additional insured.)

TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
Builder's Risk Insurance				

CONTRACTOR shall procure at his expense an "All Risk" Builder's Risk policy for the full value of this Contract to protect the work, and shall include the materials and supplies stored on and off the job site or in transit, and shall remain in force until final completion of the work and acceptance by the OWNER.



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Policy to be endorsed as follows:

1. Waiver of subrogation against the Owner (BCWCID # 10)
2. Owner (BCWCID # 10) shall be shown as additional insured and claims, if any, to be paid to Owner and Contractor as their interests may appear.

TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS

(Any other insurance coverage as outlined in the Supplementary Conditions OR the Notice of Award of these Contract Documents)

All insurance shall contain a provision that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and PROJECT MANAGER. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.12 of the General Conditions. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two (2) years after final payment and furnish OWNER with evidence of continuation of such insurance at final payment and one (1) year thereafter.

Prior to commencing any work, CONTRACTOR shall furnish to OWNER at the address shown below Certificates of Insurance under all such policies, certifying compliance with the minimum coverage outlined above. All policies shall also be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, 30 days' advance written notice of such cancellation or reduction will be mailed to the Bexar County Water Control and Improvement District #10, at the address set out herein for notices.

Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A (-) VI or better, if OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 of the General Conditions on the basis of its not complying with the Contract Documents, OWNER will notify CONTRACTOR in writing thereof. CONTRACTOR will provide to OWNER such additional information in respect of insurance provided by him as OWNER may reasonably request.

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EXHIBIT F

STATE AND LOCAL SALES TAX EXEMPTION CERTIFICATE

BEXAR COUNTY WATER AND IMPROVEMENT DISTRICT #10

PROJECT TITLE: WELLS NO. 2 AND 4 ELECTRICAL IMPROVEMENTS

This contract is to be performed for an exempt organization as defined by Texas Tax Code § 151.309 and the undersigned hereby claims an exemption from payment of taxes under the said section and Texas Tax Code § 321.208.

The Bexar County Water Control and Improvement District #10 is a political subdivision of the State of Texas, which is the reason for this claim of exemption from the Sales Tax. The Bexar County Water Control and Improvement District #10's tax-exempt number is \_\_\_\_\_.

The Contractor performing this contract may purchase all materials and supplies consumed in the performance of this contract by issuing to his retailer an exempt certificate in lieu of the tax, said exemption certificate complying with State Comptroller's Ruling No. 95-9.07. Any such exemption certificate issued by the Contractor in lieu of the tax shall be subject to the provisions of the State Comptroller's Ruling No. 95-0.09 as amended to be effective October 2, 1968.

The Contractor will be liable for payment of the Limited Sales and Use Tax if the Contractor uses the goods and services in some other manner for some other use than the reason listed above, and shall pay the tax based on the price paid for the goods and services.

Executed this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

BEXAR COUNTY WATER CONTROL  
AND IMPROVEMENT DISTRICT # 10

By \_\_\_\_\_  
Bexar County Water Control and Improvement District #10  
8601 Midcrown Drive  
Windcrest, Texas 78239