

CONTRACT BETWEEN OWNER AND CONTRACTOR

The Parties To This Contract Are:

Owner

Fort Bend Grand Parkway Toll Road Authority
c/o Mike Stone Associates, Inc.
1950 Lockwood Bypass
Richmond, Texas 77469

Contractor

NBG Constructors, Inc., a Texas Corporation
9702 Synott Road, Houston, Texas 77083

THIS CONTRACT ("Contract") is made and entered into this 21st day of June 2017, among the Parties, for and in consideration of the mutual covenants hereinafter set forth, and under the conditions expressed in the Bonds bearing even date herewith, the Contractor and Owner hereby agree as follows. All capitalized terms used herein shall be given the meanings set forth in Article II below.

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ARTICLE I. PRINCIPLE CONDITIONS OF THE CONTRACT**1.1 SCOPE OF WORK:**

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

Construction of Grand Parkway / Brazos River Tangent Wall Construction

Fort Bend Grand Parkway Toll Road, Segment D,

Project No. GPD-018

for Fort Bend Grand Parkway Toll Road Authority,

Fort Bend County, Texas,

according to those particular Plans and Technical Specifications

prepared by Freese & Nichols, Inc. ("Engineer")

and all Extra Work in connection therewith, under the terms as stated in the Contract, and, at Contractor's own proper cost and expense, to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said Work, in accordance with the conditions and prices stated in the Bid attached hereto and in accordance with the Contract Documents, including, the Invitation to Bidders, Instructions to Bidders, Contractor's Bid, Contract, Plans, and other drawings and printed or written explanatory matter thereof, and the Technical Specifications, on file with Engineer. Contractor represents and warrants to the Owner that it has carefully examined this Contract and all other Contract Documents, which are made a part of the Contract, and is thoroughly familiar therewith.

- b. Under this Contract and the Contract Documents, Contractor shall furnish all materials, appliances, tools, equipment, transportation, services, and all labor and superintendence necessary for the construction of the Work as described in the Technical Specifications and as shown on the Plans. The completed installation shall not lack any part that can be reasonably implied as necessary to its proper functioning or any subsidiary item that is customarily furnished, and Contractor shall deliver the installation to Owner in operating condition.
- c. The Work, in general, under the Contract includes the purchase, installation, and construction of all structures, equipment, and materials, including appurtenances, as indicated on the Plans.
- d. Major items of construction and services required are designated more completely in Attachment "B" – Scope of Work.

1.2 TIME FOR COMPLETION:

- a. Contractor began work on or about June 21, 2017. Contractor hereby also agrees to achieve Substantial Completion of the Work within **300 calendar days** after the effective date.

1.3 SURETY BONDS REQUIRED:

- a. It is further agreed by the parties to this Contract that Contractor will execute:

- i. a Payment Bond in the sum of 100% of the initial Contract Price

AND

- ii. a Performance Bond in the sum of 100% of the initial Contract Price

AND

- iii. if the maintenance and warranty period is not covered by a Performance Bond, a one-year Maintenance Bond in the amount of 50% of the final Contract Price

for the satisfactory performance of the Work, the fulfilment of any guarantees required, and the prompt payment to all persons supplying labor and materials in the prosecution of the Work, in accordance with this Contract on the forms provided for this purpose; and it is agreed that this Contract shall not be in effect until such Bonds are furnished and approved by Owner. Upon increase of the Contract Price authorized by Change Order, Contractor shall immediately provide revised Bonds for such increased Contract Price. Contractor's failure to provide compliant Bonds may be grounds for immediate termination regardless of whether the Contractor has started work on the Project.

- b. All Bonds shall be in the form prescribed by the Contract Documents except as required otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 370 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of the agent's authority to act must accompany all Bonds signed by an agent. Surety must have a minimum Best's Key Rating of "B+". If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Department of Treasury Circular 570, and must meet all of the rules and regulations of the Treasury Department with respect to performance and payment bonds for federal jobs, including specifically the rules related to the underwriting limitation.
 - c. For bonds over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law, or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. The person executing the

Bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the Texas Department of Insurance.

- d. The person executing the Bonds must be authorized by the surety company to execute the Bonds on behalf of the company in the amount required for the contract and such authorization must be recorded in the files of the Texas Department of Insurance. The Contract shall not be in effect until such bonds have been provided by the Contractor and accepted by the Owner.
- e. If the surety on any Bond furnished by Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in any state where any part of the Project is located, or it ceases to meet the requirements herein Contractor shall promptly notify Contractor, Owner and Engineer and shall, within 10 calendar days after the event giving rise to such notification, provide another Bond and surety to fulfill the required obligations.

1.4 CONTRACT PRICE:

- a. The Contract Price for this Work is **Fourteen Million Seven Hundred Sixty-Seven Thousand One Hundred Twenty-Five Dollars** (\$14,767,125.00). The initial Contract Price may increase or decrease due to Change Orders and Contract Price Adjustments, described below, as provided by the Contract Documents.
- b. Owner agrees to pay Contractor's invoices for work performed, in accordance with the terms of the Contract Documents, in an aggregate amount not to exceed the Contract Price, plus Change Orders and Extra Work approved by the Board of Directors of the Owner. Failure by Owner to make such payments to the Contractor shall constitute a default by Owner and shall entitle the Contractor to all rights and remedies arising under the Contract Documents for a default in payment of sums due.

ARTICLE II. DEFINITIONS

- 2.1 **DEFINITIONS.** The following terms shall be defined as described below, unless such definition is expressly modified by the Contract Documents. Any capitalized terms used in the Contract Documents not defined in this section shall have the meaning assigned to such term under the Contract Documents.
- a. **Actual Field Cost.** Includes the cost of all workmen, such as foremen, timekeepers, mechanics, and labourers, and all materials, supplies, teams, trucks, and rentals on machinery and equipment for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred if such equipment or machinery be not already on the job together with all power, fuel, lubricants, water, and similar operating expenses; also all necessary incidental expenses, incurred directly on account of such Extra Work, including Social Security, Old Age Benefits, and other payroll taxes, and a rateable proportion of premiums on all Bonds and all insurance as may be required by any law or ordinance, or required by Engineer or Owner, or as agreed to by them.
 - b. **Bid.** The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 - c. **Bond(s).** Performance bonds, maintenance bonds and payment bonds, or any of them, as required by the Contract Documents.
 - d. **Certificate of coverage.** 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.
 - e. **Change Order.** A document signed by Contractor, Engineer and Owner and entered into in accordance with the Contract Documents that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the time for completion.
 - f. **Claim.** A "Claim" is a claim, demand, or assertion by the Contractor seeking for itself or on behalf of a Subcontractor or supplier: adjustment or interpretation of any Contract term, including without limitation, adjustment of the Contract Price or Contract Time; payment of money; relief from obligations; or other relief or recovery with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question asserted by the Contractor (whether for itself or on behalf of a Subcontractor or supplier) arising out of or relating to the Contract.
 - g. **Contract.** The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 - h. **Contract Documents.** In addition to this Contract, the Contract Documents include: the Invitation to Bidders, Instructions to Bidders, Bid, the Contract, Technical Specifications, Plans, Change Orders, any written amendment to the Contract signed by both Contractor and Owner, Written Work Orders, written interpretations of the Contract or addenda issued

by Engineer, and all other documents designated as incorporated by reference. Documents incorporated by reference are Contract Documents, whether attached or not. Approved Shop Drawings and other Contractor's submittals, inspections and reports, such as testing of subsurface and physical or environmental conditions, are not Contract Documents.

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

- r. Indemnified Parties. Owner, Engineer, and the officers, directors, employees, agents, and representatives of each such party.
- s. Laws and Regulations. Any and all applicable federal, state and local laws, rules, regulations, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction and any and all rules of common law pertaining to the Contractor's services, the Site, Contractor's employees and Subcontractor's employees and/or the Work, and those of any other governmental entities with jurisdiction, including, without limitations all applicable laws of the State of Texas, Chapter 411 of the Texas Labor Code, Title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964, The Occupational Safety and Health Act of 1970, The National Environmental Policy Act, The Federal Water Pollution Control Act, The Clean Air Act, The Clean Water Act, The Toxic Substance Control Act, The Resource Conservation and Recovery Act, and all amendments thereof. The agencies charged with the administration and enforcement of the Laws and Regulations include, but are not limited to, the Department of the Interior, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, the U.S. Corps of Engineers, the National Fire Protection Association, the U.S. Geological Survey, the Minerals Management Service, the Texas Commission on Environmental Quality, the county in which the Owner is located, and the municipality, as applicable, in whose corporate or extraterritorial jurisdiction the Owner is located. Certain of the specific regulations that may be applicable to the Work are the Occupational Safety and Health Construction and General Industry Standards (29 CFR Part 1926 and 1910), and various environmental regulations.
- t. Letter of Intent. A written notice given by or on behalf of Owner to Contractor fixing the date on which the Contract Time will begin to run and on which Contractor shall start to perform the Work.
- u. Plans. That part of the Contract Documents which graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- v. Project. The total construction on the Site, which may include work performed by the Owner or other Contractors.
- w. Regulatory Agencies. Any and all governmental bodies, agencies, authorities, counties, municipalities, and courts having jurisdiction over the Project.
- x. Shop Drawing. All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- y. Site. The land or area furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access.
- z. Subcontractor. Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that 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.

- aa. Substantial Completion. The time at which the Work, or any portion thereof, is sufficiently completed in accordance with the Contract Documents so that Owner can occupy the entirety of the Work and put it to the full and unrestricted use for which it was intended, and all required certificates of occupancy and other permits, approvals, licenses, and documents required to occupy the Project by all entities, agencies and governmental authorities having jurisdiction over the Project and/or the operation and occupancy of the Project, as determined by the Engineer, have been given so that the Project may operate for its intended purpose, although the Project may still require minor miscellaneous Work and adjustment. The Work will not be considered substantially complete if any Project systems included in the Work are not operational as designed and scheduled, if designated instructions of Owner, Engineer, or Owner's other representative in the operation of systems has not been completed, or any final finishes within the Contract Documents are not in place. The terms "substantially completed" or "substantially complete" as applied to all or part of the Work shall have the same meanings as set forth here.
- bb. Technical Specifications. That part of the Contract Documents, including any written addenda thereto, consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- cc. Work. All obligations of the Contractor under the Contract Documents and all equipment, materials, labor, construction, management, supervision, services, and activities of every kind and nature, whether commenced or not, or completed or partially completed, undertaken by the Contractor, provided or to be provided by the Contractor, required of the Contractor, or inferable from the Contract Documents to perform and fulfill all of the Contractor's obligations pursuant to the Contract Documents.
- dd. Worker. Employees of the Contractor or Subcontractor, hired to perform job services on the Project.
- ee. Written Work Order. A written statement to Contractor signed by Owner or Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions. A Written Work Order will not change the Contract Price or Contract Time, but is evidence that the parties expect that the Written Work Order will be incorporated in a subsequently issued Change Order following agreement by the parties as to its effect, if any, on the Contract Price or Contract Time.

ARTICLE III. CONTRACT DOCUMENTS**3.1 INTERPRETATION OF CONTRACT DOCUMENTS AND PHRASES.**

- a. Whenever the words “required,” “permitted,” “designated,” “considered necessary,” “prescribed,” or words of like import are used, it shall be understood that the requirement, permission, order, designation, or prescription of Engineer is intended and similarly, the words “approval,” “acceptable,” or “satisfactory,” or words of like import shall mean approved by, or acceptable to, Engineer.
- b. Whenever in the Technical Specifications or Plans accompanying this Contract, the terms or descriptions of various qualities relative to finish, workmanship, or other qualities of similar kind, which cannot from their nature be specifically and clearly described and specified, are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said judgment of said Technical Specifications or Plans shall be decided by Engineer, and said Work shall be done in accordance with Engineer’s interpretations of the meaning of the words, terms, or clauses defining the character of the Work.
- c. The parties hereto agree that these Contract Documents shall not be construed against any party hereto on the basis that such party did or did not draft the Contract Documents.
- d. The section headings used herein are for convenience only and shall not affect the construction or terms hereof.
- e. If there is an irreconcilable conflict between Contract Documents, the document highest in precedence shall control, but except in such event and to avoid such conflict, every construction of provisions shall be that each is in aid to, or supplementary to or complementary of, each other provision, to control and secure for Owner the completion of the entire Work in an expeditious, orderly and coordinated manner. The precedence, from highest to lowest, shall be in the following order:
 - i. Permits for the Work from governmental authorities as may be required by law
 - ii. Contract between Owner and Contractor
 - iii. Plans and Specifications

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

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

3.2 EXHIBITS. All Work shall be done and all materials furnished in strict conformity with the Contract Documents, all of which are hereto attached (or considered as if attached) and are hereby made a part of this Contract.

3.3 ACCURACY. These Contract Documents, including the Technical Specifications, Plans, and Bid, are intended to show all Work to be done and material to be furnished hereunder. Contractor understands and acknowledges that errors may exist in the Contract Documents and that the Owner does not warrant the accuracy or sufficiency thereof. The Contractor accepts any lack of completeness of the Contract Documents, including the Plans, Technical Specifications and Bid, and acknowledges that such documents were sufficiently detailed, accurate and comprehensive to enable Contractor to have adequately estimated and established the Contract Price and to perform the Work within the time for completion.

3.4 TECHNICAL SPECIFICATIONS

- a. Technical Specifications are of the abbreviated, simplified, or streamlined type and include incomplete sentences. The omission of words or phrases such as “Contractor shall,” “in conformity therewith,” “shall be,” “as noted on Plans,” “according to Plans,” “a,” “an,” “the,” and “all,” are intentional. Omitted words or phrases shall be supplied by inference in same manner as they are when a “note” occurs on Plans.
- b. The Technical Specifications are interpreted to require that Contractor shall provide all items, articles, materials, operation or methods listed, mentioned, or scheduled either on Plans or specified herein, or both, including all labor, materials, equipment, and incidentals necessary and required for their completion.
- c. Whenever the words “designated,” “submitted,” “observed,” or similar words or phrases are used, it shall be assumed that the word “Engineer” follows the verb as the object of the clause, such as “observed by Engineer.”
- d. All references to standard Technical Specifications or manufacturer’s installation directions shall mean the latest edition thereof on the date Bids are due unless specifically noted otherwise
- e. Reference to technical society, organization, or body is made in Technical Specifications in accordance with following abbreviations:

AASHTO American Association of State Highway and Transportation Officials

ACI American Concrete Institute

ASTM American Society for Testing Materials

AWWA American Waterworks Association

FS Federal Specifications

PCA Portland Cement Association

IEEE Institute of Electrical and Electronic Engineers

NEC National Electric Code

UL	Underwriters' Laboratories
AISI	American Iron and Steel Institute
API	American Petroleum Institute
IPCEA	Insulated Power Cable Engineers Association
NEMA	National Electrical Manufacturers Association
AWS	American Welding Society
PCI	Prestressed Concrete Institute
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute (Formerly ASA)

- f. Some Technical Specification items cover construction requirements and materials in comprehensive manner, and only pertinent portions of these items apply.

3.5 MANUFACTURER'S REPRESENTATIVE. When required by Technical Specifications provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.

ARTICLE IV. PRELIMINARY MATTERS

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

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

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

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

- 4.2 **SCHEDULE OF VALUES.** Payment shall be made per the Schedule of Values (“Attachment C”). The Owner shall be the sole judge of the percent complete for any item or work for the purposes of payment.
- 4.3 **KEEPING PLANS AND SPECIFICATIONS ACCESSIBLE.** Contractor shall be furnished with five copies of all Plans and Technical Specifications without expense to him, and shall keep one copy of each constantly accessible on the Site.

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

4.5 SHOP DRAWING SUBMITTALS.

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

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

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

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

The Contractor shall stamp and sign the submittals with a stamp that states: "This submittal is certified to be in conformance with Contract Documents unless noted herein." The Engineer will rely on this statement when performing the review of the submittal. All submittals without this certification will not be reviewed and will be returned to the Contractor for proper submission.

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

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

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

- c. Engineer's Duties. The Engineer shall review submittals as quickly as possible, but not later than 7 calendar days from the date of submittal, with a thorough review and consistent with the type of information submitted. Engineer's failure to comply with such review period shall not constitute the basis of a Claim by Contractor.

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

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

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

The Contractor shall submit a complete copy, with each submittal, of relevant Contract Document items that have been marked by the manufacturer to certify compliance with the Contract Document item and noting each point of deviation.

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

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

Contractor shall, with each submittal, carefully and completely cross-reference any relevant Contract Document item requirements.

When required by an individual Contract Document item, the Contractor shall submit a written step-by-step test plan for functional checkout and demonstration test of the respective equipment.

Submissions that do not conform to the form of submittal as outlined herein will not be considered and will be returned to the Contractor for proper submission.

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

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

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

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

ARTICLE V. SITE ACCESS/ CONDITIONS/ REFERENCE POINTS

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

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

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

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

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

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

The Contract Price and/or the Contract Times may be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work. If Owner and Contractor cannot agree on entitlement to, or the amount or extent of, any adjustment in the Contract Price or Contract Times, or both, a Claim may be made. Provided, however, Contractor shall not be

entitled to any adjustment in the Contract Price or Contract Times if i) Contractor knew, or should have known, of the existence of such conditions at the time Contractor entered into the Contract; ii) the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site required by the Contract Documents to be conducted prior to Contractor's entering into the Contract; or iii) Contractor failed to give the written notice as required.

- 5.4 ARCHAEOLOGICAL OR HISTORICAL MATERIALS. On discovery of materials with potential archaeological or historical significance, the Contractor shall stop work and notify the Engineer. The Contractor shall protect the site from disturbance until it is cleared by the Engineer to resume work. The Contractor may receive damages for delay, limited to the actual costs of de-mobilization and re-mobilization, without mark-up, and may make a Claim for an extension to the Contract Time.
- 5.5 HAZARDOUS ENVIRONMENTAL CONDITIONS. Reports identifying Hazardous Environmental Condition are not Contract Documents. Owner and Engineer do not warrant the accuracy or completeness of such documents and disclaim all responsibility and liability for accuracy of investigations and reports prepared by third parties. Owner and Engineer also disclaim any responsibility for Contractor's interpretation of such reports and tests. If Contractor encounters a Hazardous Environmental Condition, or if Contractor, or anyone for whom Contractor is responsible, creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby; and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Contractor shall not be required to resume Work in connection with such condition or in any affected area until the affected area is or has been rendered safe to resume the Work. Except as provided in this section, it will not be the Contractor's duty to provide any required governmental notifications relative to the discovery of Hazardous Environmental Conditions.
- 5.6 LOSSES FROM UNFORESEEN CIRCUMSTANCES AND CONDITIONS OR NATURAL CAUSES. Except as specifically provided in the Contract Documents, all loss or damage arising from the action of the elements, or from any unforeseen circumstances or natural causes in the prosecution of the same, or from the soil, subsurface, and other conditions, whether naturally occurring or manmade, or from concealed conditions or unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by Owner at his own cost and expense. Contractor shall be entitled to any additional compensation or time associated with unforeseen circumstances or conditions or natural causes.

ARTICLE VI. CONTRACTOR'S RESPONSIBILITIES/ INDEMNITIES

6.1 **INDEPENDENT CONTRACTOR.** Contractor is an independent Contractor as to all Work performed hereunder, and it is understood and agreed that all Work done by Contractor shall be approved by Owner's representative. Owner is interested only in the result obtained, thus the detailed manner and method of doing the Work shall be under the control of Contractor as set forth more fully in these General Conditions.

6.2 **TIME AND ORDER OF COMPLETION.** It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that Contractor shall be allowed to prosecute his Work at such times, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that:

- a. In all instances Contractor shall comply with the Contract Documents and the order, time, techniques, sequences, procedures, manner, means and methods of prosecution of the Work shall be such that the Work shall comply with and shall be substantially completed as a whole and in part, in accordance with the Contract Documents, including the Plans and Technical Specifications, and within the required time of completion, and Contractor shall have no right to perform any portion of the Work or utilize means, methods, techniques, sequences, procedures or individuals in violation of the Contract Documents or that may damage the Work or decrease the life expectancy of the Project.
- b. The exercise of any of the rights and authority granted to the Owner in the Contract Documents (including, without limitation, ordering changes in the Work, rejecting proposed means, methods, techniques, sequences or procedures, and directing suspension, rescheduling, re-execution or correction of the Work) shall not be construed as or deemed to be control of, charge of, or responsibility for or violation of Contractor's responsibility for and rights with respect to such construction means, methods, techniques, sequences, procedures, safety precautions and programs.
- c. When Owner is having other work done, either by contract or by his own force, Engineer may prescribe the time and sequence of constructing the Work done under this Contract so that conflict will be avoided and the various construction being done for Owner shall be harmonized.

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

6.3 **CONTRACTOR'S DUTY AND STANDARD OF CARE.** Contractor is an independent Contractor and shall give personal attention to the faithful prosecution and completion of the Work and shall be present either in person or by duly authorized representatives on the Site continuously during its progress. If directed by the Engineer, Contractor shall maintain an office on or adjacent to the Site. Contractor shall exercise a high degree of skill, care, and diligence in the performance of the Work. Contractor warrants that Contractor will: (i) perform, supervise

and direct the Work, using the Contractor's best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Owner, (ii) utilize his best skill, efforts and judgment in furthering the interests of the Owner, (iii) perform the Work in strict compliance with applicable Laws and Regulations, such that the Work, no later than the time for completion, will comply with applicable Laws and Regulations, and (iv) furnish efficient business administration and supervision (all of the foregoing collectively, the "Standard of Care"), and (v) perform the Work in strict accordance with the Contract Documents.

Regardless of what authority and rights may be assigned by the Owner to the Engineer, Contractor remains fully and solely responsible and liable for its obligations to perform the Work in strict accordance with the requirements of the Contract Documents; to insure against failures in safety precautions; to carry out the Work pursuant to safe methods of construction; to select and fulfill the proper manner, means, and methods in performing the Work in order to fully comply with the Plans, Specifications and other Contract Documents; and to otherwise complete the Work in accordance with the Contract Documents.

- 6.4 CONTRACTOR'S AGENT. Contractor, during absence from the Site, shall keep a competent superintendent or foreman upon the Site, fully authorized to act in Contractor's absence. Contractor shall provide Engineer and Owner with written notification of such individual's position, name, and contact information. Any notice given by Engineer, when given to any superintendent, foreman, or agent of Contractor in charge of any operation of the Work in the absence of Contractor, shall be considered as notice to Contractor, provided any notice given under this paragraph shall be in writing.
- 6.5 CHARACTER OF WORKERS. Contractor agrees to employ only orderly, competent, and skillful people to do the Work. Contractor agrees that whenever Owner shall inform Contractor, in writing that any person(s) or Subcontractors on the Work are, in Owner's opinion, incompetent, unfaithful, or disorderly, such person(s) or Subcontractor shall be discharged from the Work and shall not again be employed on the Project without Owner's written consent.
- 6.6 CONSTRUCTION MATERIALS. Contractor shall provide all labor, tools, equipment, machinery, and material necessary in the prosecution and completion of this Contract, unless otherwise specifically provided. It is understood that Owner shall not be held responsible for the care, preservation, conservation, or protection of any material, tools, or machinery or any part of the Work until it is finally completed and accepted.

The Contractor shall use only new materials and equipment and shall store these materials and equipment in a manner to protect them from damage. The manner of protection is subject to specific approval of the Engineer. Pipe, fittings, equipment, and other serviceable materials found on the Site or dismantled by reason of construction shall remain property of the Owner unless otherwise designated. The Contractor shall remove and deliver materials to Owner at designated points and shall pay, at prevailing market price, for usable materials that are damaged through negligence.

6.7 OTHER CONTRACTS. Other construction may be underway concurrently in this area. The Contractor shall afford utility companies and other contractors reasonable opportunity for introduction and storage of their materials and execution of their work. All work under this Contract must be properly connected and coordinated with that constructed by others.

6.8 DAMAGES. In the event Owner is damaged in the course of the Work by the act, negligence, omission, mistake, or default of Contractor, or should Contractor delay the progress of the Work being done by others on the job so as to cause loss or liability to Owner, then Contractor shall reimburse Owner for such loss.

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

6.9 TITLE AND RISK OF LOSS. Although Contractor has custody and possession of the Work, as between Owner and Contractor, ownership and title to (as opposed to risk of loss of) all of the Work completed and in the course of construction at the Site and of all materials furnished for completion of the Work irrespective of the location thereof, shall be in the name of the Owner. The vesting of such title in the Owner shall not impose any obligations on the Owner or relieve Contractor of any of its obligations hereunder. The Contractor warrants that it shall acquire no Work or equipment and materials, whether directly or through a Subcontractor, subject to an agreement under which a security interest is retained by the seller or otherwise imposed by the Contractor, any Subcontractor, or any other person or entity. Notwithstanding the passage of title, risk of loss or damage shall remain with Contractor until the Owner finally accepts the Work, unless otherwise specified in a certificate of Substantial Completion approved by the Owner.

6.10 PROTECTION OF PERSONS AND PROPERTY. Contractor shall at all times take reasonable precautions for the safety of its employees and of all other persons at the Site, and for the protection of adjacent property of others. Contractor shall comply with all applicable federal, state, and municipal safety laws and regulations, and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the Manual of Accident Prevention in Construction of the Associated General Contractors of America unless such instructions are incompatible with Laws and Regulations. Where damage occurs on adjacent property, or where necessary to take down fences, signs, or other obstructions, Contractor shall repair, renew or replace such in their original condition and restore the damaged property or make satisfactory restitution to a condition equal to or better than the property existed before Contractor caused the damage or removal, at no cost to Owner. Contractor shall promptly report to Engineer all accidents involving Contractor's employees or any other parties or property. Where livestock are present, Contractor shall take all necessary precautions to assure that no construction or construction related activity will allow livestock to leave their confine. Where existing fences are being crossed, Contractor shall maintain the integrity of the fence during construction through placement of guards, temporary fences, or

other adequate measures as approved by the Engineer. All construction activities, including ingress and egress, shall occur within the boundaries and Contract constraints of the temporary and permanent construction limits. Additionally, no staging, parking, loading and/or unloading shall occur outside of the designated Site.

6.11 INSURANCE

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

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

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

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

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

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

General Aggregate	\$ 2,000,000
Products Comp/Ops Aggregate	\$ 1,000,000

Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000

- iii. Automobile Liability Insurance. Contractor shall carry Automobile Liability Insurance on a form no less broad than the coverage provided by a Business Automobile Liability Insurance form promulgated by the Insurance Services Office, on all owned or hired autos, as well as non-owned autos, in an amount not less than \$1,000,000 combined single limit, for all liability arising out of injury to or death of one or more persons, and injury to or destruction of property, in any one occurrence.
 - iv. Excess Liability Insurance. Contractor shall carry Excess Liability Insurance that follows the form of the underlying primary liability insurance required by Sections 6.11.a.ii and 6.11.a.iii, in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate. Such excess liability insurance shall name Owner and Engineer as additional insureds in accordance with Section 6.11.b.i, and shall contain language waiving or otherwise relinquishing any “other insurance” limitation or right of contribution by other insurance that may be maintained by Owner or Engineer.
 - v. Crossings. Whenever Work under the Contract involves construction activities that require the Contractor’s employees, agents, Subcontractors, equipment and/or materials to cross or temporarily occupy railroad, gas or other utility properties and tracks, the Contractor shall secure and maintain in his own name the types of insurance in the minimum amounts as required by owners of such properties issued by companies satisfactory to the Owner and the owner of such properties.
- b. Required Endorsements.
- i. Additional Insured. To the fullest extent allowed by applicable Laws and Regulations, Contractor shall name the Indemnified Parties as additional insureds to the same extent as Contractor is required to indemnify the Indemnified Parties pursuant to the Contract Documents. Such additional insured coverage shall be to the full extent of the limits of liability on all policies of liability insurance (other than Worker’s Compensation and Employers’ Liability insurance) maintained in force or procured by Contractor during the Work, and shall cause such insurance to provide, if necessary by endorsement, that each such policy shall respond as primary insurance and shall not contribute with or apply as excess over any other valid and collectible other insurance that may be maintained by Owner or Engineer. In addition, Contractor shall cause the insurance required by Sections 6.11.a.ii, 6.11.a.iii, 6.11.a.iv and 6.11.a.v to provide or be endorsed to provide that such insurance applies separately to each insured against whom claim is made or suit is brought.
 - ii. Waiver of Subrogation. Inasmuch as Owner and Contractor intend that all of Contractor’s insured loss and liabilities fall upon Contractor’s insurers, without recourse against the Indemnified Parties, Contractor agrees to cause of all its policies of insurance maintained in force or procured by Contractor during the Work to provide, if necessary by endorsement, that each such insurer fully waives subrogation against Owner and Engineer. The insurance as to which subrogation waiver is required includes, but is not limited to, that required by Sections 6.11.a.i, 6.11.a.ii, 6.11.a.iii,

6.11.a.iv and 6.11.a.v. Contractor hereby waives and releases all Claims it may have against the Indemnified Parties to the extent any of such Claims are covered by insurance required to be furnished by Contractor or any Subcontractors hereunder, whether or not Contractor actually obtains such insurance, and EVEN IF SUCH CLAIMS ARISE OUT OF, RELATE TO OR ARE BASED UPON THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT, HOWEVER CHARACTERIZED, OR STRICT LIABILITY WITHOUT REGARD TO FAULT, OF AN INDEMNIFIED PARTY.

- iii. Notice of Modification/Cancellation. All policies for which any Indemnified Parties are named insureds or additional insureds shall be endorsed to require the insurer to provide such named insured and additional insureds with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or non-renewal of the insurance coverage required under this Contract. For policies on which an Indemnified Party is neither a named insured nor an additional insured, Contractor shall provide such Indemnified Party with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or non-renewal of the insurance coverage required under this Contract.
- c. Deductibles. Any and all deductibles, or self-insured retentions, of all insurance policies maintained by Contractor, including insurance required hereunder, shall be assumed by, for the account of, and at the Contractor's sole risk and expense, and shall not be billed to or payable by Owner.
- d. Certificates of and Proof of Insurance. Contractor shall furnish Owner with certificates of insurance showing Contractor's procurement of the insurance required hereunder, in compliance with applicable Laws and Regulations. Contractor agrees to review each certificate, and hereby warrants to Owner the accuracy of all information shown on each certificate furnished. In addition, Contractor, upon request, shall promptly:
 - i. Permit Owner to inspect the originals of all required insurance at the offices of Contractor or its insurance broker;
 - ii. Provide copies of all required insurance to Owner; and
 - iii. Authorize Owner to communicate directly (by telephone, email, or in person) with Contractor's insurance broker for the purpose of verifying Contractor's compliance with these requirements or to answer questions concerning Contractor's insurance.
- e. Claims-Made Insurance. If the insurance required hereunder is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and, (ii) such claims-made insurance shall not provide for a retroactive date later than the commencement of Contractor's performance hereunder.
- f. Insolvency of Insurer and Reinstatement of Impaired Limits. In the event of the insolvency of any insurer underwriting any insurance required hereunder, Contractor shall replace such

insurance with insurance meeting the requirements hereof. In the event that the required aggregate limits of liability of any insurance required hereunder are reduced or impaired by 50% or more, then Contractor shall give Owner prompt notice of the impairment and promptly cause such impaired limits to be reinstated to the required limits.

- g. Subcontractors' Insurance. Contractor shall cause its Subcontractors, including all persons hired by Contractor who are not Contractor's employees, who perform any part of the work hereunder, to procure and to maintain in full force and effect insurance of the types and amounts, and meeting the requirements described in Sections 6.11.a.i, 6.11.a.ii, 6.11.a.iii, 6.11.a.iv and 6.11.a.v and of 6.11.b.i and 6.11.b.ii above. In addition, Subcontractors shall comply with Section 6.11.a.v, if applicable.
- h. Term of Required Insurance. All terms of these insurance requirements shall survive termination of this Contract and shall continue until thirty (30) calendar days after completion of all Work or services to be provided hereunder, including the performance of any warranty work. In addition, Contractor shall maintain in force and effect completed operations coverage under the insurance policies required by paragraphs 6.11.a.ii and 6.11.a.iv, and any "claims-made" coverage within paragraph 6.11.e, for a minimum of two (2) years after Final Completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.
- i. No Waiver by Owner. Contractor's failure to provide insurance as required hereunder, or Contractor's failure to supply certificates of insurance that comply with Section 5.11.d, above, or the failure of Owner to require evidence of insurance or to notify Contractor of any breach by Contractor of the requirements of these provisions, or deficiencies in the insurance obtained, shall not constitute a waiver by Owner of any of the these insurance requirements, or a waiver of any other terms and conditions of this Contract, including Contractor's obligations to defend, indemnify, and hold harmless Owner, as required herein.
- j. Minimum Limits. The foregoing insurance requirements are minimum requirements intended to benefit Owner and Engineer, shall not be interpreted to limit Contractor's liability to Owner in any manner whatsoever; and, are separate from and independent of Contractor's other obligations under this Contract, including Contractor's obligations to defend, indemnify and hold harmless Owner.

6.12 WORKER'S COMPENSATION INSURANCE COVERAGE

- a. The Contractor shall provide worker's compensation insurance coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Section 401.011(44), Texas Labor Code for all employees of the Contractor providing services on the Project for the duration of the Project.
- b. The Contractor must provide a Certificate of Coverage to the Owner prior to being awarded the Contract.

- c. 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 Owner showing that coverage has been extended.
- d. The Contractor shall obtain from each Subcontractor or persons providing services on the Project and provide to the Owner:
 - i. A Certificate of Coverage, prior to that Subcontractor beginning work on the project, so the Owner will have on file Certificates of Coverage showing coverage for all persons providing services on the Project; and
 - ii. 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.
- e. The Contractor shall retain all required Certificates of Coverage for the duration of the Project and for one year thereafter.
- f. The Contractor shall notify the Owner 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 Subcontractor providing services on the Project.
- g. 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.
- h. The Contractor shall require each Subcontractor with whom it contracts to provide services on the Project, to:
 - i. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Section 401.011(44), Texas Labor Code for all of its employees providing services on the Project for the duration of the Project;
 - ii. Provide to the Contractor, prior to that Subcontractor beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the Subcontractor providing services on the Project for the duration of the Project;
 - iii. 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;
 - iv. 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;
- v. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- vi. Notify the Owner in writing by certified mail or personal delivery, within 10 days after the Subcontractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- vii. 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.
- i. By signing this Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner 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.
- j. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

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

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

The District has adopted the prevailing wage rates previously adopted and utilized by Fort Bend County, for public works contracts, as may be amended from time to time. The Contractor is responsible for obtaining and utilizing the most current wage rate scale of this jurisdiction.

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

- a. BODILY INJURY OR DEATH OF AN EMPLOYEE OF ANY CONTRACTOR PARTIES, EVEN IF SUCH BODILY INJURY OR DEATH IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF AN INDEMNIFIED PARTY; AND
- b. BODILY INJURY TO OR DEATH OF ANY PERSON NOT ENCOMPASSED IN (I), ABOVE, PROPERTY DAMAGE OR ECONOMIC LOSS (INCLUDING LOSS OF USE) CAUSED BY OR ARISING OUT OF ANY BREACH OF THIS CONTRACT, OR THE BREACH OF ANY COMMON LAW DUTY, OR THE VIOLATION OF ANY STATUTE OR REGULATION BY THE CONTRACTOR PARTIES IN CONNECTION WITH THE PERFORMANCE (OR NON-PERFORMANCE) OF THE WORK, IN EACH INSTANCE, EVEN IF DUE IN PART TO THE NEGLIGENCE, BREACH OF CONTRACT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR OTHER FAULT OF AN INDEMNIFIED PARTY, PROVIDED, HOWEVER, THAT CONTRACTOR'S OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE PERCENTAGE OF DAMAGES, INJURIES, EXPENSES, DEMANDS, CLAIMS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, COSTS AND FEES CAUSED BY THE INDEMNIFIED PARTIES.

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

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

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

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

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

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

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

6.15 **INTELLECTUAL PROPERTY RIGHTS, COPYRIGHT AND INDEMNIFICATION.**

- a. Contractor shall not furnish or provide to Owner any materials or Work that infringes a third party's intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to Owner.

- b. Contractor represents and warrants that the materials and the Work shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- c. Contractor represents and warrants to Owner that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Owner shall be free from third party claims of ownership and that Owner's right to own, use, or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- d. Contractor represents and warrants that all processes or methods utilized by Contractor to provide it services to Owner are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like), and that all products provided by Contractor to Owner are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall cooperate fully and promptly with Owner with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Owner in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to Owner, Contractor shall obtain agreements from Contractor's vendors to cooperate in connection with requests for disclosure generated or received by Owner pursuant to the Process Patents Amendment Act of 1988.
- e. THE INDEMNITY AGREEMENT PROVIDED IN CONTRACTOR'S INDEMNITY OBLIGATION PROVIDED IN SECTION 6.14, ABOVE, INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING: (I) CONTRACTOR'S BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS, DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL

PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS, AND EXPENSES, INCLUDING ATTORNEY'S FEES INCURRED BY OWNER, IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH.

IN ADDITION TO CONTRACTOR'S INDEMNITY OBLIGATION PROVIDED IN SECTION 6.14, ABOVE, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST EVERY LOSS, ITEM OF DAMAGE, INJURY, EXPENSE, DEMAND, CLAIM, CAUSE OF ACTION, JUDGMENT OR LIABILITY, OF WHATSOEVER KIND OR CHARACTER, WHETHER ARISING IN CONTRACT OR TORT OR UNDER ANY STATUTE, FOR EVERY ELEMENT OF RECOVERY, WHETHER DIRECT OR INDIRECT, INCLUDING SPECIAL AND CONSEQUENTIAL DAMAGES, AND INCLUDING ALL RELATED FEES AND COSTS, TO INCLUDE ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, BASED UPON, ARISING OUT OF, OR RELATING TO ANY ALLEGATION OF VIOLATION OF COPYRIGHT LAWS AS A RESULT OF CONTRACTOR'S PERFORMANCE (OR NON-PERFORMANCE) OF THE WORK AND EVEN IF DUE TO THE NEGLIGENCE, BREACH OF CONTRACT, VIOLATION OF STATUTE, OTHER FAULT OR LIABILITY WITHOUT REGARD TO FAULT OF ANY INDEMNIFIED PARTY.

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

- 6.16 SUBCONTRACTOR'S ASSIGNMENT AND SUBLETTING. Contractor shall be fully responsible to Owner for all acts and omissions of any Subcontractor, supplier, or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Contractor. All Work performed for Contractor by such Subcontractor, supplier, persons or organization shall be pursuant to an appropriate agreement between Contractor and each such

party that specifically binds such party to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

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

Upon written request from the Owner or Engineer, the Contractor shall provide the Owner or Engineer a list of all Subcontractors, suppliers, and others who will provide materials or services in the prosecution of the Work.

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

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

Understanding that Owner has a special interest in preserving the good will of persons whose property may be injured in the course of the Work, should Contractor fail to settle and pay claims, including providing written receipts and releases in favor of and releasing the Indemnified Parties, within 30 calendar days of Owner's initial written notice, Owner shall thereafter have the rights and authority to settle and pay, on Contractor's behalf, such claims as described in this paragraph. Contractor expressly acknowledges, acquiesces and confirms that a representative of Owner may, in good faith, determine whether claims are payable in whole or in part by Contractor under the provisions herein (the hazard and expense of litigation and the special interest of Owner in liquidating all Claims being considered), and if found so payable in part, the portion thereof properly payable by Contractor. To minimize the expense of employing agents in settling claims, Contractor hereby further authorizes Owner to settle and pay any claims payable by Contractor hereunder which may be settled for up to \$10,000 per claim (or such greater amount per claim as Contractor may fix by written notice to Owner). The amount of any

such claims may be withheld from Contractor's final payment. Owner shall use diligence in undertaking the settlement and payment of any such claims.

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

Any suit arising out of this agreement must be brought in Fort Bend County.

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

6.20 LAWS AND REGULATIONS.

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

6.21 BUSINESS STANDARDS. Contractor, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interests of the Owner. Contractor shall review with the Owner, at reasonable frequency during the performance

of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with the Owner's employees, agents, and representatives, vendors, Subcontractors and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

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

6.22 SAFETY.

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

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

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

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

Whenever streets are closed, the Contractor shall open as soon as practicable each block for public use, and shall remove as soon as practicable any accumulated rubbish. The Contractor shall backfill and shape trenches across street intersections or driveways for safe traffic at night or, where permitted, span open trenches with steel plates or bridges to permit traffic flow. When driveways are cut, the immediate placement of mats for ingress or egress of vehicles may be directed if undue hardship to property owner would otherwise result.

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

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

- 6.30 SITE MAINTENANCE AND CLEAN-UP. Contractor shall maintain the Site during construction to keep it reasonably neat and free of trash, rubbish, and other debris. In clean-up operations, Contractor shall remove from the Site and from public and private property temporary structures, rubbish, and waste materials and dispose of excavated materials beyond that needed to bring the Site to elevations shown. During final clean-up, any road constructed by Contractor for access to the Site shall be leveled and ruts filled so that surface drainage is not hindered.

- 6.31 AS-BUILT DIMENSIONS/ RECORD DRAWINGS. The Contractor shall take daily measurements of facilities constructed and keep accurate records of location (horizontal and

vertical) of all facilities. Upon completion of the Work, the Contractor shall furnish Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and location of all Work constructed.

- 6.32 SANITATION. Contractor shall construct and maintain necessary sanitary conveniences for the use of laborers on the Work Site, properly secluded from public observation, and in such manner and at such point as shall be approved by Owner, and their use shall be strictly enforced.
- 6.33 CONTRACTOR'S BUILDINGS. Contractor shall not build structures for housing employees, nor erect tents or other forms of protection unless permitted by Owner and only at such places as Owner shall prescribe. The sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to Owner.

ARTICLE VII. ENGINEER'S STATUS DURING CONSTRUCTION

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

To prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to the Contract that, if it cannot be otherwise agreed, Engineer shall in all cases determine the amounts and quantities of the several kinds of Work, which are to be paid for under this Contract, and shall determine all questions in relation to said Work and the construction thereof, and shall in all cases decide every question which may arise relative to the performance of this Contract on the part of Contractor; provided, however, that should Engineer render any decision or make any requirement which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with Engineer within 30 calendar days a written objection to the decision or requirement so rendered. Contractor's failure to object to Engineer's decision or requirement within such 30 calendar days shall be deemed Contractor's agreement with such decision or requirement and constitute a waiver of any right of Contractor to additional time, compensation or damages as a result of such decision or requirement.

It is the intent of this Contract that there shall be no delay in the performance of the Work. To this end, the decision or requirement of Engineer shall be promptly carried out. Engineer shall, within a reasonable time or as otherwise required in the Contract Documents, render and deliver to both Owner and Contractor a written decision on all claims of the parties hereto and on all questions that may arise relative to the execution of the Work or the interpretation of the Contract, Technical Specifications, or Plans.

- 7.2 **EXAMINATION, OBSERVATION, AND TESTING.** Contractor agrees that Engineer is hereby authorized to appoint from time to time such subordinate engineers or project representatives as Owner may deem proper to examine the materials furnished, observe the Work done, and to ascertain whether the said materials are furnished and said Work is done in accordance with the Contract Documents therefor. Contractor shall furnish all reasonable aid and assistance required by the subordinate engineers or project representatives for the proper examination and testing of the Work and materials. The authority of subordinate engineers and project representatives shall be limited to examination, observation, and testing of Work and materials, and reporting same to Engineer.

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

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

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

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

ARTICLE VIII. EXTRA WORK/ CHANGE ORDERS/ CLAIMS

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

If such changes or alterations diminish the quantity of the Work to be done, such changes may reduce the Contract Price according to the quantity of Work actually done and the unit price established for such Work under this Contract and shall not constitute the basis for a Claim. If such changes or alterations increase the amount of Work and the increased Work can fairly be classified under the Plans, Technical Specifications, or other Contract Documents, such increase shall be paid for according to the quantity of Work actually done and at the unit price established for such Work under this Contract; otherwise such Extra Work shall be paid for as provided in this Article. If Owner makes such changes or alterations as makes useless any Work already done or materials already furnished or used in accordance with the Contract Documents in connection with said Work, then Owner shall recompense Contractor for such Work, labor and materials, in accordance with the prices therefore in the Contract Documents, made useless by such change.

- 8.2 **EXTRA WORK.** It is agreed that Contractor shall perform all Extra Work when presented with a Written Work Order or Change Order. **THE CONTRACT PRICE FOR EXTRA WORK MAY BE CHANGED ONLY BY A CHANGE ORDER SIGNED BY OWNER, ENGINEER, AND CONTRACTOR.** It is agreed that pricing in any Change Order for performing Extra Work shall be determined by one or more of the following methods:

Method (A) - By agreed unit prices; or

Method (B) - By agreed lump sum; or

Method (C) - If neither Method (A) nor Method (B) are agreed upon before the Extra Work is commenced, then Contractor shall be paid:

- Actual Labor Cost + 10%
- Burden on Labor shall be calculated at Actual Labor Cost x 35%
- Equipment shall be paid at Blue Book Rates + 15% and shall include mobilization and demobilization from the site.
- Materials will be paid at Actual Invoiced Cost + 25%
- Subcontractors will be paid at Actual Invoiced Cost + 5%

In the event said Extra Work is to be performed and paid for under Method (C), then the provisions of this paragraph shall apply. Engineer may prescribe the form in which accounts of the Actual Field Cost shall be kept and may also specify, in writing, before the Work commences,

the method of doing the Work and the type and kind of machinery and equipment to be used, otherwise these matters shall be determined by Contractor. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Work Order or Change Order.

NO CLAIM FOR EXTRA WORK OF ANY KIND WILL BE ALLOWED UNLESS ORDERED IN WRITING BY ENGINEER. In case any requirements, response to request for information, response to a submittal or other communication made by Engineer or any other event appear to Contractor to involve Extra Work for which he should receive compensation, Contractor shall immediately, and **IN ANY EVENT WITHIN 7 CALENDAR DAYS AFTER BEING NOTIFIED OF ANY SUCH REQUIREMENT, RESPONSE OR COMMUNICATION OR AFTER SUCH EVENT**, make written request to Engineer for written authorization there for. Such written request for written authorization shall set forth Contractor's belief of, basis for and amount of expected compensation. **IN NO EVENT SHALL CONTRACTOR BEGIN PERFORMING THAT PORTION OF THE WORK AFFECTED BY SUCH REQUIREMENT, RESPONSE, OR COMMUNICATION PRIOR TO GIVING SUCH WRITTEN REQUEST FOR WRITTEN AUTHORIZATION TO THE ENGINEER.** Any written request for written authorization not timely made by the Contractor shall be deemed a waiver by the Contractor of its right to assert and recover any additional compensation or otherwise on a Claim in respect of such request, response or communication. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefore, and Engineer insists upon its performance, Contractor shall proceed with the Work after making its written request for written authorization to Engineer and shall keep an accurate account of the Actual Field Cost thereof, as provided under Method (C). Engineer shall, within a reasonable time, render and deliver to both Owner and Contractor a written decision on all Claims as provided under Section 6.1 in this Contract.

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

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

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

Price, ii) becomes greater than five percent of original Contract Price as the result of an increase in quantity, or iii) is greater than or equal to \$100,000, whichever is least.

- 8.4 EXTENSION OF TIME. Subject to the remainder of this paragraph, should Contractor be delayed in the completion of the Work by any act or negligence of Owner or Engineer, or by any employee of either, or by other Contractors employed by Owner, or by changes ordered in the Work, then, if the other requirements for an extension of time are met, an extension of time shall be allowed for completing the Work sufficient to compensate for the delay, the amount of the extension to be the amount approved by Owner, based on the recommendation by Engineer; provided, however, that Contractor shall give Engineer notice in writing of the cause of such delay and the impact to the critical path of the schedule prior to the tenth day of the month following the month in which the delay occurred. Failure to file requests for extension of time within the time set forth in and otherwise as required by this paragraph shall constitute a waiver of any rights the Contractor may have had to such extensions of time. Contractor shall support its request for time extension with such information as required by Engineer. Approved extensions of time must be made in writing, signed by the Owner, Engineer, and Contractor.

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

- 8.5 HINDRANCES, INTERFERENCES, DISRUPTIONS, AND DELAYS. The Contractor shall receive no financial compensation for delay, interference, disruption, or hindrance at any time in the commencement or progress of the Work for any reason and for any period of time, by an act, omission or neglect, intentional or otherwise, of the Owner, Engineer or any other consultant or Contractor of the Owner, or of an employee of any of them; or by changes ordered in the Work; or by fire, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes that may justify delay. To the fullest extent allowed by applicable Laws and Regulations, in no event shall the Owner be liable to the Contractor or any Subcontractor or supplier, any other person or any surety for or any employee or agent of any of them, for any damages arising out of or associated with any delay, interference, disruption, or hindrance to the Work, regardless of the source of the delay, interference, disruption, or hindrance, AND EVEN IF SUCH DELAY, HINDRANCE, DISRUPTION OR INTERFERENCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN

WHOLE OR IN PART, TO THE NEGLIGENCE OR OTHER TORTIOUS CONDUCT, BAD FAITH, ARBITRARY OR CAPRICIOUS CONDUCT, INEQUITABLE CONDUCT, BREACH OF CONTRACT OR OTHER FAULT, HOWEVER CHARACTERIZED, OF THE OWNER OR THE ENGINEER OR THE EMPLOYEES, REPRESENTATIVES OR AGENTS OF THE OWNER OR ENGINEER. **The Contractor's sole remedy in any such case shall be an extension of time in such amount as allowed by the Section 8.4 of this Contract.**

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

If Engineer denies the Claim, in whole or part, Contractor may request the Claim to be presented to the Owner within 5 days of denial. If such request is timely made, Engineer shall present the Claim to the Owner within 30 days of the request. If the request is not timely made, Engineer may treat the Contractor's right to request the Claim to be presented to the Owner as waived, and Contractor shall have no other right or remedy to claim damages or relief in regards to the Claim made. However, Contractor hereby agrees that the Engineer's authority, as enumerated in Section 7.1, will prevail in the instance of a disagreement of how to settle the Claim between the Owner, Contractor, and Engineer.

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

IT IS FURTHER AGREED THAT ACCEPTANCE BY CONTRACTOR OF THE FINAL PAYMENT SHALL BE A BAR TO ANY CLAIMS OR SUITS BY CONTRACTOR AGAINST OWNER FOR ANY MATTERS RELATED TO THIS CONTRACT,

INCLUDING MATTERS ARISING OUT OF OWNER'S NEGLIGENCE, BREACH OF CONTRACT OR OTHER FAULT OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

ARTICLE IX. TESTS AND INSPECTIONS/ DEFECTIVE WORK/ WARRANTY

- 9.1 **TESTING AND INSPECTION.** The Owner shall arrange and obtain all inspections and tests required by the Contract Documents; provided, however, that if initial testing fails, all retests will be at Contractor's sole expense. Such testing and inspection is for the sole benefit of Owner, and Owner makes no representation or warranty as to the accuracy of the results of any test or inspection. Contractor, at its own expense, shall provide such testing laboratories with all test specimens required by the Contract Documents. The Contractor shall notify the Engineer prior to manufacture or fabrication of items so that observation may be accomplished and furnish field samples of materials to Engineer for testing.

- 9.2 **DEFECTS AND THEIR REMEDIES; WARRANTY.** It is agreed that if the Work or any part thereof, or any material delivered to the Site for use in the Work or selected for the Work, shall be deemed by Engineer as unsuitable or not in conformity with the Contract Documents, Contractor shall, after receipt of written notice thereof from Engineer, forthwith remove such material and rebuild or otherwise remedy such Work so that it shall be in full accordance with this Contract.

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

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

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

ARTICLE X. PRICE FOR WORK/ PAYMENTS TO CONTRACTOR

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

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

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

Engineer shall promptly review each application for payment, including required submittals. Engineer shall provide to Owner a statement showing, as complete as practicable and based upon Engineer's inspections, the total value of the Work completed by the Contractor together with Engineer's recommendation as to payment. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, such payments are not due and payable under the Contract Documents. Payments based on such interim statements are subject to adjustment and correction as set forth in the Contract Documents.

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

Owner may, at Owner's option, withhold part or all of any payment due the Contractor if i) any submittals, reports, Shop Drawings, samples, test reports, or Work progress not be timely or be behind schedule or any requirement of the Contractor as provided in the Contract not be performed or timely or up to date or as scheduled; ii) any Work be defective or not in complete compliance with this Contract or should Contractor otherwise fail to perform Work in accordance with the provisions of this Contract; iii) Owner has incurred damages, including, without limitation, any additional costs associated with design professionals, attorneys or other consultants, as a result of any action or inaction by Contractor not in accordance with the

Contract; iv) claims have been made against Owner on account of Contractor's performance or furnishing of the Work; v) Contractor is in breach of the Contract Documents; vi) there is evidence that the Work cannot be completed for the unpaid balance of the Contract Price; vii) Contractor has failed to submit proper statements for payment with all required attachments and supporting documentation; viii) Contractor has failed to make payment to any tier of Subcontractor or supplier; and ix) any other items entitling Owner to an offset against the amount recommended for payment. It is understood, however, that in case the whole Work be near completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the Contractor, the Owner may, at Owner's option and upon written recommendation of the Engineer, pay a reasonable and equitable portion of the retained percentage to the Contractor; or the Contractor, at the Owner's option, may be relieved of the obligation to fully complete the Work and, thereupon, the Contractor shall receive payment of the balance due him under the Contract, subject to the conditions stated in Section 10.01.

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

- 10.3 PAYMENT OF SUBCONTRACTOR/MATERIAL CLAIMS. Should Owner receive notice of any claim(s) of unpaid labor or materials (or damages) from Subcontractors, material suppliers, or any other person or entity, Owner may, at its option, withhold part or all of any payment due the Contractor until Owner, in its discretion, is satisfied that such claim(s) have been fully resolved and paid by Contractor, or Owner may, at its option, pay such claim(s) using the withheld funds.
- 10.4 RIGHT OF SET-OFF. If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, the Contractor shall make such payment promptly upon demand. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or if the Contractor owes the Owner money for any other reason, then, for all purposes and at all times, without waiver or limitation of any of its other rights or remedies under this Contract and applicable Laws and Regulations, Owner shall have the right, but not the obligation, to deduct and withhold the amount of money, if any, that may ever be due from Contractor (or its surety) to Owner from any monies that Owner owes Contractor (or its surety), or to issue a written notice to the Contractor reducing the Contract Price by an amount equal to that which the Owner is entitled.

ARTICLE XI. FINAL COMPLETION AND ACCEPTANCE

- 11.1 **FINAL COMPLETION, ACCEPTANCE, AND PAYMENT.** Upon completion of the Work, Contractor shall give the Engineer written notice that the Work has been fully and finally completed and must certify that the Work is complete and was built in conformance with the Plans, Technical Specifications, and other Contract Documents. Such written notice must be accompanied by all documentation called for in the Contract Documents, including but not limited to (i) the consent of surety to final payment; (ii) Contractor Affidavit for Final Payment and Bills Paid; and (iii) as-built drawings, as described in Section 6.31 of this Contract. Drawings will be reviewed by Engineer and returned to Contractor so that any adjustment required may be made.

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

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

The Owner shall be entitled to withhold any amounts from such final payment for any amounts in dispute or claims made by third parties arising from the Work. For example, but not by limitation, should Owner receive notice of any claim(s) of unpaid labor or materials (or damages) from Subcontractors, material suppliers, or any other person or entity, Owner may, at its option, withhold part or all of any of the final payments due the Contractor until Owner, in its discretion, is satisfied that such claim(s) have been fully resolved and paid by Contractor, or Owner may, at its option pay for such claims(s) using the withheld funds.

The 5 percent retainage, withheld from the Progress Payments, as described in Section 9.2 above, may be held by Owner for 30 calendar days after the date of said final payment, after which said retainage shall be paid to Contractor in full, provided he has fully performed his contractual obligations under the terms of the Contract and Owner is not otherwise entitled to withhold payment.

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

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

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

ARTICLE XII. SUSPENSION OF WORK/ TERMINATION/ DEFAULT

- 12.1 SUSPENSION OF WORK. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than sixty (60) consecutive calendar days by written notice to Contractor.
- 12.2 OWNER'S RIGHT TO CARRY OUT THE WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract and fails, within a ten-day period after receipt of written notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case the Owner may offset from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's or other consultant's additional services made necessary by such default, neglect or failure (the "Cost to Cure"). Such action by the Owner and Cost to Cure the Contractor are both subject to prior approval of the Engineer. If payments then or thereafter due the Contractor are less than the Cost to Cure, the Contractor shall pay the difference to the Owner.
- 12.3 TERMINATION FOR CONVENIENCE OF OWNER. Owner may terminate Contractor's performance under the Contract for Owner's convenience at any time upon written notice to Contractor, whether or not Contractor is in default and, in such event, Owner's only liability will be to pay Contractor the following amounts:
- a. The unpaid balance due Contractor for the Work actually performed and accepted, based on the schedules and tables, unit prices and lump sums enumerated in the Contract Documents; and
 - b. Reasonable expenditures made and costs incurred by Contractor for the materials ordered by Contractor for the Work prior to the date of termination and not incorporated in the Work, less reasonable salvage or resale value, provided such materials conform to the Specifications, and for labor performed on any such materials prior to the date of termination and associated labor insurance and labor payroll taxes.

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

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

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

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

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

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

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

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

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

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

Nothing contained herein shall be interpreted as enlarging Owner's legal duty to Contractor or to Contractor's agents, employees, Subcontractors, or third parties, or altering the status of Contractor as an independent Contractor. Should Owner elect to terminate the performance of Contractor hereunder, then such termination shall not waive, extinguish, or diminish the obligations and liabilities of the Contractor or its surety existing as of the termination date. Contractor shall submit and does hereby submit to the personal jurisdiction of the state or federal courts having subject

matter jurisdiction and sitting in the county in which the Site is located, for the adjudication of any suit brought to enforce Owner's rights and remedies under the Contract.

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

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

ARTICLE XIII. MISCELLANEOUS

- 13.1 **NO THIRD PARTY BENEFICIARIES.** The Contract Documents shall not create any rights in third parties and no provision of the Contract Documents shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the Owner, the Indemnified Parties, and the Contractor. Without limiting the foregoing, the Owner shall have no obligation to pay or to see to the payment of any monies due to any of Contractor's Subcontractors or material suppliers of every tier or to any other person or entity.
- 13.2 **SEVERABILITY.** Except as provided under Section 6.14 of this Contract, if any term, condition or provision of the Contract Documents, or the application thereof to any person or circumstance, shall ever be held to be void, voidable or unenforceable, then in each such event the remainder of the Contract Documents or the application of such term, condition or provision to any other person or any other circumstance (other than those as to which it shall have been held void, voidable or unenforceable) shall not be affected thereby, and each term, condition or provision of the Contract Documents shall remain valid and enforceable to the fullest extent permitted by Laws and Regulations.
- 13.3 **NON-WAIVER OF RIGHTS.** Any failure by the Owner at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the Contract Documents shall not constitute a waiver of the right to enforce or require the strict keeping of such terms or conditions, and shall not affect or impair such terms or conditions in any way or the right of Owner at any time to avail itself of such remedies as it may have for any subsequent breach or breaches of any such term or condition or of any other term or condition of the Contract Documents, including, without limitation, the right to terminate. Notwithstanding any provision hereof, neither Owner's receipt of non-compliant bonds nor non-compliant insurance certificates nor Owner's allowance of Contractor to proceed with the Work, shall be construed to relieve Contractor of its obligation to provide bonds and insurance in favor of Owner according to the requirements of these Contract Documents.

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

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

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

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

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

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

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

FORT BEND GRAND PARKWAY TOLL
ROAD AUTHORITY

By: 

Name: James D. Condrey, DDS

Title: Chairman

NBG CONSTRUCTORS, INC.

By: 

Name: DAVID BOEHM

Title: PRESIDENT

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ATTACHMENT A

TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Name of purchaser, firm, or agency:_____

Address (*Street & number, P.O. box or route number*):_____

Phone (*Area code and number*):_____

City, state, ZIP code:_____

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

Seller:_____

Street address:_____

City, state, ZIP code:_____

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

Purchaser claims this exemption for the following reason:

_____Texas Tax Code, Section 151.311

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

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

Purchaser Signature_____ Title_____

Date_____

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

ATTACHMENT B

Scope of Work

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

Construction of Grand Parkway / Brazos River Tangent Wall Construction

Fort Bend Grand Parkway Toll Road, Segment D,

Project No. GPD-018

for Fort Bend Grand Parkway Toll Road Authority,

Fort Bend County, Texas,

according to those particular Plans and Technical Specifications

prepared by Freese and Nichols, Inc. (“Engineer”)

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

Under this Agreement and the Contract Documents, Contractor shall furnish all materials, appliances, tools, equipment, transportation, services, and all labor and superintendence necessary for the construction of the Work as described below and in the Technical Specifications and as shown on the Plans. The completed installation shall not lack any part that can be reasonably implied as necessary to its proper functioning or any subsidiary item that is customarily furnished, and Contractor shall deliver the installation to Owner in operating condition.

The Work, in general, under the Contract **INCLUDES:**

1. Site preparation which includes clearing and grubbing, stripping grass, construct access roads and ramps, place base and fabric and gutters at T-5.
2. Preparing site by excavating and strengthening existing embankment by use of shotcrete and soil nails and/or sheet piles.
3. Establish a traffic control plan using concrete traffic barriers, signs, and barricades.
4. Place SWPPP items such as construction exits, silt fence, erosion control logs. These items shall be removed at completion of project.
5. Construction of a drilled shaft wall consisting of 74 – 66 inch diameter

shafts, 124 feet long and 12 – 66 inch diameter shafts, 96 feet long including 24 inch diameter seal shafts.

6. Placing tie-back anchors as shown in plans.
7. Construction of cap beams at drilled shaft wall, deadman and retaining wall under bridge.
8. At completion of project restore site and vegetation that was disturbed during construction to original or better condition.
9. Backfill between wall and edge of water as determined in field.
10. Additional work as field conditions change will be approved by the Engineer.
11. Protection of all equipment and materials from rising river levels, to the extent practical, is considered incidental to all other work required under this contract.

The following items of work are specifically **EXCLUDED** from the Contract Price:

1. Work damaged by a river event which was impossible or impractical to protect prior to the event.
2. The removal/relocation of the AT&T line and pole on the East side of the project.
3. The removal/replacement/relocation of the two light poles near work site.
4. Removal/relocation of other private and/or public utilities.
5. Drainage system at the drill shaft or wall location.
6. Coordination with the Levee District.
7. Lab tests and material testing.
8. “Drill Shaft Wall Maintenance” detailed on Sheet 2.
9. Permits or delays associated with permits.

The rates below are intended to be all encompassing for any perceived work that may be needed and are intended to be used by all parties as the method of fair compensation for any and all additional work required and requested by the Fort Bend Grand Parkway Toll Authority or its agents. It is also understood that if any work outside the scope of work shown in the plans and or as detailed in the Contractor submitted bid items that cannot be compensated by the breakdown below both parties will pursue the work expeditiously and negotiate in good faith any fair compensation.

Attachment "C"
Schedule of Values

	Description	U/M	Qty.	Unit Price	Amount
SITE PREPARATION					553,000.00
1	CLEAR AND GRUB	LS	1	\$70,000.00	70,000.00
2	STRIP GRASS	LS	1	\$60,000.00	60,000.00
3	ACCESS ROADS AND RAMPS	LS	1	\$250,000.00	250,000.00
4	BASE AND FABRIC	SY	15,000	\$11.20	168,000.00
5	GUTTERS @ T-5	LF	250	\$20.00	5,000.00
SITE ACCESS					1,231,500.00
6	EXCAVATION	CY	20,000	5.00	100,000.00
7	BACKFILL	CY	20,000	9.00	180,000.00
8	SOIL NAILS & SHOTCRETE	SF	12,300	55.00	676,500.00
9	SHEET PILE	LF	250	1,100.00	275,000.00
TRAFFIC CONTROL					113,400.00
10	CTB	LF	420	35.00	14,700.00
11	SIGNS AND BARRICADES	MO	11	1,700.00	18,700.00
12	DAILY LANE CLOSURES	LS	1	80,000.00	80,000.00
SWPPP					19,200.00
13	CONSTRUCTION EXITS	EA	2	5,500.00	11,000.00
14	SILT FENCE	LF	1,100	2.00	2,200.00
15	EROSION CONTROL LOGS	LF	500	6.00	3,000.00
16	REMOVE SWPPP	LS	1	3,000.00	3,000.00
DRILL SHAFTS					10,382,750.00
17	66' SHAFTS	LF	8,168	745.00	6,085,160.00
18	66" SHAFTS LOW OVERHEAD	LF	1,824	1,100.00	2,006,400.00
19	24" SHAFTS	LF	6,426	115.00	738,990.00
20	24" SHAFTS LOW OVERHEAD	LF	1,260	250.00	315,000.00
21	REBAR	LB	2,940,000	0.38	1,117,200.00
22	HAUL/DISPOSE OF SPOIL	CY	12,000	10.00	120,000.00
TIE BACKS					687,725.00
23	TIEBACKS	LF	4,935	135.00	666,225.00
24	POST TENSION	EA	43	500.00	21,500.00
CONCRETE WORK					718,550.00
25	CAP BEAM "A"	CY	250	450.00	112,500.00
26	CAP BEAM LOW OVERHEAD	CY	131	500.00	65,500.00
27	TIE BEAM "A"if	CY	295	500.00	147,500.00
28	DEAD MAN "A"	CY	223	350.00	78,050.00
29	RETAILNING WALL "B"	CY	130	600.00	78,000.00
30	REBAR	LB	316,000	0.75	237,000.00
SITE RESTORATION					61,000.00
31	REMOVE FABRIC AND BASE	SY	1	35,000.00	35,000.00
32	DRESS AND RESTORE SITE	LS	1	20,000.00	20,000.00
33	HYDROMULCH SEED	AC	3	2,000.00	6,000.00
MOBILIZATION					1,000,000.00
34	MOBILIZATION	LS	1	1,000,000.00	1,000,000.00
Total					14,767,125.00

The pricing described above is based upon the May 2017 Pricing Package produced by Freese & Nichols, Inc. Due to the rapidly changing conditions from the time the plans were prepared and to the mobilization of the Contractor it is impossible to determine what type or the scope of any work, if any, that may be required outside the scope as shown in the plans dated May 23, 2017, and detailed in the bid items as submitted as shown above by the Contractor.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

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

NBG Constructors, Inc.
Houston, TX United States

Certificate Number:
2017-227226

Date Filed:
06/21/2017

Date Acknowledged:
6/27/2017

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

Fort Bend Grand Parkway Toll Road Authority

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

GPD-18
Brazos River SH99 Drill Shaft Wall

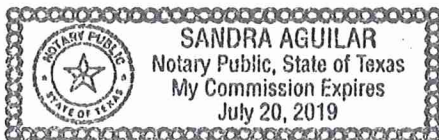
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



David Boehm
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said David Boehm, this the 21st day of June, 2017, to certify which, witness my hand and seal of office.

Sandra Aguilar Notary
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath